



What the CATSI Act means for funding bodies

Many corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) receive funding from state and territory governments and Commonwealth government agencies. The CATSI Act makes a number of improvements that are relevant to funding bodies—such as encouraging better governed and more sustainable corporations, and providing for improved risk management by funding bodies and corporations. These measures are discussed in this fact sheet.

Corporations are set up to succeed

The CATSI Act ensures that corporations are set up to succeed. It does this by improving support for groups before and after they incorporate. Before incorporating, groups must provide:

- *evidence they are ready*: Groups wanting to incorporate must show that they are ready in a number of ways, including:
 - 75 per cent of the group has agreed to apply for registration and
 - the group has agreed on its internal governance framework—i.e. its rule book.
- *a corporation rule book, which allows corporations to tailor rules to reflect local circumstances*: A sensible approach to internal governance for corporations is built into the CATSI Act, allowing them to tailor rules to their own special needs and circumstances while also meeting the standards set out in the CATSI Act. (See ORIC's fact sheet, *What's in the corporation's rule book*). For example, even though the CATSI Act is a special law for Aboriginal and Torres Strait Islander peoples, corporations can choose to allow non-Indigenous people as members, such as spouses, step children, directors who may be experts in a particular area or key staff members of the corporation.

This will encourage better corporate governance, since it draws on expert and employee help relevant to the corporation's needs. The CATSI Act requires that Indigenous people will always be the majority, so even if a corporation chooses to allow non-Indigenous members the corporation will be controlled by Indigenous people.

Further information

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Reporting

The CATSI Act aims to improve transparency of corporations. It does this through a number of mechanisms including:

- **group reporting:** If a corporation forms part of a larger corporate group it can report as part of the group—this is important for risk management of complex corporate and financial structures.
- **small, medium and large reporting:** Corporations are streamed into small, medium and large for reporting purposes. Size and income determine the number of reports required from a corporation.

All corporations must provide a minimum 'general' report. This contains the basic details of directors, current members, the contact person or secretary and the corporation's contact details. Keeping this information up-to-date and keeping proper financial records are the key compliance requirements for small and medium corporations.

For most small corporations this general report is the only one that they will have to provide to the Registrar, and they can apply to do so every second year. Small corporations can also apply to hold an annual general meeting every second year and can hold these by video or teleconference. This helps unfunded land holding corporations and small businesses reduce their reporting costs.

Medium and small corporations with income of more than \$100 000 will also need to prepare some additional reporting. Large corporations and any size with income of more than \$5 million will prepare comprehensive reports, consistent with the Corporations Act. Many already do this.

If a corporation has a temporary increase in income, such as a capital grant, higher reporting may be required and the Registrar may alter the registered size of a corporation to reflect this.

For more information see ORIC's fact sheet, *Corporation size and reporting*.

Ongoing support

The CATSI Act enables the Registrar to provide ongoing support to corporations such as:

- **compliance support:** The Registrar can help Aboriginal and Torres Strait Islander corporations with compliance through training and specialist troubleshooting sessions about good corporate governance.
- **dispute management:** The Registrar can help corporations manage disputes by providing non-binding advice about the registration of an Aboriginal and Torres Strait Islander corporation and the corporation's rules. The Registrar also aims to make sure corporations follow correct procedures during disputes to avoid litigation and, if necessary, can refer parties to mediation.
- **providing advice:** The Registrar can help with complaints about corporations by providing advice or referring parties to independent mediation and arbitration services (these are not funded by ORIC). The Registrar can also investigate complaints made about corporations, for example, those relating to corporate governance and compliance with legislation.
- **whistleblower provisions:** Employees and officers such as senior staff and directors can safely report suspected breaches of the Act to the Registrar and certain other people such as auditors. Corporations are prohibited from victimising whistleblowers when they report breaches. Whistleblowers whose disclosures meet certain criteria will be eligible for protection such as protection from employment termination.
- **power to call general meetings:** The Registrar has a power to call general meetings including meetings to elect directors. If members are concerned that meetings have not been called, this power can be used to step in when corporations cannot call a meeting due to quorum problems or will not call a meeting when the corporation's rules require it.
- **power to call meetings of interested people:** The Registrar can also call a meeting of other people interested in a problem that is affecting a corporation. For example, the Registrar could ask funding bodies, creditors and other corporations to meet to sort out a particular problem.

