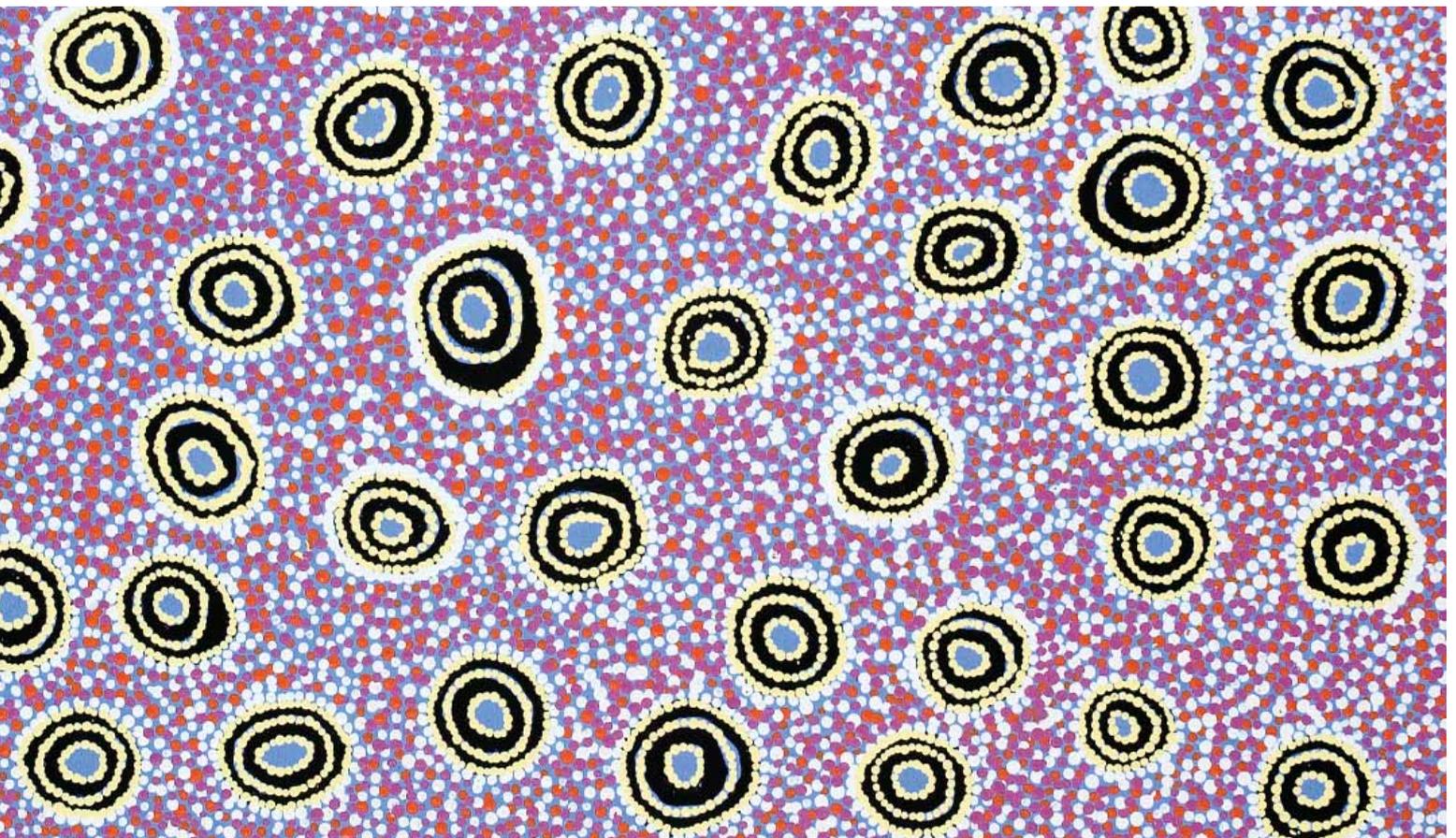


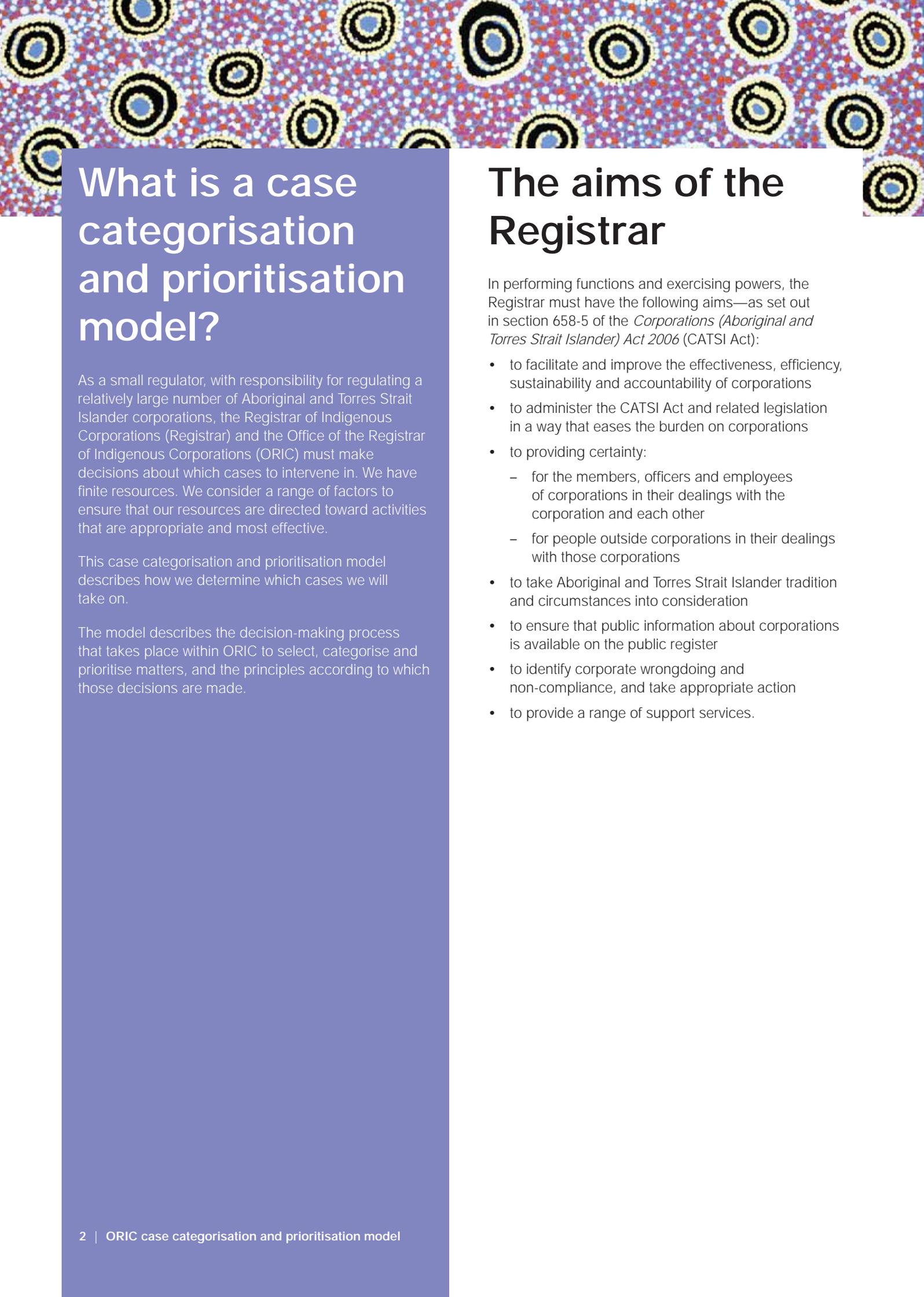


Australian Government

Office of the Registrar of Indigenous Corporations

Case categorisation and prioritisation model





What is a case categorisation and prioritisation model?

