



Australian Government

Office of the Registrar of Indigenous Corporations



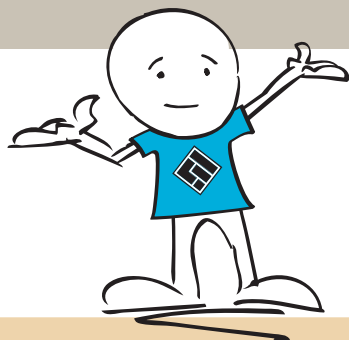
ASIC

Australian Securities &amp; Investments Commission



# The CATSI Act and the Corporations Act —some differences

There are advantages to an Aboriginal and Torres Strait Islander group becoming a corporation and separate legal entity. Groups can incorporate under a Commonwealth, state or territory law. Which law is appropriate for each group differs depending on individual circumstances. The Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) allows the Office of the Registrar of Indigenous Corporations (ORIC) to provide specialised regulatory assistance and education. Some differences between the CATSI Act and the Corporations Act are explained below.



## Who is the regulator?

### Corporations Act

Companies registered under the Corporations Act are regulated by the Australian Securities and Investments Commission (ASIC). ASIC is an independent government body.

### CATSI Act

Corporations registered under the CATSI Act are regulated by the Registrar of Indigenous Corporations. The Registrar is an independent office holder and is supported by the Office of the Registrar of Indigenous Corporations (ORIC).

## Special measure

### Corporations Act

The Corporations Act is a Commonwealth law that governs the operation of companies.

### CATSI Act

The CATSI Act is a Commonwealth law that is a special measure for the benefit of Aboriginal and Torres Strait Islander people.

## Members

### Corporations Act

The members own the company.

There must be at least one member. Private companies must not have more than 50 members. Public companies have no limit on the number of members.

There are no age or race restrictions on members.

In some circumstances members may have to contribute to the costs of winding up a company.

### CATSI Act

The members own the corporation.

There must be at least five members (unless the Registrar approves a smaller number). There is no limit on the number of members.

Depending on the corporation's rule book, members:

- must be at least 15 years of age
- must be Aboriginal or Torres Strait Islander
- won't be liable for the debts of the corporation.

The corporation may have other rules on membership—for example, living in a particular Indigenous community.

## Directors

Directors must be at least 18 years old. They must give their permission to become a director.

## Corporations Act

Any person can be a director; they don't need to be a member.

A proprietary (private) company must have at least one director, but doesn't need to have a secretary. The director and secretary (if there is one), must usually live in Australia.

A public company must have at least three directors and at least one secretary. At least two of the directors and one secretary must usually live in Australia.

## CATSI Act

Corporations can have a rule in their rule book that allows people who are not members to be directors. However, the majority of directors must:

- be Aboriginal or Torres Strait Islander
- be members of the corporation
- not be employees of the corporation.

The minimum number of directors is three and the maximum number is 12. Corporations can apply to the Registrar for an exemption if they want more than 12 directors.

The majority of directors must usually reside in Australia.

Large corporations must have a secretary. Small and medium corporations have a contact person.

## Shares or debentures

## Corporations Act

A company can issue shares to its members (proprietary companies) or the public (public companies).

A company may issue debentures\* and other securities. A debenture is issued by companies in return for funds.

\* A note or certificate acknowledging a debt.

## CATSI Act

Members of an Aboriginal and Torres Strait Islander corporation cannot own or trade shares in their corporation. However, the members can include rules in the corporation rule book about how any profits will be shared.

The CATSI Act does not allow Aboriginal and Torres Strait Islander corporations to issue debentures or other securities.

## Types of corporations

## Corporations Act

The two main types of companies are **proprietary** (private) companies and **public** companies.

## CATSI Act

Corporations are registered as small, medium or large.

## Financial services

## Corporations Act

The Corporations Act has extensive provisions dealing with managed investment schemes and financial products or services.

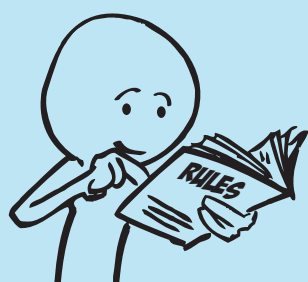
## CATSI Act

Aboriginal and Torres Strait Islander corporations cannot provide financial services or be a trade union.

## Internal governance rules

## Corporations Act

A company can follow the replaceable rules in the Corporations Act or adopt their own constitution.



## CATSI Act

An Aboriginal and Torres Strait Islander corporation must have a rule book which, at a minimum, contains the objectives and name of the corporation, frequency of directors' meetings and a dispute resolution process. The corporation may adopt the replaceable rules in the CATSI Act or modify or replace them—see the Registrar's fact sheet *A corporation's rule book: what you need to know*.

## Regulatory assistance

### Corporations Act

Mainstream companies have limited access to regulatory assistance.



