



Australian Government  
Office of the Registrar of  
Indigenous Corporations

# ORIC Regulatory compliance framework



February 2024

## Introduction

The ORIC Regulatory Compliance Framework outlines the approach taken to ensuring compliance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) is an independent statutory office holder appointed by the Minister for Indigenous Australians to administer the CATSI Act. Provisions throughout the CATSI Act and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (the Regulations) empowers the Registrar to, among other things, make decisions, issue a direction to corporations and to intervene.

The Office of the Registrar of Indigenous Corporations (ORIC) assists the Registrar to administer the CATSI Act.

The CATSI Act authorises the Registrar to:

- register Aboriginal and Torres Strait Islander corporations
- support corporations to establish and maintain their own rule books
- maintain the public register of Aboriginal and Torres Strait Islander corporations
- maintain the register of disqualified officers
- provide guidance, support and corporate governance training to corporations, directors and members
- assist with complaints and disputes,
- undertake certain regulatory action.

In administering the CATSI Act, the Registrar is focused on increasing compliance with the Act and corporation rule books. The Registrar's vision is for well governed and self-determining Aboriginal and Torres Strait Islander corporations achieving their economic, social or cultural purpose.

The CATSI Act contains provisions that are not included in other governing legislation for incorporated entities that are aimed at supporting corporations. This includes providing mechanisms for the Registrar to support corporations get back on track before returning corporations back to members in a stronger position.

When a corporation does not meet, or is suspected of not meeting, its obligations, the Registrar will take proportionate regulatory action. While the Registrar's preference is to work with corporations to give them the opportunity to meet their obligations under the CATSI Act, sometimes a formal process is necessary, which may include the Registrar's intervention.



## ORIC's values

The Registrar's approach to non-compliance is shared by staff at ORIC and guided by the following values:

- **Independence** – the Registrar is independent and apolitical. We are balanced in how we exercise the Registrar's powers and do so without influence or interference.
- **Impartiality** – we remain neutral and treat all equally. We apply our policies and processes consistently, and we listen to all perspectives to ensure decisions and actions are free from bias.
- **Respect** – we show regard for the dignity of Indigenous people, their cultures, views and self-determination. We respect the diversity and worth of Aboriginal and Torres Strait Islander corporations and are committed to high quality products and services that support them to achieve their purpose.
- **Accountability** – we are open and transparent in our decision making and actions, accept responsibility for them, and are responsive to scrutiny.

## Foundations of our compliance approach

The Registrar has a range of powers and functions that may be exercised to respond to non-compliance or suspected non-compliance. The Registrar approaches non-compliance responsively and makes considered decisions to ensure the regulatory actions applied are proportionate to the nature of the non-compliance and potential for harm, for example, the potential for loss of corporation assets. The ability and willingness of corporations to meet their obligations, as well as their operating environment, helps to inform the approach taken.

Where a suspected compliance issue exists the Registrar, assisted by ORIC, will begin by gathering and analysing relevant data to determine the extent, seriousness and likely consequences.

The Registrar expects that corporations will be proactive and committed to complying with the CATSI Act and their corporation rule books. These corporations would generally be well governed with strong accountability back to their members. To assist corporations to be compliant and successful, a range of training and education, information, and support services are provided by ORIC.

Where a corporation is experiencing difficulties meeting their obligations or make honest mistakes and is willing to become compliant, the Registrar's preference is to work with the corporation to get it back on track. This may include a combination of education and appropriate regulatory action to support achieving that compliance. This is consistent with the Registrar's approach to providing advice and education to help corporations comply with their obligations.

