



attachments

PHOTO: Participants at an Introduction to Corporate Governance Workshop.

Attachment 1

Summary of the Registrar's existing regulatory powers under the Aboriginal Councils and Associations Act 1976

These powers will change from 1 July 2007.

Request updated list of members—section 58(4)

The Registrar can at any time request the board of a corporation to provide an updated copy of the register of members of the corporation. The board must comply within 14 days or such other time as specified by the Registrar. Failure to comply results in a fine of \$200 for each board member, unless the board member can prove they were not knowingly involved in the contravention, and did not contribute to it. Keeping the members' register up to date is extremely important, in particular for clarifying voting rights at meetings.

Call and conduct a special general meeting—sections 58B(3), (4), (5)

The Registrar has the power to call and/or conduct special general meetings in three different circumstances:

- when a special general meeting was not held within 14 days of the date advertised by the corporation's board
- when a meeting is requested by the greater of five or more members or 10 per cent of the members of a corporation
- at any time, if, in the opinion of the Registrar, a meeting is needed.

Examination of documents—section 60

The Registrar may authorise a person under section 60 to examine the documents of a corporation, and report on any irregularities in financial affairs. This is a very broad discretionary power that does not require any specific grounds for its exercise. It can therefore be used to perform spot checks on corporations.

ORAC has initiated a program of rolling examinations of corporations. These will be conducted on all corporations over a number of years and more frequently on corporations at risk of breaching the ACA Act, where breaches could have serious consequences for the community concerned. A corporation's risk level is assessed against a range of criteria, including size, purpose, time since last examination, compliance status and history of member or other complaints.

Issue compliance notice—section 60A

Where the Registrar suspects on reasonable grounds that a corporation has failed to comply with the ACA Act, the regulations or the corporation's constitution, or that there has been an irregularity in the corporation's financial affairs, the Registrar may issue a compliance notice. The compliance notice can require the board to take specified action, within specified timeframes, to remedy the suspected breach or irregularity.

Issue injunction show cause notice—sections 61(2), (3)

Where the Registrar believes that the board of a corporation is not complying with the ACA Act, the regulations or the corporation's constitution, the Registrar may issue a 'show cause' notice. This requires the board to show cause, within a specified reasonable period, why the Registrar should not seek an injunction to prevent their breaching action.

Injunction application—sections 61(2), (3)

After considering a board's response to an injunction 'show cause' notice, the Registrar may apply to the court for an injunction. The court may then grant an injunction to require the board to not breach, or cease from breaching, the ACA Act, regulations or constitution.

Winding-up application (liquidation)—sections 62A, 63, 65

The Registrar may apply to the court to wind up a corporation if this is recommended by an administrator, or if the Registrar believes that this would be in the public interests or the interests of the members of the corporation.

The Registrar may apply for winding up on any of a number of grounds, including:

- that the corporation has not commenced business within one year of incorporation, or has suspended its operation for a continuous period of one year
- that there are fewer than five members of the corporation
- that the corporation is unable to pay its debts (that is, it is insolvent)
- that board members have acted in their own interests rather than the interests of the members, or in any other manner that is unfair or unjust to other members
- that the complexity or magnitude of the activities of the corporation is such that incorporation under the ACA Act is inappropriate
- that it is just and equitable to wind up the corporation.

If satisfied, the court appoints a liquidator to take over control of the corporation's affairs and discharge its liabilities in preparation for its eventual deregistration. This will typically involve selling off the corporation's assets to pay its debts.

If there are any surplus assets after the debts have been paid, these must be distributed in accordance with the corporation's constitution. If there are no specific rules in the constitution, or the court considers the rules unjust, then the court must make orders for the distribution of the assets, having regard to the objects of the corporation.

Investigation—sections 68, 69, 70

The Registrar is given very broad powers to investigate the affairs of a corporation under the ACA Act. The Registrar can investigate a corporation where the Registrar suspects on reasonable grounds that the corporation has failed to comply with the ACA Act, the regulations or its constitution, or that there has been an irregularity in the corporation's financial affairs.

Under the investigation powers, the Registrar can:

- require any person who the Registrar believes to have knowledge of the affairs of a corporation to attend before the Registrar, answer questions, and produce documents to which the person has access and which the Registrar requires
- enter onto land or premises occupied by the corporation, and examine, take or copy any books on the premises relating to the affairs of the corporation.

Failure to attend, answer a question or produce a document results in a penalty of \$200. Knowingly making false or misleading responses, and hindering or obstructing the Registrar's access to premises and books, carry fines of \$1500.

