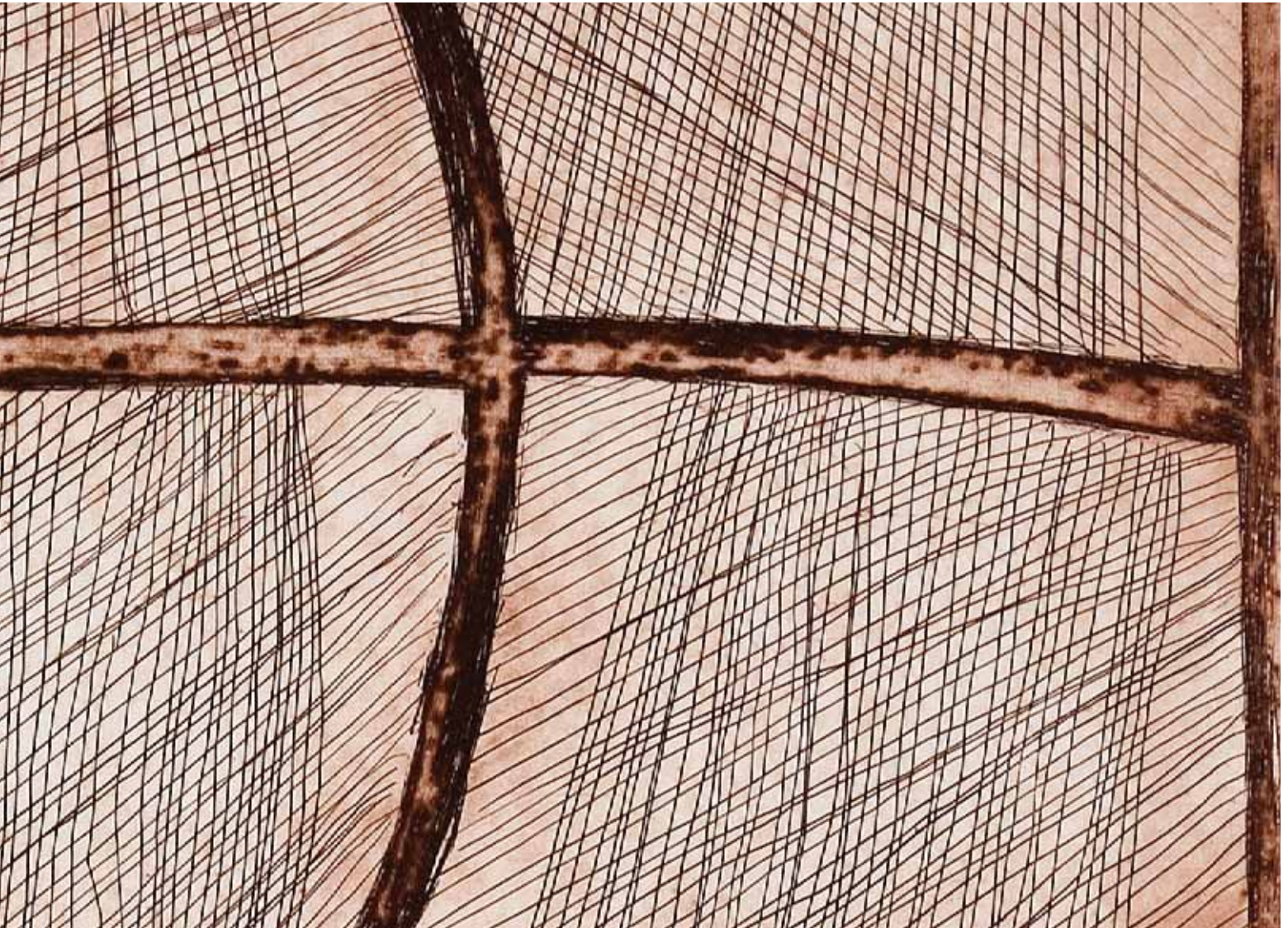




Australian Government  
Office of the Registrar of Indigenous Corporations

# Regulatory approach





# Our regulatory mission

## About us

### Who we are

The Registrar of Indigenous Corporations (Registrar) is an independent statutory office holder appointed by the Minister responsible for Indigenous affairs.