The Registrar will consider intervention, for those corporations that:

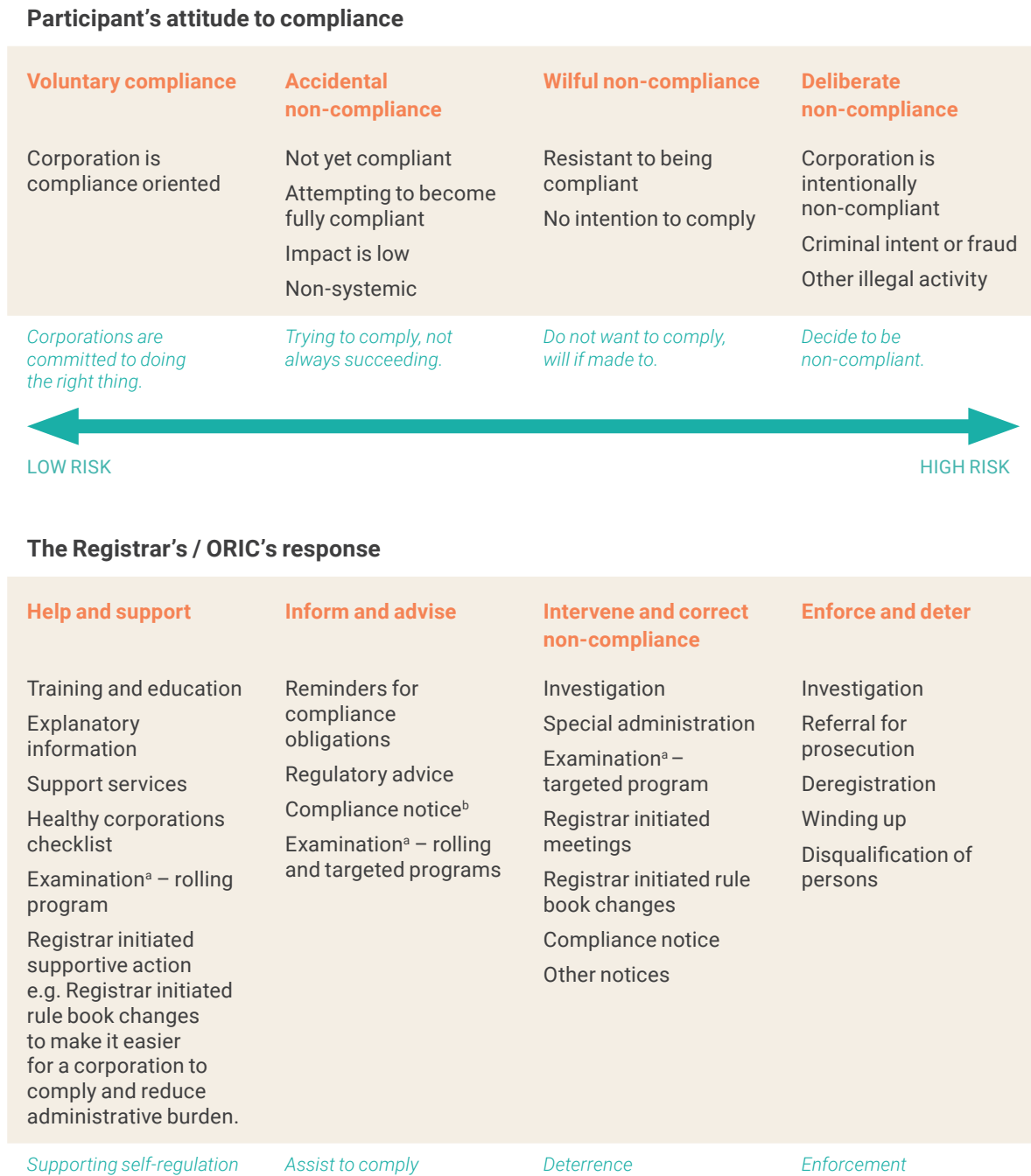
- have a history of or intentionally provide incomplete or inaccurate information
- ignore or do not meet statutory timelines for routine requirements
- do not respond to ORIC's efforts to engage them
- disregard the mandate of members
- do not cooperate and fix non-compliance after being given the opportunity to do so
- demonstrate wilful or deliberate non-compliance.

The Registrar will also consider whether there is evidence or suspicion of serious mismanagement and wrongdoing that has significant consequences. For example, where:

- a corporation is not following the rules outlined in the rule book
- a corporation or officer(s) of the corporation have displayed intentional or repeated disregard to obligations under the CATSI Act or
- there is conduct that compromises the interests of the members
- there is the potential for harm to the corporation.