Issue administration 'show cause notice'—section 71(1)

If the Registrar considers there may be grounds for appointment of an administrator, the Registrar may serve a notice on the public officer of a corporation calling on the corporation to show cause, within a specified time, why an administrator should not be appointed.

Appointment of administrator—sections 71–77E

Following the issue of an administration ‘show cause’ notice, the Registrar can appoint an administrator to take over and manage the affairs of a corporation. Administrators are often positively received because they offer an alternative to winding up, and aim to achieve turnaround for a struggling corporation.

An administrator can only be appointed if the Registrar is satisfied that any of certain grounds have been established, including:

- that the corporation has been trading at a loss for at least six of the previous 12 months
- that the board has failed to comply with the ACA Act, the regulations or the constitution, and has failed to give a satisfactory explanation for the failure
- that board members have acted in their own interests rather than the interests of the members, or in any other manner that is unfair or unjust to other members
- that the appointment is required in the interests of members and creditors
- that the appointment is otherwise required in the public interest.

The approval of the minister is required before the appointment of an administrator.

Upon the appointment of an administrator, the board is dismissed. The administrator takes control of the affairs of the corporation, has the functions and duties of the public officer, and has an express power to cancel or vary contracts of employment. The administrator must report to the Registrar from time to time, as required.

Upon termination of the administration, the Registrar must conduct an election for a new board.

The Registrar can also determine the administrator’s remuneration, and who should pay it.

Deregistration—section 82, regulation 18

Deregistration is the cancellation of a corporation's registration so that it will cease to exist as a corporation. It is intended to be used for corporations which are 'defunct' and essentially non-operational but without debts (if a corporation had debts, winding up would be required).

The process for deregistration operates under provisions of the *Corporations Act 2001*, imported through Regulation 18 of the Aboriginal Councils and Associations Regulations. Under those provisions, the Registrar may deregister a corporation if the following three conditions are met:

- the annual report is at least six months overdue
- no other documents have been lodged in the previous 18 months
- the Registrar has no reason to believe that the corporation is carrying on business.

On deregistration, any property of the corporation vests in the Registrar.

Deregistration is also the end result of a winding up (liquidation).

Attachment 2

Incorporation and support services, 2001–02 to 2004–05

	2005–06	2004–05	2003–04	2002–03	2001–02
Incorporation services					
Incorporations					
Applications received	110	120	160	211	206
Total applications actioned during the year	123	134	143	205	207
Applications approved	102	120	134	183	187
Applications refused	1	–	–	–	–
Application lapsed/withdrawn	17	14	9	22	20
Constitution change requests					
Requests received	92	116	122	138	134
Total requests actioned during the year	127	131	114	127	143
Requests approved	92	112	106	94	98
Requests refused	9	4	4	22	21
Requests lapsed/withdrawn	20	15	4	11	24
Name change requests					
Requests received	11	27	26	20	24
Total requests actioned during the year	15	25	18	16	32
Requests approved	9	18	14	8	22
Requests refused	–	2	–	2	1
Requests lapsed/withdrawn	6	5	4	6	9
Post incorporation services					
Public register searches					
Search requests received	177	543	283	551	858
Search requests finalised	282	501	272	557	844
Members' complaints and dispute assistance					
Matters finalised	103	119	131	107	119
Annual general meeting extensions					
Matters finalised	197	137	104	–	–
Advice on corporation issues					
Inquiries finalised	882	682	634	622	245

Note: Some services finalised during the financial year were initiated in the previous year.

Attachment 3

Corporations where examinations were initiated 2005–06



This table lists corporations for which examinations under section 60 of the ACA Act were initiated during 2005–06, and summarises follow-up action by the Registrar to the time of writing.

