



Examinations

The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) can decide to commence an examination of an Aboriginal and Torres Strait Islander corporation. The *Corporations (Aboriginal and Torres Strait Islander Act) 2006* (CATSI Act) does not set out a test or grounds that must be met to commence an examination. An examination is at the discretion of the Registrar, or the Registrar's delegate.

A corporation may be examined for a number of reasons, including:

- Rolling program (or routine) examinations – these are generally corporations selected where there are no known issues. They may be selected based on their size, industry sector, examination history or other considerations relevant to the Registrar's regulatory posture.
- Targeted examinations – where the Registrar becomes aware that a corporation:
 - may be experiencing governance, operating and/or financial challenges
 - has failed to meet their annual reporting requirements.

To conduct an examination, the Registrar will appoint an examiner to look at a corporation's books and provide a report about what they found.¹ The main objectives of an examination are to:

- assess whether the corporation is being governed in accordance with the CATSI Act and its rule book
- identify whether there are any irregularities in the affairs of the corporation
- check that a corporation is keeping proper financial records and has relevant procedures and policies in place

- check that the directors and officers of the corporation are meeting their responsibilities
- check whether the corporation is managing conflicts of interest and related party benefits appropriately
- report any fraud or misuse of corporation resources
- assess the financial health of a corporation including its financial viability and solvency.

What corporations can expect during an examination

The Registrar or their delegate will write to the corporation to advise that an examination will be conducted. The letter will also tell the corporation:

- the timeframe of review for the examination
- who will conduct the examination
- what records and paperwork the examiner will need to see.

The notice of examination is recorded on the corporation's details on the public Register of Aboriginal and Torres Strait Islander Corporations, on ORIC's website.

¹ Section 453-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) provides the Registrar with this power.



The examiner will then contact the corporation to request documents and arrange to visit the corporation. This visit is called fieldwork and will generally be between 2 and 5 days.

When the examiner visits the corporation, they will usually organise an entry meeting with the directors and chief executive officer (CEO) of the corporation. At this meeting the examiner will explain the examination process and answer any questions. At the entry meeting corporations can also raise any issues or concerns with the examiner.

The CATSI Act says that the examiner can access the corporation's books at all reasonable times – that means corporations cannot restrict or prevent access to their books. More specifically, the CATSI Act says that examiners can:

- ask any person to provide them with books
- ask someone who gave them books or someone who prepared the books to explain the books or an aspect of the books
- take or make copies of the books
- give the books to the Registrar
- use or give permission for the books to be used in legal proceedings.

Books include but are not limited to:

- documents such as
 - meeting minutes
 - staff records
 - insurance and tax records
 - asset registers
- records relating to subsidiaries, trusts and partnerships²
- financial reports, records, statements and all other supporting documents such as invoices
- registers of members and former members
- any other records.

Once fieldwork is complete, the examiner will generally organise an exit meeting with the directors and CEO to discuss their preliminary findings.

Examination outcomes

The examiner will write a report about what they have found and send the report to the Registrar. The report may include information about:

- the standard of corporate governance of the corporation
- compliance with the CATSI Act or corporation's rule book
- any irregularities in the affairs of the corporation
- an assessment of the corporation's financial health including its financial viability and solvency.

The CATSI Act says a person may inspect any document lodged with the Registrar except an exempt document. A report by an examiner is an exempt document. As such, ORIC does not provide corporations with a copy of the examination report.

Any findings in the report are disclosed to the corporation with the corporation afforded a period of procedural fairness where they can review and respond to the examiner's findings.

The Registrar and/or their delegate will review the examiner's report. The most common outcomes from an examination are:

- An examination outcome letter – this letter will highlight the corporation's compliance with the CATSI Act and their rule book, and identify any minor issues that were identified in the examination. The outcome letter may suggest areas for improvement to the corporation.
- A compliance notice – this notice requires the corporation to rectify breaches of the CATSI Act or rule book and/or irregularities in the affairs of the corporation. The corporation will be required to demonstrate to the Registrar that it has addressed the matters in the compliance notice. While a compliance notice sets out issues to be rectified it is an indication that the Registrar is confident that the corporation has the ability to rectify the breaches and should be given the opportunity to do so.

² Examiners can also examine the books of any body corporate related to the corporation. There is more information about what a related body corporate is in sections 700-1 and 689-20 of the CATSI Act.

- A show cause notice³ – this is where the examination has identified more serious breaches and where there may be grounds for the appointment of a special administrator. This notice invites the corporation to explain why it should not be placed under special administration. After the corporation responds to the notice, the Registrar and/or their delegate will review the response provided and decide whether the corporation should be placed under special administration.
- The appointment of a special administrator – this is where the breaches are serious, there are serious risks and the corporation has not been able to demonstrate that it should be given an opportunity to rectify the issues.

A corporation’s entry on the public Register of Aboriginal and Torres Strait Islander Corporations is the most appropriate place for members to check if their corporation is being examined and whether further action is being taken.

The Registrar considers the individual circumstances of corporations and may consider other regulatory action following an examination where appropriate.

³ Section 487-10 of the CATSI Act.

What happens when a corporation doesn’t cooperate with an examination

If a corporation or person does not provide books when asked, the Registrar or their delegate can:

- apply to a Court for a warrant to enter and search premises and seize the books
- issue a compliance notice requiring the books.⁴

A person can be prosecuted if they:

- are asked to provide books or explain an aspect of the books and intentionally or recklessly do not do as they have been asked⁵
- conceal, destroy, mutilate or alter a book that the corporation has been asked to provide⁶
- provide false or misleading information, including materials during an examination.⁷

⁴ This notice is issued under section 453-5 of the CATSI Act.

⁵ Section 456-10 of the CATSI Act.

⁶ Section 461-10(1) of the CATS Act.

⁷ Section 461-5 of the CATSI Act.

Contact ORIC

Freecall: 1800 622 431
Email: info@oric.gov.au
Post: PO Box 29 Woden ACT 2606
oric.gov.au

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Strong communities,
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