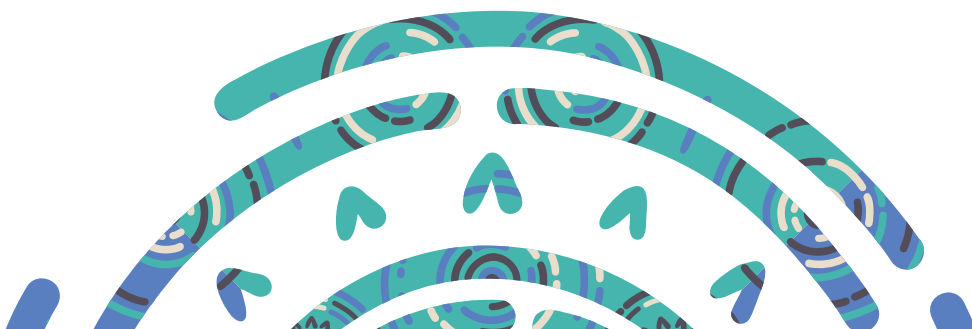
An overview of ORIC's approach to compliance is shown as a continuum in figure 1. The Registrar may respond with a range of actions from across the continuum.

Figure 1 – ORIC's response continuum to compliance issues



Note a: Examinations are not always undertaken in response to suspected non-compliance with the CATSI Act or a corporation rule book. A corporation may be randomly selected as a part of a rolling examinations program, or may be undertaken in response to a particular concern to help determine further regulatory action. For further information, see the Examinations section below.

Note b: The issuing of a notice, including a compliance notice, does not always reflect serious non-compliance by a corporation.



## Regulatory functions and powers

Under the CATSI Act, the Registrar has a range of regulatory powers to intervene. These extend from the ability to request the provision of information or to require a corporation to take a particular action, through to the ability to place a corporation under special administration and/or refer a corporation or person for prosecution for criminal offences. The latter can result in imprisonment, the issuing of a fine and/or reparation orders, and disqualification from holding certain positions within an Aboriginal or Torres Strait Islander corporation registered under the CATSI Act.

The Registrar is not limited to exercising only one power, and in some cases multiple forms of intervention may be appropriate. In determining whether to use regulatory powers, the Registrar considers factors including:

- whether it is in ORIC's jurisdiction to intervene
- the seriousness of the matter, including:
  - » the impact on a corporation's governance and transparency of operations for members
  - » if there is sufficient evidence to support allegations which also suggests misconduct that is intentional, reckless, or negligent
- materiality – including the potential impact on the assets of the corporation
- whether the non-compliance was one off or consistent and repeated
- the age of the matter
- what action is available to, or has already been taken, by the corporation or other parties to address the matter, for example, the corporation has already taken independent action to remediate the risk.

### Support for corporations

The Registrar recognises that most non-compliance is inadvertent and prefers to work with corporations to resolve issues and promote good governance. Support provided to corporations is focused on education and enabling them to identify and rectify any non-compliance with their obligations under the CATSI Act.

#### Training and education

The provision of education programs is a key feature of the CATSI Act. ORIC's training workshops support the Registrar's commitment to increase corporate governance knowledge, skills, efficiency and accountability within corporations.

Workshops are designed for directors and members of Aboriginal and Torres Strait Islander corporations.

Most courses bring people from different corporations together to maximise information sharing, networking opportunities, problem solving practice and the generation of ideas affecting Indigenous corporations and communities in a region.

ORIC also runs training with individual corporations where requested or they would benefit from tailored assistance.

Strengthening governance integrity and confidence in corporations is also supported by providing access to educational resources. In addition to training programs, ORIC provides a range of materials which support corporations to apply learnings and build corporate confidence.