ICN	Corporation	Examination action
326	Albany Aboriginal Corporation	Section 60A notice issued 9 Oct 2006
3716	Allawah Aboriginal & Torres Strait Islander Corporation	ORAC wind up action initiated 23 Sept 2005
841	Arlparra Aboriginal Corporation	Section 60A notice issued 28 Feb 2006
1094	Bama-Ngappi-Ngappi Aboriginal Corporation	No further action—management letter issued 11 Oct 2005
4125	Banjelungup Aboriginal Corporation	Section 60A notice issued 10 Oct 2006
3429	Bargumar Aboriginal and Torres Strait Islanders Corporation	Section 60A notice issued 5 Mar 2006
2273	Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region	No further action—management letter issued 23 Sept 2005
3180	Bindal Sharks United Sport and Recreation Aboriginal Corporation	Section 60A notice issued 10 Oct 2005
2102	Bungala Aboriginal Corporation	Section 60A notice issued 3 Jan 2006
1978	Buttlingarra Aboriginal Corporation	No further action—Orderly restructure or wind up of affairs pending
3976	Cairns Regional Community Development & Employment Aboriginal & Torres Strait Islander Corporation	Section 60A notice issued 25 Oct 2005
2987	Deewin Kurim Aboriginal Corporation	No further action—management letter issued 15 Dec 2005
3027	Derby Aboriginal Health Service Council Aboriginal Corporation	Section 60A notice issued 21 Sept 2005
1025	Gindaja Substance Misuse Aboriginal Corporation	No further action—management letter issued 21 Oct 2005
2032	Giru Dala Council of Elders Aboriginal Corporation	Section 60A notice issued 11 Feb 2006 ORAC wind up action initiated 10 Apr 2006
1999	Gkuthaarn Aboriginal Corporation	Section 71 notice issued 24 Jan 2006 Administrator appointed 3 Apr 2006
2113	Goondi Aboriginal & Torres Strait Islanders Corporation	Section 60A notice issued 11 Jul 2006
3697	Gudu Wondjer (Sea Women) Aboriginal Corporation	No further action—Unfunded and non-operational, the creditor's have petitioned for wind up.
2916	Jurrugk Aboriginal Health Service Aboriginal Corporation	No further action—management letter issued 7 Sept 2005
3147	Karboyick Larkinjar Aboriginal Corporation for Health	Examiner's report received 3 Jan 2006— the members resolved to wind up

ICN	Corporation	Examination action
2202	Keriba Mina Torres Strait Islanders Corporation for Development	ORAC wind up action initiated 7 Dec 2005
3037	Kukatj Aboriginal Corporation	Section 71 notice issued 24 Jan 2006 Administrator appointed 3 Apr 2006
1213	Kuku Djungan Aboriginal Corporation	Section 60A notice issued 3 Jan 2006
2173	Kullila Welfare & Housing Aboriginal Corporation	Next action being considered
2169	Kurtijar Aboriginal Corporation	Section 60A notice issued 9 Feb 2006
3033	Kurtijar Land Trust Aboriginal Corporation	Section 60A notice issued 10 Feb 2006
680	Link-up (QLD) Aboriginal Corporation	Section 71 notice issued 28 Mar 2006 Administrator appointed 16 Jun 2006
2464	Living Waters Aboriginal & Torres Strait Islanders Corporation	No further action—management letter issued 7 Oct 2005
799	Minbani Aboriginal Corporation	ORAC wind up action initiated 22 Nov 2005
90	Mowanjum Aboriginal Corporation	Section 60A notice issued 28 Sept 2005
1881	Mulungu Aboriginal Corporation Medical Centre	Section 60A notice issued 6 Jan 2006
761	Mutitjulu Community Health Service (Aboriginal Corporation)	Section 71 notice issued 17 Jan 2006 Administrator appointed 13 Mar 2006
916	Ngallagunda Aboriginal Corporation	No further action—ORAC to monitor—finalised 14 Nov 2006
1866	Nirrumbuk Aboriginal Corporation	Section 60A notice issued 16 Feb 2006
1274	Njernda Aboriginal Corporation	Section 60A notice issued 5 Sept 2005
697	North Queensland Aboriginal and Torres Strait Islander Corporation for the Aged and Disabled Care	No further action—management letter issued 5 Dec 2005
1838	Nyangatjatjara Aboriginal Corporation	Section 71 notice issued 16 Jan 2006 Administrator appointed 28 Apr 2006
1519	Orana Aboriginal Corporation	Section 71 notice issued 4 Nov 2005 Administrator appointed 28 Nov 2005
1175	Pukatja Garage and Auto Spares (Aboriginal Corporation)	Section 60A notice issued 24 Nov 2006
2242	Pukatja Supermarket and Associated Stores Aboriginal Corporation	Section 60A notice issued 24 Nov 2006
1084	Ramingining Homelands Resource Centre Aboriginal Corporation	Section 60A notice issued 21 Sept 2006
1539	The Little Yuin Pre-School Aboriginal Corporation	Section 60A notice issued 3 Jul 2006
1273	Wahgunyah (Housing) Aboriginal Corporation	Section 60A notice issued 7 Aug 2006
587	Weigelli Centre Aboriginal Corporation	No further action—management letter issued 24 Aug 2005
2022	Wulgurukaba Aboriginal Corporation	Section 60A notice issued 22 Mar 2006
3975	Yabur Yulgun CDEP Aboriginal Corporation	Section 60A notice issued 24 Oct 2005
2000	Yargin Aboriginal Corporation	Section 60A notice issued 17 Jan 2006
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation	Section 60A notice issued 27 Oct 2005
1161	Yothu Yindi Foundation Aboriginal Corporation	Section 60A notice issued 25 Jan 2006

Attachment 4

Corporations issued with notices to rectify matters 2005–06



This table lists corporations that were issued with notices to rectify matters under section 60A of the ACA Act during 2005–06.