The Office of the Registrar of Indigenous Corporations (ORIC) supports the Registrar to regulate and deliver services to corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

### The CATSI Act

The CATSI Act is the law that establishes the role of the Registrar and allows Aboriginal and Torres Strait Islander groups to form corporations.

The CATSI Act delivers modern corporate governance standards but still provides measures to suit the needs of Aboriginal and Torres Strait Islander people. Examples of this are the requirements for the majority of directors and the majority of members to be Aboriginal and Torres Strait Islander people. This means corporations will always be owned and controlled by Aboriginal and Torres Strait Islander people.

The CATSI Act sets out the Registrar's functions and services, as well as what powers the Registrar has to enforce this law.

### Who we regulate

Aboriginal and Torres Strait Islander corporations operate in a unique social and cultural environment. Corporations are community controlled and run. A majority of directors and members must be Aboriginal and/or Torres Strait Islander people.

Corporations vary greatly. Some have only one or two members; others have thousands. Some have little or no income; others operate large commercial enterprises turning over millions of dollars annually. Some derive their income entirely from government grants; others have private income sources.

More than half of corporations are based in remote or very remote locations. Many provide essential services to their communities, often as the only service provider within a given community.

The most prominent sectors in which Aboriginal and Torres Strait Islander corporations operate are health and community services, employment and training, land management, and education.

Activities of corporations can include:

- delivering services, such as medical, housing, sporting and recreation
- managing administration of land holdings, native title or community councils
- providing representation and advocacy
- acting as a peak body
- supporting local economic development through:
  - small businesses such as community stores and art centres
  - employment and skills training
  - media and communications.

Corporations register under the CATSI Act to:

- carry on business, enter into contracts, apply for funding or manage native title
- meet mandatory requirements under other legislation such as the *Native Title Act 1993* (Cth), *Aboriginal Land Rights Act 1983* (NSW), *Aboriginal Land Act 1991* (Qld), *Torres Strait Islander Land Act 1991* (Qld) and *Aboriginal Heritage Act 2006* (Vic)
- minimise legal risk to individuals
- gain access to ORIC services and support
- incorporate Aboriginal and Torres Strait Islander tradition and culture into their legal framework.

# Why we need to regulate

Aboriginal and Torres Strait Islander corporations are an important part of a complex social and economic system linked to multiple policy domains—education, employment, health, safety, and Aboriginal and Torres Strait Islander affairs.

## The importance of good governance

Most Aboriginal and Torres Strait Islander corporations are located in remote or very remote areas, and many provide essential services funded by government. Good corporate governance ensures that corporations can work effectively and efficiently to achieve their objectives and deliver their services.

Aboriginal and Torres Strait Islander corporations play an important role in Australian society by:

- delivering critical services
- driving economic benefits for their local communities
- providing benefits to their members
- boosting confidence within local communities
- empowering Aboriginal and Torres Strait Islander people to determine their own future
- preserving traditional culture, language, knowledge and land.

Ultimately, corporations achieving their objectives, such as those outlined above, contribute to outcomes for all Aboriginal and Torres Strait Islander people and Australia by providing jobs, health, prosperity and, importantly, continuing connection to land and culture.

## Risks to good governance

Our regulatory mission is built around the need to mitigate risks to the effective running of corporations. Examples of the risks we are most interested in as a regulator include:

- **underdeveloped leadership, skills and capability:** poor management, lack of governance, motivation, skills and experience, an inability to address risk and a lack of succession planning
- **waste and mismanagement of resources:** solvency concerns, poor financial security and sustainability, failure to seek external advice or assistance
- **feuding and disputes:** lack of focus on key issues, litigation / costs, loss of good people
- **fraud:** loss of reputation, credibility and funding, breakdown of relationships, personal interest conflicting with community interest
- **unsuitable business models:** unsustainable business, loss of services, missed opportunities, inefficient or ineffective service delivery, lack of adaptability.

## The flow-on effects

The consequences of poor governance of Aboriginal and Torres Strait Islander corporations reach beyond the corporations themselves, affecting the lives of Aboriginal and Torres Strait Islander people and communities, and the broader Australian community.