#### ORIC website

ORIC's website serves to keep stakeholders informed of current activities, procedures and policies. The materials available are designed to help corporations voluntarily comply, be well governed and to mature their governance standards. More intensive resources are available for corporations that are struggling. In particular, the website makes available to corporations and key stakeholders a broad range of information. The website includes links to resources such as:

- policy statements
- position statements
- fact sheets
- guides
- forms and templates.

#### Policy statements

Policy statements are technical documents that provide an overview of an aspect of the CATSI Act by bringing together relevant parts of the legislation. Policy statements may also fill gaps in the interpretation of the CATSI Act by including relevant references to case law.

The policy statements are available on ORIC's website.

#### Position statements

Position statements give guidance to Aboriginal and Torres Strait Islander corporations, their directors and members, and the public about:

- the Registrar's position in relation to relevant regulatory matters
- the principles underlying the Registrar's approach
- how the Registrar will exercise specific powers under the CATSI Act.

The position statements are available on ORIC's website.

## Fact sheets

Fact sheets are intended to provide a short overview of particular topics about the CATSI Act and running corporations.

The fact sheets are available on ORIC's website.

## Guides

Guides provide information to Aboriginal and Torres Strait Islander corporations about the CATSI Act and reporting obligations.

The guides are available on ORIC's website.

## Forms and templates

A range of forms are available for Aboriginal and Torres Strait Islander corporations on ORIC's online portal that allow corporations to update information and request changes. These forms are also available on ORIC's website to be lodged.

ORIC provides a variety of [templates](#) to corporations to assist them with meeting their obligations under the CATSI Act. The templates available include rule books, and notices for general and annual general meetings.

## Healthy corporation checklist

A corporate governance self assessment tool is available on ORIC's [website](#). The tool serves as an education tool and a resource that can assist a corporation to mature its standard of governance. The tool may be used proactively by a corporation or in response to an identified need in a corporation that is struggling to meet expected governance requirements under the CATSI Act and corporation rule book.

The checklist comprises a list of questions which can be used to check compliance with the CATSI Act and the corporation's own rule book. Links to document templates, forms and further information are included in the checklist to assist a corporation to improve its standards of corporate governance.

## Public register

The ORIC website includes the public register of Aboriginal and Torres Strait Islander corporations (the Register) which provides accountability and transparency for corporations, members and other stakeholders. A range of information can be generated from the Register including a corporation extract, corporate documents such as the rule book, general and financial reports, membership lists, and a list of the current directors.

## Assisted compliance

Where there is inadvertent or sustained non-compliance, and the corporation is willing and capable of being compliant, the Registrar may provide assistance or direct a corporation to meet its obligations under the CATSI Act using one or more of the regulatory powers below.

### Convening and calling general meetings

The Registrar has the power to convene and call general meetings, including annual general meetings (AGM). This power is not used lightly and will generally only be exercised when the corporation has repeatedly demonstrated a failure to hold such meetings and this is, in the circumstances, affecting the members' rights and the corporation.

The Registrar has no statutory power to attend a general meeting or AGM that they have not called, unless invited. The Registrar and ORIC staff may only be invited to attend a general meeting or AGM if the corporation's rule book allows for non-members to attend. Due to time and resource constraints, the Registrar is unable to accept all invitations. The Registrar is unable to attend a director's meeting.

Requests to attend a general meeting or AGM will be declined by the Registrar where it is clear a corporation has a divided membership. In these instances, there is a real risk that if the Registrar were to accept an invitation from one side of the membership it could be perceived as the Registrar and ORIC supporting, whether directly or indirectly, some of the members and not the membership as a whole. This is inconsistent with the Registrar's, and ORIC's, duties of impartiality.

### Directing a corporation to act

In certain circumstances, the CATSI Act provides the Registrar with a power to direct a corporation to take specified action, including but not limited to:

- correct a mistake – such as correcting the name of the corporation
- ensure that members and others dealing with a corporation have access to important information that should be available to them
- provide additional documents or information to ORIC
- hold a meeting – where one has been requested by members in an eligible format.

## Issuing a compliance notice

In response to non-compliance with the CATSI Act and/or corporation rule book, or irregularities in the affairs of the corporation, a delegate of the Registrar may issue a compliance notice to a corporation. In particular, at the conclusion of an examination of a corporation a compliance notice may be issued to require the corporation to address matters identified.