ICN	Corporation
841	Arlparra Aboriginal Corporation
3429	Bargumar Aboriginal and Torres Strait Islanders Corporation
3180	Bindal Sharks United Sport and Recreation Aboriginal Corporation
2102	Bungala Aboriginal Corporation
3976	Cairns Regional Community Development & Employment Aboriginal & Torres Strait Islander Corporation
3027	Derby Aboriginal Health Service Council Aboriginal Corporation
1508	Giangurra Aboriginal Corporation
2032	Giru Dala Council of Elders Aboriginal Corporation
2375	Kamilaroi Aboriginal Housing Aboriginal Corporation
1754	Kamilaroi Employment Aboriginal Corporation
1213	Kuku Djungan Aboriginal Corporation
2169	Kurtjar Aboriginal Corporation
3033	Kurtjar Land Trust Aboriginal Corporation
2250	Kutkabubba Aboriginal Corporation
1807	Manyallaluk Aboriginal Corporation
90	Mowanjum Aboriginal Corporation
1881	Mulungu Aboriginal Corporation Medical Centre
1061	Mungoorbada Aboriginal Corporation
500	Murchison Region Aboriginal Corporation
2062	Nindethana Aboriginal Corporation
1866	Nirrumbuk Aboriginal Corporation
1274	Njernda Aboriginal Corporation
584	Papulu Apparr-Kari Aboriginal Corporation
334	Pintubi Homelands Health Service (Aboriginal Corporation)
2999	Pulikutarra Aboriginal Corporation
2249	Windida Aboriginal Corporation
548	Winton District Aboriginal Corporation
1302	Wongatha Wonganarra Aboriginal Corporation
2022	Wulgurukaba Aboriginal Corporation
3975	Yabur Yulgun CDEP Aboriginal Corporation
2000	Yargin Aboriginal Corporation
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation
620	Yarrowarra Aboriginal Corporation
1161	Yothu Yindi Foundation Aboriginal Corporation

Attachment 5

Corporations issued with notices to show cause why an administrator should not be appointed 2005–06

This table lists corporations that were required to show cause why an administrator should not be appointed under section 71 of the ACA Act during 2005–06.

ICN	Corporation	Due date	Outcome
269	Carpentaria Land Council Aboriginal Corporation	22 Jun 06	Administrator appointed 3 July 2006
2915	Eidsvold Wakka Wakka Aboriginal Corporation	2 Sep 05	Administrator appointed 16 January 2006
3830	Ghungalou Aboriginal Corporation	21 Oct 05	Administrator appointed 16 January 2006
1999	Gkuthaarn Aboriginal Corporation	9 Feb 06	Administrator appointed 3 April 2006
2824	Goreta Aboriginal Corporation	22 Jul 05	Administrator appointed 5 September 2005
1754	Kamilaroi Employment Aboriginal Corporation	22 Nov 05	Section 60A notice issued 16 January 2006
3037	Kukatj Aboriginal Corporation	9 Feb 06	Administrator appointed 3 April 2006
680	Link-up (QLD) Aboriginal Corporation	13 Feb 06	Administrator appointed 26 June 2006
761	Mutitjulu Community Health Service (Aboriginal Corporation)	31 Jan 06	Administrator appointed 16 March 2006
1838	Nyangatjatjara Aboriginal Corporation	3 Feb 06	Administrator appointed 28 April 2006
1519	Orana Aboriginal Corporation	11 Nov 05	Administrator appointed 28 November 2005
2	Urapuntja Health Service Aboriginal Corporation	21 Nov 05	Administrator appointed 16 March 2006
3409	Uwoykand Tribal Aboriginal Corporation	29 Aug 05	Administrator appointed 3 October 2005

Attachment 6

Corporations where new administrators were appointed 2005–06



This table lists corporations for which administrators were appointed under section 71 of the ACA Act during 2005–06.