As a small regulator, with responsibility for regulating a relatively large number of Aboriginal and Torres Strait Islander corporations, the Registrar of Indigenous Corporations (Registrar) and the Office of the Registrar of Indigenous Corporations (ORIC) must make decisions about which cases to intervene in. We have finite resources. We consider a range of factors to ensure that our resources are directed toward activities that are appropriate and most effective.

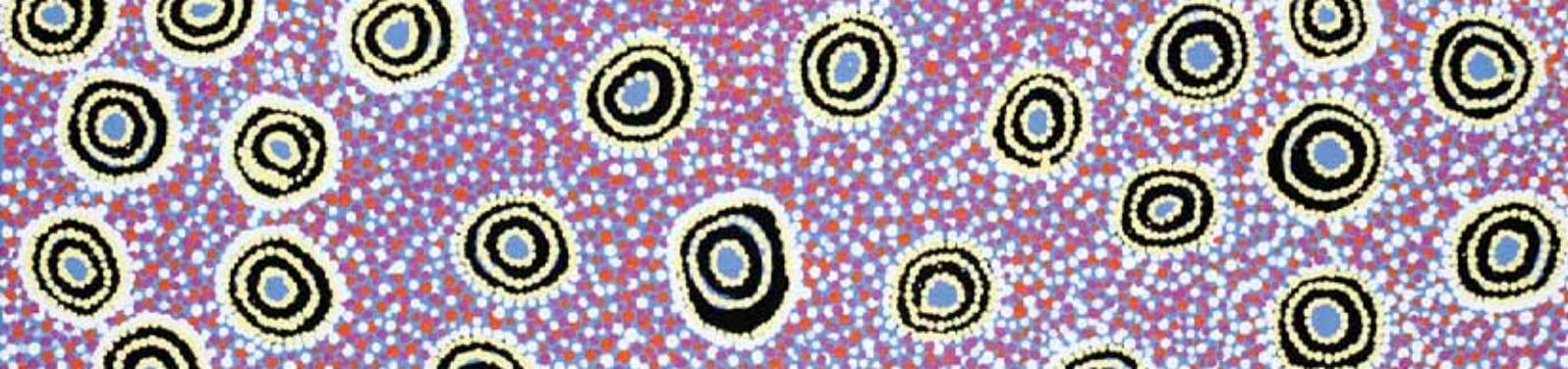
This case categorisation and prioritisation model describes how we determine which cases we will take on.

The model describes the decision-making process that takes place within ORIC to select, categorise and prioritise matters, and the principles according to which those decisions are made.

The aims of the Registrar

In performing functions and exercising powers, the Registrar must have the following aims—as set out in section 658-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act):

- to facilitate and improve the effectiveness, efficiency, sustainability and accountability of corporations
- to administer the CATSI Act and related legislation in a way that eases the burden on corporations
- to providing certainty:
 - for the members, officers and employees of corporations in their dealings with the corporation and each other
 - for people outside corporations in their dealings with those corporations
- to take Aboriginal and Torres Strait Islander tradition and circumstances into consideration
- to ensure that public information about corporations is available on the public register
- to identify corporate wrongdoing and non-compliance, and take appropriate action
- to provide a range of support services.



Source of information and the risk assessment process

We are empowered to look into matters concerning the governance and finances of Aboriginal and Torres Strait Islander corporations, and any matters relating to breaches of the CATSI Act.

We collect information from a variety of sources, including reports lodged by Aboriginal and Torres Strait Islander corporations, complaints, inquiries and government agencies. In addition, ORIC staff, particularly regional officers, work with corporations on a daily basis and gain first-hand knowledge of emerging issues.

Most of the information we collect is recorded in our internal database, the Electronic Register of Indigenous Corporations under the CATSI Act (ERICCA). Analysis of incoming information is occurring all the time, in case assessment and prioritisation, at staff meetings and in other forums.

An initial assessment is made by the receiving officer as to whether the matter is straightforward, detailed or complex. Straightforward matters may be dealt with by the officer, while detailed matters may be referred to the relevant business area. More complex matters are referred to our Complaints Panel or Regulation and Litigation Committee for assessment and a decision.