A compliance notice provides guidance for corporations on how to improve its standards of corporate governance and financial management. The compliance notice is made publicly available on the register to ensure transparency for members and other stakeholders.

## Changes to reporting requirements

All Aboriginal and Torres Strait Islander corporations must submit a general report each year unless an exemption to reporting has been granted. Additional financial reports, directors' reports and auditors' reports may also be required depending on the size and income of the corporation. Timely and accurate reporting not only helps to ensure compliance with the CATSI Act, it also helps to provide transparency to members and other stakeholders.

To assist with providing transparency to members and stakeholders, ORIC maintains a list of corporations with overdue reports on its website.

In response to an identified need we may request additional or increased reporting from a corporation, or class of corporations, for a past or future period. As an example, the Registrar may require additional reporting from a corporation following the conclusion of a special administration or examination.

## Examinations

An examination is a review of the standard of governance and financial health of an Aboriginal and Torres Strait Islander corporation or a related body corporate. An examination of any kind is not a formal investigation into potential breaches of law. An examination is a power available to the Registrar to assist in monitoring compliance under the CATSI Act.

An examination may identify when a corporation is running well or may identify areas that could be strengthened. If the corporation is found to be experiencing financial or governance difficulties, the Registrar may use an examination as a basis to identify areas for improvement, provide assistance or to inform decisions regarding further regulatory action.

The Registrar will also consider examinations to assist the assessment of reports of serious non-compliance and/or frequent complaints regarding corporations. This includes undertaking examinations that focus on targeted governance and/or financial management areas.

There are two main ways in which a corporation may be selected for an examination: as a part of an annual rolling program, or in response to matters that have come to the Registrar's attention.

### *Annual rolling program*

The annual rolling program of examinations focuses on corporations with a specific set of characteristics, rather than specific compliance concerns. For example, corporations that are large or publicly funded, providing essential services or community infrastructure, or holding interests in native title. The number of corporations examined each year under the rolling program will depend on resource availability. A corporation included in this program does not mean that the Registrar has concerns regarding the standard of governance or its financial health.

### *Targeted examinations*

When there are signs that a corporation may be experiencing financial or governance difficulties, or has experienced rapid growth an examination may be conducted outside of the annual rolling program. The Registrar may use an examination as a basis to identify areas for improvement, provide assistance or exercise other regulatory powers. An examination undertaken in this context may look at a range of matters related to a corporation's standard of corporate governance and financial management or focus on a particular governance or financial concern.

The following are examples of matters that when brought to the Registrar's attention may result in an examination:

- circumstances that are impacting on a corporation's governance, including a lack of transparency for members of the corporation's operations and frequent changes of directors or executive
- information which indicates that directors, officers or employees of a corporation are not carrying out their duties and exercising their powers appropriately
- repeated failures of the corporation to meet its obligations under the CATSI Act
- irregularities relating to a corporation's financial or operational management, including indicators that could impact on the corporation's viability such as disruptions to funding and income sources
- ongoing reliance on ORIC for advice, guidance, support for complaints and disputes resolution.

### *Potential outcomes of an examination*

There are several potential outcomes from an examination. These include:

- **Issuing a management/outcome letter to a corporation letter** – no serious issues are identified in the examination. May highlight minor matters that would help the corporation to mature its standard of governance and financial management. A management letter is published on the Register.
- **Making a determination requiring additional or increased reporting** – issues identified in an examination indicate that there would benefit in the corporation preparing additional reports or including additional information within one or more of its standard reports. Any additional or increased reporting requirements are published on the Register.
- **Issuing a compliance notice** – issues identified during the examination are serious enough that the directors are required to take action to ensure the corporation is complying with the CATSI Act and/or its rule book, or to remedy irregularities in the affairs of the corporation. A compliance notice is published on the Register.
- **Issuing a show cause notice** – issued as a part of procedural fairness to provide the corporation with an opportunity to explain why it should not be placed under special administration (see below for further information on special administration). In this instance serious non-compliance and irregularities in the affairs of the corporation have been identified in the examination. A show cause notice is published on the Register.