Date appointed	ICN	Corporation	Administrator
29 Aug 05	3805	Billa Downs Aboriginal Corporation	Bob Brewster
16 Jan 06	2912	Eidsvold Wakka Wakka Aboriginal Corporation	Lindsay Roberts
16 Jan 06	3830	Ghungalou Aboriginal Corporation	Lindsay Roberts
3 Apr 06 1 Jul 06	1999	Gkuthaarn Aboriginal Corporation	Peter McQuoid Tony Birch
5 Sep 05	2824	Goreta Aboriginal Corporation	Peter Lanthois
3 Apr 06 1 Jul 06	3037	Kukatj Aboriginal Corporation	Peter McQuoid Tony Birch
16 Jun 06	680	Link-up (QLD) Aboriginal Corporation	Barry Jameson
13 Mar 06	761	Mutitjulu Community Health Service (Aboriginal Corporation)	Eamonn Thackaberry
28 Apr 06	1838	Nyangatjatjara Aboriginal Corporation	Eamonn Thackaberry
28 Nov 05	1519	Orana Aboriginal Corporation	Peter Scolari
29 Aug 05	942	Parnngurr Aboriginal Corporation	Brian McMaster
13 Mar 06	2	Urapuntja Health Service Aboriginal Corporation	Glen Walker
5 Oct 05	3409	Uwoykand Tribal Aboriginal Corporation	Glen Walker

Attachment 7

Corporations with administrators continuing from previous years at 30 June 2006

This table lists corporations with administrations continuing from previous years, and when the administrator was appointed.

Date appointed	ICN	Corporation	Administrator	Date cancelled	Outcome
5 Apr 04	1716	Armidale Employment Aboriginal Corporation	Bob Brewster	31 Aug 06	Liquidator appointed
18 May 05	1269	Dubbo Googars Aboriginal Corporation — CDEP	Andrew Bowcher		
16 Jul 02	2133	Goomburrup Aboriginal Corporation	Eamonn Thackaberry		
21 Nov 03	2541	Kununurra Region Economic Aboriginal Corporation	Eamonn Thackaberry		
12 Apr 04	54	Mount Morgan Aboriginal Corporation	Glen Walker	25 Sep 06	Handed back to members control 25 Sept 06
24 Mar 03	662	Munjuwa Health Housing and Community Aboriginal Corporation	Peter Sheville		
1 Nov 04	560	Piccadilla Aboriginal Corporation	Bob Brewster		
29 Sep 04	2749	Three Ways Aboriginal Corporation	Andrew Bowcher		
31 Oct 03	289	Wirrimanu Aboriginal Corporation	Bob Smillie	22 Nov 03	Replaced by Joe Schiavi
22 Nov 03			Joe Schiavi	23 May 04	Replaced by Ian Swan
24 May 04			Ian Swan	23 Feb 07	Replaced by Brian McMaster
24 Feb 07			Brian McMaster		
27 Jun 05	4088	Yapatjarra Aboriginal and Torres Strait Islander Corporation for Health Services	Lorraine Forman	9 Feb 07	Handed back to members control 9 Feb 07

Attachment 8

Liquidations in progress at 30 June 2006



This table lists corporations where liquidation was in progress under the ACA Act at 30 June 2006.

ICN	Corporation	State	Date appointed
2293	Aboriginal and Torres Strait Islander Corporation for All Sports, Health and Recreation	Qld	29 May 03
3716	Allawah Aboriginal and Torres Strait Islander Corporation	NSW	21 Oct 05
227	Balangarri Aboriginal Corporation	WA	28 Jul 99
893	Boree Aboriginal Corporation	NSW	13 Apr 04
1449	Carnma CDEP Aboriginal Corporation	NSW	13 Feb 04
164	Central Qld Aboriginal Corporation for Training Resources	Qld	30 May 97
198	Centralian Aboriginal Organisation Enterprise (Aboriginal Corporation)	NT	21 Nov 05
1766	Coolgaree Youth Movement Aboriginal Corporation	Qld	18 Aug 04
1930	Durahrwa Training and Development Aboriginal Corporation	NSW	10 May 05
4050	Gangali Aboriginal Corporation	Qld	13 Oct 05
2032	Giru Dala Council of Elders Aboriginal Corporation	Qld	25 May 06
2824	Goreta Aboriginal Corporation	SA	2 Mar 06
1696	Guddoo Marddah Aboriginal Corporation	WA	23 Feb 00
1674	Gundabooka Aboriginal Corporation	NSW	14 Aug 02
1579	Gunyah Construction Aboriginal Corporation	NSW	12 Jun 01
2202	Keriba Mina Torres Strait Islander Corporation for Development	Qld	2 Feb 06
328	Kerrup Jmara Elders Aboriginal Corporation	VIC	2 Apr 01
3950	Mackay Bama Dorge Lag Aboriginal and Torres Strait Islander Corporation	Qld	25 May 06
2416	Marruwayura Aboriginal Corporation	WA	16 Mar 06
3639	Martidja Bunyjima Aboriginal Corporation	WA	29 May 03
549	Mearu Djarula Aboriginal Corporation	WA	20 Apr 99
799	Minbarni Aboriginal Corporation	NT	13 Mar 06
3553	Murrin Bridge Vineyard Aboriginal Corporation	NSW	7 Mar 05
1476	Narrogin Aboriginal Corporation	WA	16 Aug 01
272	Ngaku Aboriginal Corporation Multi-Purpose Centre	NSW	3 Nov 04
957	NSW Women's Aboriginal Corporation	NSW	2 May 00
2704	Orana Barellan Aboriginal Corporation	NSW	12 Jun 99
3727	Port Hedland Indigenous Media Aboriginal Corporation	WA	23 Sep 05
87	Sports Aboriginal Corporation of Tasmania	TAS	6 Oct 00
1551	Wandanooka Aboriginal Corporation	WA	4 Oct 99
2323	Warrego Aboriginal Corporation	Qld	28 Nov 02
3221	Wiri/Yuwiburra "Touri" Aboriginal Corporation	Qld	7 Jun 02
778	Yabu Bindalynga Aboriginal Corporation	WA	5 Sep 95
235	Yagga Yagga Community Aboriginal Corporation	NT	23 Feb 06
2091	Yagga Yagga Enterprises Aboriginal Corporation	WA	23 Feb 06

