



Australian Government

Office of the Registrar of Indigenous Corporations



## POLICY STATEMENT 04

# Registration under the CATSI Act

<b>Policy</b>	PS-04: Registration under the CATSI Act
<b>Relevant legislative provisions</b>	CATSI Act Parts 2.2, 2-3 and 2-4
<b>Last updated</b>	30 January 2013
<b>Other relevant policies</b>	PS-19: Transferring registration in and out of the CATSI Act

## **PS-04: Registration under the CATSI Act**

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## **PS-04 Registration under the CATSI Act**

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### **1 Purpose**

- 1.1 The purpose of this policy statement is to provide information about the benefits of registering under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) and the registration process.
- 1.2 This policy statement also outlines the circumstances in which the Registrar may exercise his/her discretion to:
- refuse an application for registration—section 26-1(2)
  - grant an application which is incomplete—section 26-5 and
  - grant an application where some of the basic statutory requirements are not met—section 26-10.
- 1.3 References to sections in this policy statement are references to sections of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) unless otherwise specified. References to corporations in this policy statement are references to Aboriginal and Torres Strait Islander corporations unless otherwise specified. In addition, references in this policy statement to the Registrar are also references to a delegate who is lawfully exercising the powers of the Registrar.

### **2 Corporations: the basics**

- 2.1 A corporation is a separate legal entity which can perform all the functions of an individual, and it has therefore become one of the main economic vehicles for an organisation to participate in the modern world. Broadly, a corporation's functions and responsibilities include:
- the ability to sue and be sued, while limiting the liability of individual members
  - remaining the same legal entity despite changes to its membership
  - the ability to acquire, hold and dispose of property, including money obtained through grants and other funding
  - the requirement to keep records of its spending and assets.
- 2.2 Some types of corporations, such as those set up for charitable purposes, may also be eligible for taxation concessions.
- 2.3 The powers of a corporation are determined partly by its rule book or constitution and, for Aboriginal and Torres Strait Islander corporations, by the CATSI Act. Generally, the directors exercise the powers of the corporation and manage its business. The ultimate power of a corporation though resides in the members in a general meeting who can appoint and remove the directors, and amend the rule book.
- 2.4 Directors of Aboriginal and Torres Strait Islander corporations have various duties outlined in Part 6.4 of the CATSI Act, including the duty to act

honestly and diligently in exercising their powers and functions. The CATSI Act clarifies the statutory duties of directors and other senior staff of corporations by aligning them with mainstream corporations under *Corporations Act 2001*. The individual rule book of the corporation may also allocate certain powers to directors.

### **3 What are the benefits of registering under the CATSI Act?**

3.1 Whether registration under the CATSI Act is appropriate for particular Aboriginal or Torres Strait Islander organisations depends on individual circumstances. However, there are some benefits in becoming registered.

3.2 The main benefits are:

#### **A. Limited liability**

3.3 The members can choose, when they register the corporation, not to be liable for the debts of the corporation.

#### **B. Recognition of customs and circumstances**

3.4 The rule book that governs how the corporation is run can take into account Aboriginal or Torres Strait Islander customs and circumstances.

#### **C. National operation**

3.5 Aboriginal and Torres Strait Islander corporations can operate nationally; they are not limited to the state or territory where they are registered.

#### **D. No fees**

3.6 Registering as an Aboriginal and Torres Strait Islander corporation is free and no ongoing fees apply under the CATSI Act.

#### **E. Exemptions**

3.7 Sometimes the Registrar may exempt corporations from lodging annual reports and from other provisions of the CATSI Act.

#### **F. Business/for-profit**

3.8 Aboriginal and Torres Strait Islander groups looking to incorporate for business purposes can apply to be registered under the CATSI Act. Profits of the corporation can be distributed to members if the corporation's rule book allows for this. This is prohibited in some other forms of incorporation.

#### **G. Assistance**

3.9 Aboriginal and Torres Strait Islander corporations can access client assistance, support and information and training programs offered by the Registrar.

## 4 Application for registration

- 4.1 Under the CATSI Act, a person may apply for:
- new registration of a corporation—section 21-1
  - registration of an existing body corporate as a corporation—section 22-1 and
  - registration of a corporation to replace two or more existing Aboriginal and Torres Strait Islander corporations—section 23-1.
- 4.2 The CATSI Act specifies the type of information that each application must contain—sections 21-1(1), 22-1(2) and 23-1(2). An application must be submitted in the form approved by the Registrar, although strict compliance with these forms is not required.
- 4.3 For further information on the application process refer to the Registrar’s website: [www.oric.gov.au](http://www.oric.gov.au).