Poor governance and the failures it can cause jeopardise services, employment and economic development. It could also lead to a general loss of confidence in the sector, meaning less funding and reduced opportunities for Aboriginal and Torres Strait Islander people.

# Our approach to regulation

## Our regulatory posture

We encourage corporations to adopt good practices in management and governance, tailored to suit traditional culture. We focus on strengthening the skills, knowledge and abilities of directors and members to help them build sustainable corporations and take control of their own economic growth and development. We are an active regulator that provides support, but will intervene and take necessary action when we identify the need to do so.

## Our regulatory toolkit

We use a range of regulatory tools to register, support, monitor and intervene as required.

### Establishing a robust regulatory framework

We provide a process for Aboriginal and Torres Strait Islander corporations to register and a reporting framework to ensure transparency of their operations.

We set standards for good governance, identify and manage risks, and conduct research and analysis to understand where there are patterns of issues that need to be addressed. We provide information to government, corporations and the wider community about the performance of the Aboriginal and Torres Strait Islander sector.

### Educating, training and supporting

We provide training for Aboriginal and Torres Strait Islander corporations to improve their corporate governance capability. We also publish guidance materials to support corporations in practising good governance and meeting their obligations under the CATSI Act.

We provide information and advice to corporations through our website, printed materials, by phone, email and face-to-face. We provide a range of free services to help corporations manage their operations. We advertise jobs, provide assistance to recruit senior staff, broker pro bono legal help, host a service for finding independent directors, run workshops to design rule books, and help resolve disputes.

### Monitoring and intervening

We ensure compliance with reporting obligations as a first step to ensuring transparency of corporations. We use information from reports, complaints and other sources to determine where there are individual corporations requiring direct support or interventions, and broader issues that need to be addressed through education and training. Where we need more information to understand a corporation's circumstances we can require a corporation to give it to us. To obtain more complex or in-depth information we may conduct an examination. When problems are identified we can call meetings of interested people to discuss the issues; require a corporation to fix matters that we list in a compliance notice; and for serious matters, we are able to investigate and take appropriate and proportionate action.

### Safeguarding

Our special administration power allows us to assist corporations in trouble or in need of specialist assistance. The power involves temporarily taking control to rescue and rebuild corporations, and protect critical services and assets.

# Regulating to manage risk

Our general approach to regulation, and how we direct our finite resources to provide support and use powers, is informed by both strategic and individual case level risk.

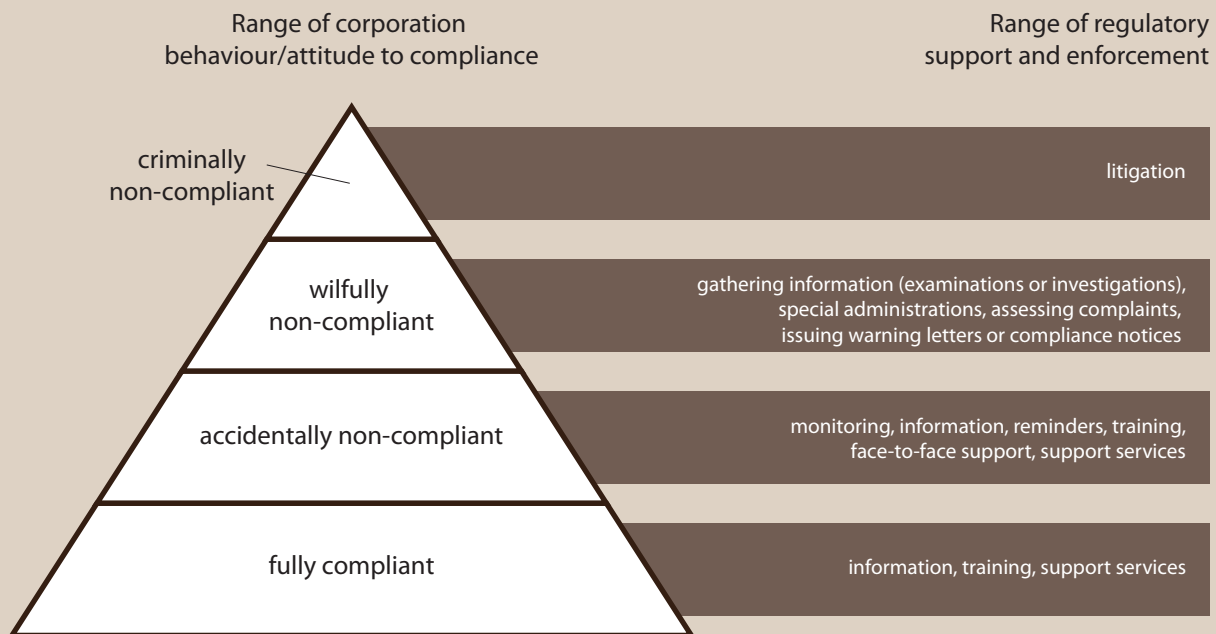
## Our regulatory support and enforcement model