Attachment 9

Liquidations finalised during 2005–06

The corporations listed in this table were liquidated under the ACA Act, and the liquidations were finalised during 2005–06.

ICN	Corporation
2690	Aboriginal Building Corporation (Aboriginal Corporation)
2452	Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
2911	Cairns and District Indigenous Families Aboriginal and Torres Strait Islander Corporation
1228	Doonooch Self-Healing Aboriginal Corporation
2412	Euston Aboriginal Corporation
1122	Gubrun Aboriginal Corporation
1192	Karjini Aboriginal Corporation
1562	Manth-Thayan Aboriginal Corporation
147	Narwon Housing Aboriginal Corporation
166	North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care
77	Theodore Aboriginal Corporation
10	Tingha Aboriginal Corporation
1825	Youth Activities Services Torres Strait Islander Corporation

Attachment 10

Deregistrations completed during 2005–06

10

This table lists corporations that were deregistered under the ACA Act during 2005–06.

ICN	Corporation	State	State total
4067	Indigenous Womens Sport and Recreation Aboriginal Corporation	ACT	
3276	Jumby Mulla Aboriginal Corporation	ACT	
3730	Mulanggang Aboriginal Corporation Consultancy	ACT	3
3220	Anya-Gunya Housing Aboriginal Corporation	NSW	
3579	Bermagui Gaunji Housing Aboriginal Corporation	NSW	
2031	Bidjigal Aboriginal Corporation	NSW	
736	Brewarrina Aboriginal Cultural Museum Aboriginal Corporation	NSW	
2452	Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation	NSW	
3298	Christian Aboriginal and Torres Strait Islander Corporation	NSW	
4156	Combined Council Hunter Valley Aboriginal Corporation	NSW	
3268	Cunnamulla Dreaming Aboriginal Corporation	NSW	
3799	Dhigabilla Aboriginal Men Support Group Aboriginal and Torres Strait Islander Corporation	NSW	
1228	Doonooch Self-Healing Aboriginal Corporation	NSW	
2503	Elders Council of Murrin Bridge (Aboriginal Corporation)	NSW	
2412	Euston Aboriginal Corporation	NSW	
3891	Forbes Aboriginal Corporation of Sisters	NSW	
49	Gilgandra Aboriginal Corporation	NSW	
2835	Gilgandra Aboriginal Corporation Health Service	NSW	
3148	Gluwan Nation Aboriginal Corporation	NSW	
3941	Guboo Foundation Aboriginal Corporation	NSW	
3757	La Perouse Community Aboriginal Corporation	NSW	
812	La Perouse United Aboriginal Corporation for Sport and Recreation	NSW	
3781	Marrambang Marra Aboriginal Corporation	NSW	
3856	Moree Kamilaroi Warriors (RLFC) Aboriginal Corporation	NSW	
2601	Muli Muli Health Post Aboriginal Corporation	NSW	
147	Narwon Housing Aboriginal Corporation	NSW	
3853	New South Wales Aboriginal Junior Rugby League Association Aboriginal Corporation	NSW	
2647	Ngamba Local Aboriginal Corporation	NSW	
1099	Ngarrpaana CDEP Aboriginal Corporation	NSW	
3787	Nhantu Karra Karra Indigenous Aboriginal Corporation	NSW	
3866	Niigarr Baygal Mens Aboriginal Corporation	NSW	
3372	Ningi Aboriginal Corporation	NSW	