It is fundamental to transparency and accountability to directors, members and stakeholders that any regulatory action taken is made publicly available. This process also builds public confidence in the sector.

### **Special administration**

The power to appoint a special administrator is a unique provision under the CATSI Act. The Registrar may appoint 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 to address any governance or finance challenges it may be experiencing.

The special administrator is responsible for the conduct of the affairs of the corporation while it is under special administration and has broad powers under the CATSI Act. The role of the special administrator will vary, but in most appointments will include:

- Attending to the 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 and corporate governance.

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.

### **Enforcement action**

The Registrar has a range of powers which are available in circumstances where serious non-compliance or misconduct is identified or suspected by individuals and/or corporations. The Registrar may take one or more types of enforcement action to address any alleged or suspected contraventions of the CATSI Act.

### **Investigations and prosecutions**

The Registrar does not undertake a formal investigation of every report of concern, instance of alleged non-compliance or matter reported to ORIC. In determining priority of investigations, the Registrar pursues those investigations which have the potential to most influence community behaviours, and those for which a successful outcome will support well governed and self-determining Aboriginal and Torres Strait Islander corporations.

If the available information suggests a breach that is serious and provable, we may investigate. A formal investigation is the first step toward initiating, or ruling out, a prosecution.

An investigation may lead to the following court action.

### **Strict liability offences**

The CATSI Act includes provisions for strict liability offences. Strict liability offences are criminal offences for which there is no requirement to prove criminal or malicious intent. Corporations or individuals are liable under the CATSI Act for some offences, regardless of the intent when committing the alleged action. Examples of strict liability offences in the CATSI Act include a corporation's failure to:

- lodge required annual reports
- hold its AGM within 5 months after the end of its financial year
- produce records when requested to do so by an officer authorised by the Registrar.



## Applying for an injunction

The Registrar may apply for an injunction where a person is engaged in a contravention of the CATSI Act. An injunction enables the Registrar to protect member and creditor interests where they are threatened by persons who are alleged or suspected of contravening the CATSI Act – for example, if the corporation makes a related party benefit without member approval.

## Civil penalty proceedings

As an alternative to criminal proceedings, the Registrar may seek civil penalty orders from the court against a person who is found to have breached one, or a number, of civil penalty sections of the Act.

The range of civil penalty orders available from the court include to:

- require a person to pay a fine
- require a person to compensate a corporation
- disqualify a person from managing corporations.

## Criminal proceedings

The CATSI Act allows the court to impose criminal sanctions for serious, intentional or reckless misconduct, and offences of strict liability, such as a corporation failing to lodge reports or to hold an annual general meeting. The criminal sanctions that may be imposed include prison terms (up to 5 years), fines and court orders (e.g. community service orders).

The Registrar pursues criminal proceedings for the most serious and harmful wrongdoing. The Registrar will generally consider criminal proceedings for offences involving conduct that is dishonest, intentional or highly reckless - even when civil action is also available.

Criminal proceedings are conducted by the Commonwealth Director of Public Prosecutions (CDPP). The Registrar may refer matters to the CDPP for assessment, however, it is the CDPP that determines whether the evidence is sufficient to commence criminal proceedings and whether prosecution is in the public interest.

## Intervening in a civil proceeding

The Registrar may intervene in any court proceeding relating to a matter arising under the CATSI Act. If the Registrar intervenes in such a proceeding, the Registrar is taken to be a party to the proceedings and has all the rights, duties and liabilities of a party. The Registrar will consider intervention in the following 4 cases:

- the Registrar believes it is important that judicial interpretation of the CATSI Act is consistent
- to disclose information to the court obtained from an investigation
- to protect the interests of corporation members

- to bring proceedings on behalf of a corporation, or intervene in proceedings to which a corporation is a party, for the purpose of taking responsibility for the corporation and acting in the corporation's name.

