



## REGISTRAR'S POSITION STATEMENT

# Indigeneity provisions

The Indigeneity provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) are fundamental to ensuring that Aboriginal and Torres Strait Islander corporations are, at all times, Indigenous owned and controlled. The following principles guide the Registrar (or their delegate) when considering matters of a corporation's Indigeneity. Further guidance can be found in ORIC's fact sheet on Indigeneity.

## Principles

1. The Registrar relies on corporations to be assured of the Indigeneity of their members and directors, and that they meet the Indigeneity provisions.
2. It is not the role of the Registrar to determine an individual's Indigeneity.
3. The Registrar has a focus on being satisfied that corporations meet the Indigeneity provisions as this ensures corporations are Indigenous controlled.



## **Principle 1: The Registrar relies on corporations to be assured of the Indigeneity of their members and directors, and that it meets the Indigeneity provisions.**

1. Corporations have obligations to ensure they meet the Indigeneity provisions on registration and at all times. This means they will be required to provide evidence of Indigeneity of members and directors in certain circumstances.
2. For the Registrar to be satisfied that a body corporate meets the definition of an Aboriginal and Torres Strait Islander person under the CATSI Act, the body corporate must be controlled by Aboriginal and/or Torres Strait Islander persons. Subsection (h) of the definition of 'Aboriginal and Torres Strait Islander person' provided under section 700-1 provides a clear definition of this requirement.
3. In considering if the Indigeneity provisions are met, the Registrar may seek evidence from the corporation regarding the Indigeneity of its members and/or directors.

## **Principle 2: It is not the role of the Registrar to accept or determine any individual's Indigeneity.**

1. The Registrar will only concern themselves with an individual's Indigeneity in circumstances where he or she must consider if a corporation meets the Indigeneity provisions or is complying with a rule in their rule book.
2. The Registrar respects there are processes, protocols and customs of community in recognising an individual's Indigeneity.
3. The Registrar does not seek evidence of Indigeneity unless there is a risk that the corporation:
  - a. does not meet the Indigeneity provisions, or
  - b. is in breach of the CATSI Act by having a non-Indigenous director or member if not expressly permitted by the corporation's rule book.
4. The Registrar must be satisfied that the evidence provided (when sought) is acceptable.
5. The Registrar acknowledges the sensitivities when seeking evidence of Indigeneity and will, exercise this function with due regard for the dignity of Aboriginal and Torres Strait Islander people.

## **Principle 3:** The Registrar has a focus on being satisfied that corporations meet the Indigeneity provisions as this ensures corporations are Indigenous controlled.

1. The Registrar may seek evidence from a corporation regarding the Indigeneity of its members and/or directors where there is a reasonable belief that the corporation is not meeting the Indigeneity provisions. This may occur when:
  - a. a corporation applies for registration
  - b. a corporation lodges a document with the Registrar
  - c. at any time when a corporate member is included on a member register lodged with the Registrar
  - d. a concern is raised which underpins a reasonable suspicion that the corporation is in breach of the CATSI Act or its rule book
  - e. a corporation's attributes place it at a higher risk of not meeting the requirement, such as where:
    - i. the corporate member is not an Aboriginal or Torres Strait Islander corporation
    - ii. the corporation has a small number of members (fewer than 20) and directors (fewer than 3).



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