ICN	Corporation	State	State total
3967	Nye Bros Aboriginal Corporation	NSW	
3813	Peak Hill Aboriginal Corporation	NSW	
3892	Thungutti Gooree Sports & Recreation Aboriginal Corporation	NSW	
3895	Thungutti Nulla Nulla Aboriginal Corporation Day Care and Pre School	NSW	
3894	Thungutti Rugby League Football Club (Aboriginal Corporation)	NSW	
10	Tingha Aboriginal Corporation	NSW	
3523	Tru Colors Aboriginal Corporation	NSW	
2620	Walealu Aboriginal Corporation	NSW	
3516	Walgett Youth and Community Development Aboriginal Corporation	NSW	
2154	Wdajri Myiral Elders Aboriginal Corporation	NSW	
3299	We Do Care Aboriginal Corporation	NSW	
3383	Winarrkirrpa Aboriginal Corporation	NSW	
819	Wutuma Keeping Place Aboriginal Corporation	NSW	
1639	Wyaliba Aboriginal Corporation	NSW	43
2690	Aboriginal Building Corporation (Aboriginal Corporation)	NT	
2680	Arrernte Security of Central Australia Aboriginal Corporation	NT	
3025	Gumatj-Rirratjingu Leasing Aboriginal Corporation	NT	
3621	Ikuntji Artists Aboriginal Corporation	NT	
3522	Laramba Arts Aboriginal Corporation	NT	
3532	Puntutjarrpa Council (Aboriginal Corporation)	NT	
3163	Warkuwa (Emu Rockhole) Aboriginal Corporation	NT	7
1464	'Gindaaja' Yarrabah Youth Sports and Recreation (Aboriginal Corporation)	QLD	
2892	'Kurrimundi' Aboriginal and Torres Strait Islander Corporation	QLD	
1518	'Woyan Min' The Aurukun Community Development and Welfare Aboriginal Corporation	QLD	
1884	Ait Kadal Clan Torres Strait Islander Corporation	QLD	
3932	Badi Fisheries (Torres Strait Islanders) Corporation	QLD	
2568	Badjiri Aboriginal Corporation for Culture and Land	QLD	
3778	Barbarian Woorawa Aboriginal Sports and Recreation Corporation	QLD	
1982	Bar-Bar-Rum Tribal Aboriginal Corporation	QLD	
1935	Binthi Aboriginal Corporation	QLD	
2408	Biraruki Djodjongatjoro Outstation Aboriginal Corporation	QLD	
2929	Budjiti Aboriginal Corporation for Land, Culture and Heritage	QLD	
3456	Bunda Cultural Aboriginal Corporation	QLD	
3524	Bundarra Aboriginal Corporation	QLD	
4413	Buruja Aboriginal and Torres Strait Islander Corporation	QLD	
3792	Bwgcolman Business Incubator Aboriginal Corporation	QLD	
1280	Bwgcolman Warrior Boxing Club Aboriginal Corporation	QLD	
2911	Cairns & District Indigenous Families Aboriginal and Torres Strait Islander Corporation	QLD	

ICN	Corporation	State	State total
1975	Cairns and District Aboriginal and Torres Strait Islander Corporation for Women	QLD	
1480	Caloundra and District Aboriginal and Torres Strait Islander Corporation	QLD	
2417	Cape York Environment Foundation Aboriginal Corporation	QLD	
2578	Central Queensland Kyou Aboriginal Corporation	QLD	
2211	Central Western Gangalu Aboriginal Corporation	QLD	
3765	Cherbourg Mens Action Group Aboriginal Corporation	QLD	
3794	Cloncurry Performing Arts Aboriginal Corporation	QLD	
3132	Creative Training Aboriginal Corporation	QLD	
829	Diocese of Cairns Catholic Council of Aboriginal and Torres Strait Islander Corporation	QLD	
3776	Duhlgubadda Aboriginal Corporation	QLD	
3933	Erub Mekik Le Torres Strait Islander Corporation	QLD	
3784	Gia Traditional Aboriginal Corporation	QLD	
1986	Gold Coast Aboriginal and Torres Strait Islander Corporation for Child Care	QLD	
1972	Gold Coast Aboriginal and Torres Strait Islander Corporation for Women	QLD	
2482	Goorin Mulla Regional Artist's Aboriginal Corporation	QLD	
3806	Gu-Gu-Bara-Bi Aboriginal Corporation	QLD	
3886	Gunggari Aboriginal Corporation for Land	QLD	
1568	Gurindal Aboriginal and Torres Strait Islander Corporation for Cell Visitors	QLD	
1665	Jukambe Aboriginal and Torres Strait Islander Corporation	QLD	
2610	Jymbilung Aboriginal and Torres Strait Islander Corporation	QLD	
2624	Kamu Kamu Jikan Bawa Ngananga Kari Aboriginal Corporation	QLD	
2655	Kargoolnah Blackall Aboriginal and Torres Strait Islander Corporation	QLD	
1146	Karloo Aboriginal and Torres Strait Islander Corporation	QLD	
2235	Kemus Torres Strait Islander Corporation	QLD	
2355	Komilario Land Aboriginal Corporation	QLD	
2051	Koranga Health Action Torres Strait Islander Corporation	QLD	
1516	Kuku Ya'o Aboriginal Corporation	QLD	
1562	Manth-Thayan Aboriginal Corporation	QLD	
2574	Mardigan Aboriginal Corporation for Land	QLD	
3821	Mathainab-au Fisheries (Torres Strait Islanders) Corporation	QLD	
3968	Miminni Indigenous Womens Aboriginal Corporation	QLD	
2847	Moonlight Aboriginal Corporation	QLD	
972	Mullen-Budda Tribal Aboriginal Corporation	QLD	
2039	Munda Goala Research Aboriginal Corporation	QLD	
3921	Murdi Gudi Mens Group Aboriginal Corporation Dalby QLD	QLD	
2100	Muthanth Aboriginal Corporation	QLD	
2174	Ngadjon Tribal & Cultural Aboriginal Corporation	QLD	