## 5 When is registration under the CATSI Act not permitted?

### A. Registration is contrary to the public interest

- 5.1 The Registrar will refuse to grant an application for registration under section 26-1(2)(f) if satisfied that registering the corporation would be contrary to the public interest.
- 5.2 The concept of ‘public interest’ is not easily defined. Australian courts have indicated that making a determination on whether a particular matter is contrary to the public interest will depend on the facts of the individual case. In *O’Sullivan v. Farrer* (1989)<sup>1</sup> the High Court held:
- ... the expression ‘in the public interest’, when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters ...
- 5.3 Accordingly, determining whether the registration of a corporation is contrary to the public interest is a broad discretionary power which will only be decided on a case by case basis.
- 5.4 An example of when a corporation would be contrary to the public interest is if the proposed objects and activities of the corporation would breach state or Commonwealth law.

### B. Certain types of organisations may not be registered

- 5.5 The Registrar cannot register the following as Aboriginal and Torres Strait Islander corporations (section 26-15):
- a trade union

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<sup>1</sup> (1989) 168 CLR 210 at 216 per Mason CJ, Brennan, Dawson and Gaudron JJ.

- a body that is providing financial services (within the meaning of Chapter 7 of the *Corporations Act 2001*) or
- a body of the kind prescribed in the regulations as a kind of body that must not be registered.

## **6 Incomplete applications**

6.1 The Registrar may accept a registration application under section 26-5 even if:

- the application for registration is incomplete or contains errors (so long as the applicant has provided his/her name and address in the application) or
- some or all of the material required to accompany the application is not provided, is incomplete, or contains errors.

6.2 This section can be used when an application contains minor technical errors or omissions, and aims to reduce the administrative burden on applicants.

6.3 The Registrar cannot accept applications which do not contain the name or address of the applicant (as provided in section 26-5). If possible, the Registrar will attempt to contact the applicant by telephone, email or letter to verify or correct all erroneous or incomplete information with the applicant.

6.4 In exercising the discretionary power in section 26-5, the Registrar will consider whether the error or omission:

- is merely a typographical mistake or error in completing the form
- relates to additional information requirements on the application form which are not required under the CATSI Act
- will affect the validity or accuracy of information included on the register of corporations.

## **7 Basic requirements for registration not met**

7.1 The Registrar may grant an application under section 26-10 even if the Registrar is not satisfied that, on registration, the corporation would meet requirements about:

- the minimum number of members
- the age of members
- the pre-incorporation
- the pre-transfer of registration
- the creditor notice or
- pre-amalgamation.

7.2 However, the Registrar must not grant the application and register an Aboriginal and Torres Strait Islander corporation if the corporation does not meet requirements about [subsection 26-10(2)]:

- Indigeneity

- the internal governance rules or
- the name.

7.3 The Revised Explanatory Memorandum to the Corporations (Aboriginal and Torres Strait Islander) Bill states (at paragraph 5.45):

Proposed section 26-10 provides that the Registrar may grant an application in some circumstances, even if some of the basic requirements have not been met. The Registrar will not be able to grant an application if the application does not meet the critical requirements of Indigeneity, internal governance rules or the name. Without the Indigeneity requirement, the Bill may not fulfil the requirement to come within a constitutional head of power. A clear and sound internal governance framework and a name are essential to a functioning corporation.

7.4 In exercising the discretionary power in section 26-10, the Registrar must be satisfied that if the proposed corporation fails to meet the legislative requirement it will not adversely affect its governance structure or prevent it meeting its legal obligations.

7.5 The Registrar will be guided by a number of factors, including, whether the failure of the proposed corporation to meet the requirement:

- is out of its control
- indicates that there is a lack of consent or disagreement among the proposed members
- would put the proposed members' rights at risk or
- would adversely affect its governance structure and arrangements.

7.6 In addition, the Registrar recognises that registered native title bodies corporate or other land-holding bodies corporate may need special treatment. Circumstances may arise where these bodies cannot meet the requirements for registration—for example, there may be members who do not meet the age requirement in section 29-10. Because of the importance of these bodies in holding land interests, the Registrar will help them register wherever possible.

7.7 Before exercising his/her discretion in section 26-10, the Registrar may seek further information from the proposed corporation (under sections 21-10, 22-10, and 23-10) to clarify why the proposed corporation failed to meet the registration requirements.

## **8 Registration assistance**

8.1 The Registrar also provides pre- and post-registration services. The pre-registration service promotes registration if it is necessary and responsible. This includes:

- workshops providing information and advice to prepare organisations wanting to register
- providing information on the key features of registration under the CATSI Act

- helping with the design of a corporation's rule book that support good governance.

8.2 Post-registration services include:

- workshops on operating as a corporation, including the benefits, challenges and ongoing responsibilities
- assisting with the redesign of a corporation's rule book.
- assistance with pre-registration requirements, including attendance of meetings and completing required registration paperwork.

8.3 The Registrar tries to answer all questions about the registration process in a timely and helpful manner. The Registrar's office gives applicants a range of extra resources and help, including a freecall number 1800 622 431 (not free from mobiles), training services, fact sheets and newsletters. The Registrar's website, [www.oric.gov.au](http://www.oric.gov.au), includes more information about these services.

## **END OF POLICY STATEMENT**