



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 19

Transferring registration in and out of the CATSI Act

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| Policy | PS-19: Transferring registration in and out of the CATSI Act |
| Relevant legislative provisions | CATSI Act Division 540 |
| Last updated | 8 February 2013 |
| Other relevant policies | PS-08: Corporation names PS-11: The Indigeneity requirement The Treasury 'Guidelines for Ministerial Consent to Body Corporate Names under the <i>Corporations Act 2001</i> ' |

PS-19: Transferring registration in and out of the CATSI Act

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PS-19: Transferring registration in and out of the CATSI Act

1 Purpose

- 1.1 Aboriginal and Torres Strait Islander corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) can transfer their registration to another law. Similarly, organisations incorporated under another law can also transfer their registration to the CATSI Act.
- 1.2 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) sets out when and how an Aboriginal and Torres Strait Islander corporation's registration can be transferred to another law. This policy statement also sets out how to transfer from another law to the CATSI Act.
- 1.3 References to sections in this policy statement are references to sections of 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 When is it appropriate for a CATSI Act corporation to transfer its registration?

- 2.1 The CATSI Act allows a corporation to transfer its registration to another Commonwealth, state or territory law that provides for the incorporation of bodies corporate.
- 2.2 A corporation cannot transfer its registration to a law outside Australia.
- 2.3 A corporation may consider transferring its registration to another law when another Commonwealth, state or territory law is more suited to the corporation's business affairs or membership.
- 2.4 For example, if the corporation no longer wants to meet the Indigeneity requirement in the CATSI Act, it may be more suitable to transfer its registration to another law—see 'PS-11: The Indigeneity requirement'. A corporation may also want to provide financial services or operate as a trade union—these are prohibited activities for a corporation registered under the CATSI Act.
- 2.5 The Registrar recommends incorporation under Commonwealth legislation, such as the CATSI Act or the *Corporations Act 2001*, especially for those entities that:
 - have trusteeship of significant or important public funding

- deliver essential services on behalf of government
- represent Aboriginal and Torres Strait Islander people and communities
- hold significant assets, income or expenditure.

The Commonwealth legislation also provides a more comprehensive regulatory regime appropriate for complex or significant organisations. The legislation also provides a higher level of transparency and accountability.

3 Steps to transfer registration out of the CATSI Act

A. Corporation must apply

3.1 A corporation must do the following to transfer its registration:

- pass a special resolution to transfer its CATSI Act registration to another law—section 540-1(a)—see attachment A for an example resolution and minutes
- send the Registrar:
 - an application to transfer its registration (a covering letter is sufficient)
 - a copy of the special resolution—section 540-5(a)—see attachment A for an example resolution and minutes
 - a statement signed by the directors of the corporation that in their opinion the corporation’s creditors are not likely to be materially prejudiced by the change, including their reasons for that opinion—section 540-5(b)—see attachment B for an example statement.

B. Registrar to make transfer of registration declaration

3.2 The Registrar may issue a transfer of registration declaration for a corporation if the Registrar is satisfied that (section 540-10):

- the corporation has lodged with the Registrar an application to transfer its registration, a copy of the special resolution and the directors’ statement
- the corporation’s creditors are unlikely to be disadvantaged (materially prejudiced) by the transfer
- the Commonwealth, state or territory law that the corporation wants to transfer its registration to adequately:
 - provides for the corporation’s legal personality to continue and
 - preserves any rights or claims against the corporation that accrued while the corporation was registered under the CATSI Act.

3.3 When deciding whether the corporation’s creditors are unlikely to be materially prejudiced by the transfer, the Registrar may require evidence that the corporation has provided reasonable notice to creditors of its intention to

transfer its registration and no objections have been received by the corporation.

- 3.4 The Registrar has determined that the *Corporations Act 2001* (Commonwealth) and the *Associations Incorporation Act 2009* (NSW) adequately provide for the continued existence of the corporation and its liabilities after its registration is transferred, although this does not exclude other laws. Check with the regulating body of the law you wish to transfer to for more information.

