



Objects of the CATSI Act

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—the CATSI Act—was set up to provide a framework for incorporation that was flexible enough to take account of the tradition and circumstance of Aboriginal and Torres Strait Islander people.

The CATSI Act came into effect in 2007 as a ‘special measure’ under the *Racial Discrimination Act 1975* to help Aboriginal and Torres Strait Islander people have access to the same opportunities to form and manage corporations as everyone else.

It sets out the requirements for the incorporation and regulation of Aboriginal and Torres Strait Islander corporations. It also outlines a range of support for corporations to be provided by the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar).

The CATSI Act is designed with the understanding that many CATSI corporations are in remote and very remote locations, and play a critical role in providing essential services to communities. It is also designed to address the special incorporation needs of Aboriginal and Torres Strait Islander people as identified in a review of the *Aboriginal Councils and Associations Act 1976* (ACA Act) which was the predecessor to the CATSI Act.

Special incorporation needs

The 2002 review of the ACA Act identified a number of special incorporation requirements of Aboriginal and Torres Strait Islander people, which were:

- **Social disadvantage:** barriers that could prevent some Aboriginal and Torres Strait Islander people from establishing and managing corporations.
- **Cultural values and practices:** The impact of Aboriginal and Torres Strait Islander tradition and circumstances on the governance of corporations.
- **Nature of corporations:** some corporations must incorporate under the CATSI Act either because of government policy or because it is required by law.
- **Corporations’ functions:** Indigenous corporations may be expected to facilitate social, economic and political objectives.

The CATSI Act was designed as a special measure under the *Racial Discrimination Act 1975* to accommodate these special incorporation requirements. The nature of these needs may have changed since that time, but they nevertheless persist in some form.



What makes the CATSI Act a special measure

The CATSI Act contains many of the same provisions as the *Corporations Act 2001* (Corporations Act), but it also has unique parts that make it a special measure. The purpose of a special measure is to provide for the advancement of particular racial or ethnic groups so that those groups can enjoy the same human rights and fundamental freedoms as others. As a special measure, the purpose of the CATSI Act is to ensure that Aboriginal and Torres Strait Islander people can form corporations that serve their needs.

Areas considered as part of this review indicate an ongoing need for the CATSI Act as a special measure. As a special measure it should be reviewed from time to time to make sure it does what it sets out to do.

The unique provisions of the CATSI Act include:

- special incorporation provisions for Aboriginal and Torres Strait Islander corporations
- protection for members
- support for corporations
- capacity building.

Special rules for Indigenous corporations

A majority of a corporation's members and directors must be Aboriginal and Torres Strait Islander people. This ensures that Indigenous people control their corporations.

The CATSI Act also allows corporations to operate in a culturally appropriate way. For example, corporations can:

- hold meetings and keep their books in languages other than English, as long as there are English versions available; and
- have rules that take account of Aboriginal and Torres Strait Islander tradition and circumstances.

The CATSI Act also specifically states that the Registrar must take into account the tradition and circumstances of Aboriginal and Torres Strait Islander people in undertaking his or her role.

Protection for members

Majority of directors must be members—the CATSI Act states that the majority of directors must be members. This is to make sure members' interests are protected.

Provide advice—the Registrar provides advice about the registration, rules and governance of a corporation as a source of independent information.

Help resolve disputes—the Registrar can also help to resolve disputes by: providing advice; referring parties to independent mediation and arbitration services; and investigating and responding to complaints made about corporations.



Support for corporations

Appoint a special administrator—the Registrar can appoint a special administrator, at Commonwealth expense, when a corporation is having problems with governance or financial management. This is unique to the CATSI Act. The aim is to strengthen governance and financial management, then return control of the corporation back to its members. Without this special support, the corporation might fail.

Since 2007, 110 corporations have been put into special administration and of the 102 completed over 90 per cent were returned to the control of their members.

Support for remote corporations—the CATSI Act includes provisions for corporations that operate in remote or very remote locations, including:

- enabling CATSI corporations and their members access to a broad range of courts to hear CATSI matters; and
- allowing the election of directors in some circumstances via postal ballot to make it easier for corporations with geographically dispersed members.

Change a corporation’s rule book—CATSI corporations must have constitutions which are known as rule books. Rule books set out the internal governance rules for a corporation. For example, rule books can include rules that govern membership, meetings and the appointment of directors. Rule books are unique to the CATSI Act.

Recently the Registrar was able to exercise his power to change rule books in certain circumstances. The Registrar changed corporations’ rules so that they could hold meetings virtually and make decisions without meetings, if certain conditions were met. These changes were aimed at making it easier for corporations to respond to the impacts of COVID-19.

Capacity building

Under the CATSI Act, the Registrar is required to provide public education programs on the operation of the Act and on the governance of Aboriginal and Torres Strait Islander corporations. This is another unique requirement under the CATSI Act.

The Office of the Registrar of Indigenous Corporations (ORIC) has been providing training to an increasing number of CATSI corporations each year. Most participants of the training reported that it improved their knowledge of corporate governance as illustrated in the table below.

	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Number of participants	897	1015	886	865	943	1058	889
Number of corporations	198	194	169	208	260	254	276
Participants reporting a ‘significant’ or ‘very significant’ increase in corporate governance knowledge	92.5%	91.1%	90.0%	88.2%	92.1%	97.4%	84.0%

Source: ORIC data.



Should the CATSI Act be strengthened?

- Is the CATSI Act meeting the needs and expectations of Aboriginal and Torres Strait Islander people?
- Does the CATSI Act put CATSI corporations on an even playing field with companies incorporated under the Corporations Act?
- Can changes be made to the powers of the Registrar to better take into account the traditions and circumstances of Aboriginal and Torres Strait Islander people?
- Is the CATSI Act flexible enough to meet the needs of a whole range of different Aboriginal and Torres Strait Islander corporations?
- How can the Registrar and ORIC better support corporations to pursue economic and community development opportunities?
- Should the Registrar have greater oversight of Prescribed Bodies Corporate (PBCs), including the power to intervene in disputes—especially given PBCs have to incorporate under the CATSI Act?
- Should the CATSI Act be changed to better support corporations in remote and very remote areas, especially seeing they often provide essential services and account for 40 per cent of all CATSI corporations?

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