



Disqualification from managing corporations under the CATSI Act

Under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) a person can be disqualified from managing an Aboriginal and Torres Strait Islander corporation in three ways:

- automatically
- by the court if the Registrar applied for a person to be disqualified
- directly by the Registrar.

It is an offence to manage an Aboriginal and Torres Strait Islander corporation if you are disqualified. The maximum penalty is \$8500, imprisonment for up to one year or both.

DEFINITION

A **personal insolvency agreement** is when a person enters into an agreement with their creditors without being made bankrupt. The person entering into the agreement identifies such things as the person's income, property and how it will be dealt with.

DEFINITION

Insolvent means not being able to pay debts when they are due and payable.

DEFINITION

You usually become **discharged from your bankruptcy** three years and one day after your documents are filed with the Insolvency and Trustee Service Australia (ITSA). A person can remain an undischarged bankrupt for a longer period. For more information refer to www.itsa.gov.au.

Automatic disqualification

Automatic disqualification happens when:

- a person is an **undischarged bankrupt**
- a person has signed a **personal insolvency agreement** under the *Bankruptcy Act 1966* (or a similar law) and has not kept to the agreement. (In Australia the term 'bankruptcy' only applies to a person).
- a person is convicted of certain serious offences under the CATSI Act or other offences involving dishonesty that are punishable by imprisonment for at least three months
- a person has been disqualified under the *Corporations Act 2001* (Corporations Act) from managing a corporation.

How long is the disqualification for?

If the person goes to jail, they stay disqualified for five years after they are released. If the person does not go to jail, they will be disqualified for five years after they are found guilty.

The Registrar can ask the court to extend the disqualification by up to 15 years, but must do so before the disqualification begins or before the end of the first year of disqualification.

Disqualification by the court

1. For breaking a civil penalty provision

The civil penalty provisions under the CATSI Act and the Corporations Act include things such as duties of directors and other officers, related party rules, record keeping and reports, and trading while **insolvent**.

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person has contravened a civil penalty provision (under the CATSI Act or the Corporations Act)—such as using a position of power for one's own benefit or to disadvantage the corporation and the members, and
- the court is satisfied the disqualification is justified.

How long is the disqualification for?

The court can order disqualification for any amount of time it thinks appropriate.

2. For poor financial management

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person has been an officer of two or more corporations that have become insolvent or have not been able to pay its debts in the past seven years—the court must be satisfied that the way the corporation was managed caused the corporation to fail.

How long is the disqualification for?

The court can order disqualification in this case for up to 20 years.

3. For repeatedly breaking the law

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person (or the corporations where the person was an officer) has broken the law under the CATSI Act or the Corporations Act more than once and did not do enough to prevent this
- the person has been an officer of a body corporate (other than an Aboriginal and Torres Strait Islander corporation) and has done something that was against the duties of care and diligence and good faith under the CATSI Act.

How long is the disqualification for?

The court can order disqualification for any amount of time it thinks appropriate.

Disqualification by the Registrar

The Registrar can disqualify a person who has been an officer of two or more corporations in the past seven years that have been wound up and a liquidator has lodged a report to complain that the corporations can't pay its debts.

Before disqualifying the person, the Registrar must give them a written notice asking them to show why they should not be disqualified and giving them an opportunity to be heard.

How long is the disqualification for?

The Registrar can disqualify the person for up to five years and must give the person a written notice of the disqualification. The disqualification starts the moment the notice is served.

Can a disqualified person get permission to manage corporations?

The court or the Registrar can give permission to a disqualified person to manage an Aboriginal and Torres Strait Islander corporation, depending on how the person was originally disqualified.

Register of Disqualified Officers

The Registrar maintains a publicly available register of people who are disqualified from managing corporations on the ORIC website—the Register of Disqualified Officers.

Further information

freecall: 1800 622 431
(free except for mobiles)

email: info@oric.gov.au

website: www.oric.gov.au