Additional guidelines are available to support our decision-making around certain types of matters. For example, the Registrar's approach to complaints is described in *Policy statement 02: Complaints involving corporations*.

Our risk committee meets periodically to consider emerging issues and rate their risk. The risk committee may refer issues to the senior management team at any time but will at a minimum feed analysis into our annual strategic and business planning process.

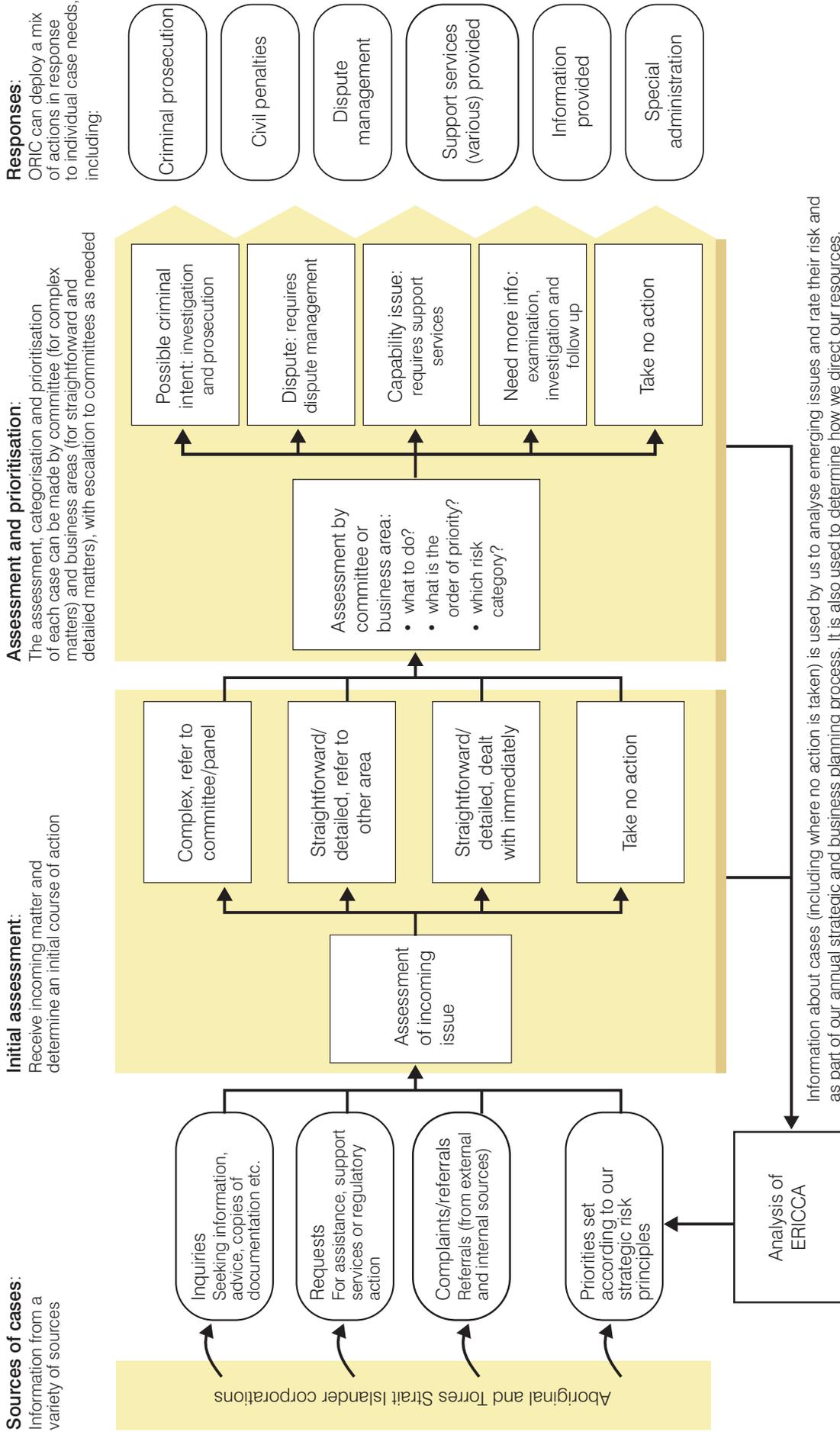
Categorisation

We categorise cases according to risks to corporate health and good governance of Aboriginal and Torres Strait Islander corporations as identified in our research paper, *Analysing key characteristics of Indigenous corporate failure* (2010):