4 Corporation name when transferring out of the CATSI Act

- 4.1 A corporation transferring its registration to another Commonwealth, state or territory law cannot include any of the following sets of words in the corporation's new name:
- 'Aboriginal Corporation'
 - 'Torres Strait Islander Corporation'
 - 'Aboriginal and Torres Strait Islander Corporation'
 - 'Torres Strait Islander and Aboriginal Corporation' or
 - 'Indigenous Corporation'.
- 4.2 The prohibited sets of words identify corporations registered under the CATSI Act. In some circumstances, an organisation can get authorisation to use these sets of words as part of its name. Refer to the Treasury's *Guidelines for ministerial consent to body corporate names under the Corporations Act 2001* at www.treasury.gov.au.
- 4.3 A corporation transferring its registration may use the prohibited words in its name as long as they are not used consecutively. For example, 'ABC Aboriginal Artists' Corporation' could be used for the organisation's new name, but not 'ABC Artists Aboriginal Corporation'.

5 Registrar to deregister corporation

- 5.1 The Registrar must deregister a corporation after receiving confirmation that its registration has been transferred to another Commonwealth, state or territory law—section 540-15(1).
- 5.2 The organisation must let the Registrar know in writing that its registration has been transferred and lodge a certified copy of a current certificate of its incorporation under another law, or a document that has a similar effect.
- 5.3 The following sections of the CATSI Act do not apply to the deregistration of a corporation after its registration has been transferred [section 540-15(2)]:
- section 546-20—on deregistration, a corporation ceases to exist and all the corporation's property vests in the Registrar and a director commits

an offence if he or she does not keep the corporation's books for three years after the deregistration

- section 546-25—what the Registrar does with property that vests in the Registrar on deregistration, including the obligations that attach to that property and accounts and records required to be held by the Registrar
- section 546-30—the Registrar's power to act on behalf of a corporation or its liquidator if satisfied that they would be bound to act if the corporation still existed
- section 546-35—that a person may recover money that was payable under an insurance contract from the deregistered corporation's insurer.

6 Transferring out of the CATSI Act—effect of deregistration

- 6.1 The entity does not cease to exist when the Registrar deregisters it after its registration has been transferred to another law.
- 6.2 Despite the deregistration of the corporation, officers of the corporation may still be liable for things done before the corporation was deregistered.

7 Reinstatement

- 7.1 If a corporation is incorrectly deregistered under section 540-15 before its registration is transferred to another law, the Registrar may under section 546-40 reinstate the corporation.
- 7.2 The Revised Explanatory Memorandum for the Corporations (Aboriginal and Torres Strait Islander) Bill states (at paragraph 5.573):
- This subsection retains the capacity of the Registrar to reinstate a corporation under proposed section 546-40. This addresses the situation, for example, where the registration under the new incorporations system is later found to be defective.

8 Transferring registration to the CATSI Act

- 8.1 A person can apply to the Registrar to register an existing body corporate under the CATSI Act by using the *Application for registration (existing organisation)* form.
- 8.2 The following laws specifically allow organisations to transfer their incorporation to the CATSI Act, although this does not exclude other laws:
- *Corporations Act 2001* (Commonwealth)
 - *Associations Act 2003* (Northern Territory)
 - *Associations Incorporation Act 1985* (South Australia)
 - *Associations Incorporation Act 1981* (Victoria)
 - *Associations Incorporation Act 2009* (New South Wales)

- *Associations Incorporation Act 1987* (Western Australia) (when the CATSI Act is prescribed for the purposes of section 10A of the Western Australian legislation) or the *Associations Incorporation Bill 2006* (Western Australia) (when enacted).
- 8.3 Matters that an existing organisation may wish to consider before transferring their registration to the CATSI Act include:
- meeting the Indigeneity requirement—all corporations registered under the CATSI Act must meet the Indigeneity requirement at all times—see ‘PS-11: The Indigeneity requirement’
 - the proposed name of the corporation once it transfers its registration to the CATSI Act—see ‘PS-08: Corporation names’
 - whether members will or will not be liable for the debts of the corporation.
- 8.4 The organisation must call a meeting of its members to pass an appropriate resolution (usually a special resolution) on transferring its registration to the CATSI Act. At least 21 days’ notice of the meeting and the proposed resolution must be given.
- 8.5 The organisation should also have a draft CATSI Act rule book ready for its members to read and consider at the meeting. When holding the meeting, it is important that the organisation follows procedures under its current constituent documents (like a rule book or constitution) to make valid decisions, such as meeting quorum requirements. The organisation will only be able to transfer its registration to the CATSI Act if at least 75 per cent of the members entitled to vote and actually voting agree to the transfer.
- 8.6 The following documents must also be provided when lodging the *Application for registration (existing organisation)* form with the Registrar—section 22-5:
- a copy of the resolution passed by members—see attachment C for an example resolution and/or minutes
 - a copy of the proposed rule book
 - a certified copy of the organisation’s current constituent documents (like a rule book or constitution)
 - evidence that under the law of the original registering body the organisation is authorised to transfer to the CATSI Act and has complied with all requirements (if any) of that law (a letter from the registering body is sufficient)
 - a certified copy of the organisation’s current certificate of incorporation, or a document that has a similar effect
 - any application for exemption under the CATSI Act—for example, if the corporation wishes to have more than 12 directors.
- 8.7 The organisation may need to comply with additional requirements of the law under which it is currently incorporated. The organisation should obtain more information from its current registering body if required.