We base our regulatory support and enforcement activities on a responsive (pyramid) model. The shape of the pyramid indicates the number of corporations that might be found at each level of behaviour/attitude.

It recognises that the majority of corporations seek to be, and are, compliant, and others can be compliant with assistance. We offer these corporations support to build their governance skills and further their corporate objectives.

The pyramid also indicates that corporations or individuals within corporations that are disengaged or deliberately doing the wrong thing are in the minority. For those choosing not to comply, we have a graduated response culminating in criminal or civil litigation.

### A graduated response to compliance with regulation



## Our risk principles

We use a set of risk principles to identify and assess strategic and individual case level risk. We set out how we identify and address risk in our *Strategic risk framework* and our *Case assessment and prioritisation model*. Both types of risk draw on a similar set of principles:

**Potential consequences:** what is the potential for harm to corporations, communities or other stakeholders? What is the potential extent of that harm? How many people could be affected?

**Likelihood:** how likely is it that the risk will manifest? Is it a high or low probability that the risk will come to pass, and that the consequences will be realised?

**Cost-effectiveness of a response:** is the risk in scope for the Registrar, and do we have the capability to do something about it? If so, what is the likely cost of a response and what value will it add?

**Integrity of legislative framework:** what is the threat to the credibility of the CATSI Act, and our ability to uphold it? What precedents may be set? Are there likely flow-on impacts to the rest of the sector?

**Public interest:** what is the alignment to broader government goals and the public interest? Is there a threat to government funding, or the Minister's statement of expectations?

**Diversity of risks:** have we addressed all categories of strategic risk in our priorities—to Aboriginal and Torres Strait Islander corporations, to the sector as a whole, and to ORIC's operations?



## Our risk categories

We identify strategic risks as falling into one of three broad categories: risks to Aboriginal and Torres Strait Islander corporations, risks in the environment and risks to ORIC.

### Risks to Aboriginal and Torres Strait Islander corporations

Risks to corporate health and good governance of Aboriginal and Torres Strait Islander corporations include:

- **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.

### Risks in the environment

Risks in the environment refers to risks relating to communities and to broader government policy that could affect Aboriginal and Torres Strait Islander corporations:

- changes in government strategic outcomes and funding arrangements (e.g. a change in government)
- changes in community and social factors (e.g. population shifts)
- economic factors (e.g. a mining down-turn)
- environmental factors (e.g. major floods).

### Risks to ORIC’s operations

Risks to ORIC’s own operations affect our ability to deliver on our regulatory mission effectively, and include:

- matters that could affect the reputation of ORIC
- changes to capability, staffing, resources and funding
- impacts on the credibility of the CATSI Act and the regulatory framework.

#### Risks to Aboriginal and Torres Strait Islander corporations

- Diligence
- Mismanagement
- Disputes
- Fraud
- Defunct
- Interference
- Objectives

#### Risks to ORIC’s own operations

- Reputation of ORIC
- Changes to capability, staffing, resources and funding
- Credibility of the CATSI Act and regulatory framework

#### Risks in the operating environment

- Changes in policy and funding arrangements
- Community and social factors
- Economic factors
- Environmental factors