- **diligence:** failure in the governance of the corporation—including directors not meeting their obligations and duties, poor practices around directors' and general meetings and registration of members.
- **mismanagement:** failure in the management of the corporation—for example, the corporation is poorly run and has poor financial accounting practices and a general lack of record-keeping relating to the management of the corporation
- **disputes:** conflict or division within or between corporations, directors, officers and members, which restricts the corporation's capacity to carry out its objectives
- **fraud:** behaviour or circumstances involving fraud
- **defunct:** where the corporation is not operating, but has not been wound up
- **interference:** people unduly influencing or interfering in the decisions of directors and the activities of the corporation
- **objectives:** instances where corporation resources have been used to pursue activities outside the corporation's objectives.

The purpose of our categorisation is to improve our ability to monitor risks to the Aboriginal and Torres Strait Islander sector, and to determine how best to provide support and use our powers in individual cases.

Case assessment, categorisation and prioritisation process



Risk assessment and prioritisation principles

The decision to take on and prioritise certain cases, and whether or not to use our regulatory powers, is made according to a set of principles (which are closely linked to the principles used in our *Strategic risk framework*). Our risk principles are not weighted according to any mathematical formula—they aid the judgement of decision-makers to make a sound, risk-based decision. Cases are evaluated according to these principles:

Priority

- Is the matter time sensitive, requiring an immediate response?
- Is the matter ongoing? If not, how old is the matter?

Impact

- What is the potential for harm to the community, and innocent parties?
- Is there a threat to public confidence in the sector and the integrity of the CATSI Act? Is there any precedent that could be set?
- Is there a breach of the CATSI Act and, if so, how serious is the breach, including:
 - the potential impact on a corporation's governance and sustainability
 - the potential detriment caused to a corporation, and the monetary value of the detriment
 - whether the case suggests misconduct that is intentional, reckless or negligent, including fraud and dishonesty
- Are the Minister's expectations, public funds, or broader government agenda threatened?

Resources

- What is the likely cost of intervening?
- What is the likely effectiveness of intervening?
- What action is available to, or has already been taken by, the corporation or other parties to address the matter?
- Is any intervention likely to alter the situation or result in an improved outcome?

Information credibility

- Is there sufficient evidence to establish the facts of the case?
- Are there doubts as to the veracity of the information?
- Would the litigation or prosecution, if any, be consistent with the *Legal Services Directions 2005* (Cth) and the *Prosecution Policy of the Commonwealth*?

Value to the Aboriginal and Torres Strait Islander corporate sector

- Is there an opportunity to deter others from the misconduct?
- Is there an opportunity to improve corporations' education and understanding?
- Is there an alignment with one of ORIC's strategic risk principles?
- Is there a public interest in the matter?

Our policy statements

Guidelines for the use of particular powers under the CATSI Act, and specialised procedures for complaints and disputes are covered in the following policy statements, available from our website and other publicly available websites:

- PS-01 Providing information and advice
- PS-02 Complaints involving corporations
- PS-03 Complaints and feedback about the Registrar's staff, contractors and services
- PS-04 Registration under the CATSI Act
- PS-05 The Registrar's powers to intervene
- PS-14 Review of reviewable decisions
- PS-20 Special administrations
- PS-21 No-action letters
- PS-22 Disputes involving corporations
- PS-25 Examinations
- PS-26 Compliance notices
- PS-27 Suspension of members and directors
- *Legal Services Directions 2005* (ag.gov.au)
- *Prosecution Policy of the Commonwealth* (cdpp.gov.au)



Artwork: Mina Mina Jukurpa (Mina Mina dreaming), 2007
© Margaret Napangardi Brown/Licensed by Viscopy, 2017.