- 8.8 If the Registrar decides to grant an application to register an existing body corporate under the CATSI Act, the Registrar will issue the corporation with a certificate of registration.

9 Registration under the CATSI Act—effect of transfer

- 9.1 When an existing body corporate is registered under the CATSI Act a new legal entity is not created and the corporation's property, rights, legal proceedings and obligations are not affected—section 42-3.
- 9.2 In most instances, the existing body corporate ceases to be registered under its previous incorporation law when its registration is transferred to the CATSI Act. Check with the registering body of that law for more information.
- 9.3 Corporations that transferred their registration after 7.30 pm (AEST) on 11 May 2010 may be eligible for capital gains tax roll-over relief. This is provided for in subdivisions 124-I and 620-A of the *Income Tax Assessment Act 1997*.

END OF POLICY STATEMENT

Attachment A—Example minutes for transferring out

General meeting passing a special resolution to transfer the registration of the corporation from the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) to another law.

Corporation name: _____

ICN: _____

Minutes of general meeting of members

Date: _____/_____/_____

Location: _____

Time: _____

Present: see attached attendance list

Apologies: see attached list of apologies

Chair: _____

Quorum: A quorum of members entitled to vote on the resolution was present at all times during the meeting.

Notice of meeting: The notice of the meeting of members was, with the permission of the members, taken as being read.

Resolution: The following special resolution was passed by at least 75 per cent of members attending the meeting.

THE MEMBERS RESOLVED:

1. that the registration of the corporation be transferred from the CATSI Act to <insert legislation>.

Closure: There being no further business the meeting was declared closed at _____.

Confirmed:

(Signature of chair)

(Name of chair)

Attachment B—Example directors' statement about creditors

Corporation name: _____

ICN: _____

Directors' statement about creditors

Date: ____/____/____

The directors, whose names appear on this statement, state that in their opinion the corporation's creditors are not likely to be materially prejudiced by transferring the corporation's registration to <insert legislation>.

The reasons for this opinion are:

- <insert reasons>.

On <insert date> the corporation notified all of its creditors of its intention to transfer its registration from the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) to <insert legislation>. A copy of the notice is attached.

The corporation has received no objections from creditors.

OR

The corporation has received the attached objections from creditors.

Directors

| Name | Signature | Date |
|------|-----------|------|
| | | |
| | | |
| | | |
| | | |
| | | |
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| | | |
| | | |

Attachment C—Example minutes for transferring in

Meeting passing a special resolution to transfer the registration of the organisation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

Organisation name: _____

Incorporated under: _____
(legislation)

Minutes of general meeting of members

Date: _____/_____/_____

Location: _____

Time: _____

Present: see attached attendance list

Apologies: see attached list of apologies

Chairperson: _____.

Quorum: A quorum of members entitled to vote on the resolution was present at all times during the meeting.

Notice of meeting: The notice of the meeting of members was, with the permission of the members, taken as being read.

Resolution: The following special resolution was passed by at least 75 per cent of members attending and voting at the meeting.

THE MEMBERS RESOLVED:

1. to authorise the applicant to apply for registration of the organisation as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act.
2. that the proposed rule book provided to the Registrar of Aboriginal and Torres Strait Islander Corporations under section 29-20(2) of the CATSI Act was approved as the rule book to be adopted by the organisation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act
3. that the attached list of replaceable rules will apply to the organisation when it becomes registered as an Aboriginal and Torres Strait Islander corporation, unless it is changed or replaced in the proposed rule book
4. that the persons specified in the application will become directors of the organisation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act

5. that the person specified in the application will become the contact person/secretary [whichever is applicable] of the organisation when it becomes registered as an Aboriginal and Torres Strait Islander corporation under Part 2-3 of the CATSI Act.

Closure: There being no further business the meeting was declared closed at _____.

Confirmed:

(Signature of chairperson)

(Name of chairperson)