### CATSI Act

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

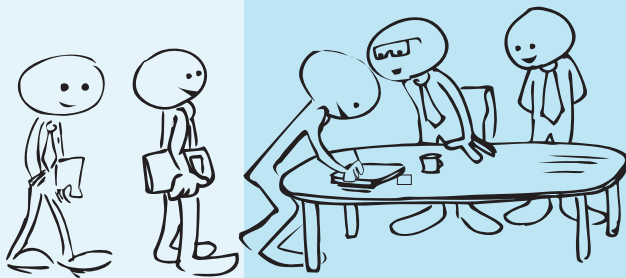
The Registrar can also appoint an examiner to look at a corporation's business. This means 'healthy corporation checks' can be carried out to identify any financial or governance problems.

The Registrar also has other unique powers, including the power to change a corporation's rule book or call a general meeting or an annual general meeting or act for members in certain circumstances.

## Registration requirements

### Corporations Act

Any group or organisation can register as a corporation if they satisfy basic incorporation requirements.



### CATSI Act

A body may only be registered as an Aboriginal and Torres Strait Islander corporation if the Registrar is satisfied that it can meet certain unique standards. These requirements include:

- a majority of directors and members must be Aboriginal or Torres Strait Islander
- a minimum age for members
- a maximum number of directors
- certain rules in its rule book.

While registration is largely voluntary, some legislation requires certain organisations to be registered under the CATSI Act. For example, registered native title bodies corporate (RNTBCs) are required under the *Native Title Act 1993* to be registered under the CATSI Act.

## Reporting

### Corporations Act

Most companies and corporations must lodge reports with their regulator each year, unless their regulator has given an exemption. The types and number of reports vary.

Public and proprietary companies have different reporting requirements.

For example, small proprietary companies are excluded from many of the reporting requirements that apply to public companies.

### CATSI Act

A corporation must lodge reports with the Registrar according to their registered size and income.

For example, small corporations with an income of less than \$100,000 have fewer reports to lodge than large corporations—see the Registrar's fact sheet *Corporation size and reporting*.

## Merits review

### Corporations Act

The Corporations Act allows for a merits review of some ASIC decisions by the Administrative Appeals Tribunal. There is no provision for internal review in the Act.

### CATSI Act

All reviewable decisions under the CATSI Act are subject to internal review (by an ORIC officer not involved in the original decision) before any appeal can be made to the Administrative Appeals Tribunal.

<b>Native title</b>	<b>Corporations Act</b> Corporations that have been determined as RNTBCs by the Federal Court are not allowed to be registered under the Corporations Act.	<b>CATSI Act</b> Corporations that have been determined as RNTBCs by the Federal Court are required to register under the CATSI Act.  The CATSI Act has special provisions for RNTBCs. It makes sure that obligations they have under native title legislation do not conflict with obligations under the CATSI Act.
<b>Fees</b>	<b>Corporations Act</b> ASIC charges fees for the lodgment of some forms and documents—see <a href="http://www.asic.gov.au">www.asic.gov.au</a> for a list of fees for commonly lodged forms.	<b>CATSI Act</b> ORIC does not charge fees for lodging forms and documents.
<b>Other differences</b>	<b>Corporations Act</b> Mainstream provisions in the Corporations Act cover meetings, members and officers.  For example, all public companies must have a secretary and hold an annual general meeting each year.	<b>CATSI Act</b> Many of these provisions have been changed to recognise the special circumstances of Aboriginal and Torres Strait Islander corporations.  For example, small and medium corporations have a document access address because they may not have the resources to maintain a registered office. Many rules about meetings can be replaced in a corporation’s rule book to suit each corporation’s circumstances—see the Registrar’s fact sheets about meetings for more information.

## Important similarities

<b>Legal duties</b>	The legal duties for directors and officers under the Corporations Act and CATSI Act are similar. Sometimes directors, officers and employees can be held personally responsible for actions related to the corporation—see the Registrar’s fact sheet <i>Duties of directors and other officers</i> .
<b>Disqualification from managing a company or corporation</b>	You cannot be a company or corporation director if: <ul style="list-style-type: none"> <li>• you are declared bankrupt and have not been discharged, or</li> <li>• you have been disqualified from managing a corporation by being convicted of certain serious offences to do with managing a corporation, serious fraud, duties of directors or trading while insolvent.</li> </ul> Usually people are disqualified for five years.  A person who is disqualified under the Corporations Act is automatically disqualified from managing Aboriginal and Torres Strait Islander corporations—see the Registrar’s fact sheet <i>Disqualification from managing corporations under the CATSI Act</i> .  The Registrar is required to keep a Register of Disqualified Officers under the CATSI Act. It is available at <a href="http://www.oric.gov.au">www.oric.gov.au</a> .



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NOTE: This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act and Corporations Act.