## Disqualification from managing corporations

Individuals found to have been in breach of their duties may be disqualified from managing any corporation, or holding a position as a director or officer of any corporation. There are 3 ways in which a person may be disqualified from managing an Aboriginal or Torres Strait Islander corporation:

1. Automatic disqualification upon:
  - » being convicted of particular offences
  - » bankruptcy or entering a personal insolvency agreement
  - » disqualification under the *Corporations Act 2001* (Corporations Act).
2. Disqualification by a court upon application by the Registrar:
  - » for breaching a civil penalty provision under the CATSI Act or Corporations Act
  - » if the person has been an officer of two or more corporations (including Corporations Act corporations) that have failed in manner prescribed in the last 7 years
  - » for repeatedly contravening the CATSI Act or Corporations Act.
3. Disqualification by the Registrar:
  - » within the preceding 7 years, a person has been an officer of 2 or more corporations (including Corporations Act corporations), which have been wound up and a liquidator has lodged a report about each corporation's inability to pay its debts.

## Register of Disqualified Officers

The CATSI Act prescribes that the Registrar keep a [Register of Disqualified Officers](#). The Register of Disqualified Officers is a register of people who have been disqualified from managing Aboriginal and Torres Strait Islander corporations by court order or by the Registrar under particular sections of the CATSI Act.

ORIC is not required by the CATSI Act to maintain a register of officers disqualified for other purposes, such as automatic disqualification, as it is not possible to ensure it is always factually up to date. For example, where an officer is automatically disqualified for convictions for various serious offences and/or bankruptcy, ORIC is not necessarily party to these matters or notified of such.

## Closing corporations

In cases of continued and wilful non-compliance with the CATSI Act, serious dysfunction which impedes the corporation's operations, or where a corporation is not functioning, the Registrar may act to wind up or deregister a corporation.

The 2 ways the Registrar can close a corporation is to deregister it or apply to the court to have it wound up.

### *Registrar initiated deregistration*

Under the CATSI Act the Registrar may deregister a corporation if:

- the corporation has not lodged a general report within 6 months after it is due and no exemption was granted
- the corporation has not lodged any other documents under the CATSI Act in the last 18 months and no exemption was granted
- the Registrar has no reason to believe that the corporation is carrying on business.

Deregistering corporations that are non-compliant or are no longer carrying on business helps to ensure that corporations are operating in the best interests of members and are achieving their economic, social and cultural purpose.

### *Court ordered winding up of a corporation*

Where a corporation has not cooperated with ORIC despite being given the opportunity to comply with its obligations under the CATSI Act, is continuously non-compliant or not achieving its economic, social or cultural purpose, the Registrar may consider applying to the court for a corporation to be wound up. A court ordered winding up results in the corporation being closed and deregistered. The grounds on which the Registrar may apply for a corporation to be wound up include the:

- business operations of the corporation have not commenced within one year of its registration
- business operations of the corporation have been suspended for a continuous period of one year
- corporation no longer meets the minimum number, Indigeneity and/or age of member requirements
- officers of the corporation have acted in their own interests, rather than in the interests of corporation members as a whole
- corporation is insolvent.

This provision in the CATSI Act is not solely a regulatory power, a corporation may also apply to the court to be wound up where it has resolved to do so by special resolution.

## Conclusion

The Registrar's efforts are focussed on building strong, well functioning corporations that understand and meet their obligations under the CATSI Act. Strong corporations are best positioned to deliver for members and communities. The Registrar will use the full range of powers under the CATSI Act to support corporations to meet their obligations. The Registrar will exercise the powers available under the CATSI Act consistently and proportionately depending on the circumstances and risk to the corporation and its members.

## Important notice

Please note that this document is a summary giving you basic information about the CATSI Act. It does not cover the whole of the relevant law regarding these powers, and it is not a substitute for professional advice. Omission of any matter in this document will not relieve a corporation or its officers from any penalty incurred by failing to comply with any statutory obligations within the law administered.

You should also note that because this document is providing a plain language legal summary, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your circumstances must be taken into account when determining how the law applies to you.