Clear governance standards

The CATSI Act supports clear governance standards for corporations with:

- *a civil penalties scheme for serious contraventions of the Act:* The CATSI Act includes the option for a penalty notice scheme as an alternative to criminal prosecution. The Registrar can ask the Federal Court to declare a contravention has occurred. These provisions are based on the civil penalties scheme found in the Corporations Act.
- *new disqualification measures:* The Act has a new power for a court to disqualify individuals—that is, directors and senior staff—from managing a corporation if they have contravened a civil penalty provision of the Act, have repeatedly contravened provisions of the Act, or if they have been involved with two or more corporations that have failed. This is consistent with the Corporations Act.

Some people are automatically disqualified from managing corporations, for example, if they are bankrupt or have been convicted of offences involving fraud.

The Registrar maintains a register of people who are disqualified from managing corporations. This register is publicly available. At a minimum funding bodies should check it regarding directors of corporations.

- *clear duties of directors and extending the duties to chief executive officers and other people who manage the corporation:* Directors and senior managers are referred to as officers. Their duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent (see ORIC fact sheet, *Duties of directors and other officers*). These duties are in line with the Corporations Act and ensure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.
- *anti-nepotism measures:* These prevent corporations from giving financial benefits to directors or related parties (such as a spouse of a director) unless approved by members.
- *members' capacity to participate in managing the corporation:* This is done by allowing members to request information about directors' payments and requiring members to approve related party transactions. These include transactions involving another business or personal interest of a director or even a relative of a director.
- *members' rights:* 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 members.
- *allowing for meetings to be held by video or teleconference:* This is particularly important for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in Indigenous language so long as some parts can be translated later if required.

Streamlined and targeted intervention by the Registrar

The CATSI Act retains the Registrar's special powers of intervention with broader and clear grounds for intervening.

For example:

- **healthy organisation checks:** The Registrar can appoint an expert to examine a corporation's affairs, including subsidiaries. This means 'healthy organisation checks' can be carried out to stop any problems arising or increasing.
- **special administrator:** The Registrar can appoint a special administrator. This power can be used to provide a safety net against corporate failure, especially for corporations providing essential services, infrastructure or holding land.
- **examination of books:** The Registrar can examine a corporation's books and, if they are not produced, seek a warrant from a magistrate to enable the Registrar to investigate matters if necessary.
- **other investigations:** The Registrar can investigate matters such as when public or private funds might have been misused.

Protecting assets

Under the CATSI Act funding bodies and creditors are better able to protect assets through strengthened rights as an interested party. For example, corporations and creditors can use the external administration provisions of the Corporations Act:

- voluntary administration
- receiver and liquidator provisions
- applications to a court to seek an order to protect assets.

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Information sharing

- **sharing non-public information:** The CATSI Act enables the Registrar to share non-public information with relevant agencies, in line with the Privacy Act.
- **public information:** ORIC maintains the Public Register of Aboriginal and Torres Strait Islander Corporations. It provides useful and unique information about Indigenous corporations to members of the public, funding agencies and corporations themselves.

Currently the information in ORIC's Public Register includes certificates of incorporation, applications for incorporation, rules (constitutions), details of contact people, annual financial statements, exemptions from some reporting requirements, and some documents relating to regulatory action—for example, monitoring, administration, liquidation and deregistration.

A list of all documents held by ORIC for any individual corporation since 1978 is available electronically. These documents are available in hard copy from ORIC and some, including corporations' rules (constitutions), are accessible online. A few corporations have requested that their lists of members not be published electronically, for justifiable reasons.

- **register of members:** The CATSI Act requires corporations to keep a register of members and former members. The register of members is lodged with the Registrar and is usually a public document available on ORIC's website.
- **register of disqualified officers:** The CATSI Act establishes a register of people disqualified from managing corporations which complements a similar register maintained by the Australian Securities and Investments Commission.
- **other information:** Other key information about corporations will be held on the Register of Aboriginal and Torres Strait Islander Corporations, including information about directors, corporation rules, reports such as financial statements, and some information about assets held and subsidiaries controlled by corporations.
- **readily available information:** Public information will be free and easily accessible to members, creditors and other interested parties. Providing readily available information about corporations promotes good corporate governance and gives funding bodies, creditors and members greater access to information about corporations. ORIC is constantly developing more streamlined access to its public information about Indigenous corporations.