ICN	Corporation	State	State total
2377	Ngarang-Wal Gold Coast Aboriginal Corporation and Land Council	QLD	
1964	Ngarrabullgin Tourism Aboriginal Corporation	QLD	
938	Ngooderi Sports Aboriginal Corporation	QLD	
166	North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care	QLD	
1118	Nyawaygi Aboriginal and Torres Strait Islander Corporation for Womens Issues	QLD	
445	Nyletta Aboriginal and Torres Strait Islander Corporation for Community Advancement	QLD	
803	Nynugmba Bukumba Aboriginal Corporation for Sport	QLD	
2710	Old Doomadgee Traditional Owners Aboriginal Corporation	QLD	
1208	Palm Island Aboriginal Corporation for Home and Community Care	QLD	
3709	Palm Island Mens Business Group Aboriginal Corporation	QLD	
802	Palm Island Netball Association Aboriginal Corporation	QLD	
3443	Pearson and Sons Aboriginal Corporation	QLD	
1927	Poonko Aboriginal Corporation	QLD	
3930	Porumal-Gal Fisheries (Torres Strait Islanders) Corporation	QLD	
2589	Queensland Aboriginal & Islander Health Forum (Aboriginal Corporation)	QLD	
2820	Queensland Indigenous Rugby League Association (Aboriginal Corporation)	QLD	
3534	Redbank, Sport, Culture and Recreation Aboriginal Corporation	QLD	
2549	Remote Indigenous Media Association of Queensland (Aboriginal Corporation)	QLD	
1865	Rirmerr Aboriginal Corporation	QLD	
2196	Sagiba Erubian Torres Strait Islander Corporation	QLD	
657	South East Queensland Aboriginal Community Care Agency Aboriginal Corporation	QLD	
3885	South West Indigenous Aboriginal Corporation	QLD	
3820	South West Queensland Aboriginal Corporation	QLD	
2471	Suibaidam Clan Torres Strait Islander Corporation	QLD	
2096	Thakilanchi Ikalin Cape Direction Aboriginal Corporation	QLD	
1967	The Harold Jackson Progress Aboriginal Corporation	QLD	
2558	The North Coast Aboriginal and Torres Strait Islander Corporation for Legal Service	QLD	
77	Theodore Aboriginal Corporation	QLD	
2387	Tjilpatha Aboriginal Corporation	QLD	
4222	TNQ Employment and Training Aboriginal Corporation	QLD	
3910	Toowoomba and District Aboriginal Corporation for Health	QLD	
3259	Toowoomba and Districts Aboriginal Corporation for Community Support Group	QLD	
1418	Townsville Aboriginal and Torres Strait Islander Corporation for Mental Health	QLD	
2207	Townsville/Thuringowa Torres United Sports and Recreation Torres Strait Islander Corporation	QLD	

ICN	Corporation	State	State total
2875	Undumbi Land Council Aboriginal Corporation	QLD	
1789	Waah'ur Paant Aboriginal Corporation	QLD	
1644	Waridube Aboriginal and Torres Strait Islander Corporation	QLD	
3931	Warraber-Gal Fisheries (Torres Strait Islanders) Corporation	QLD	
2354	Wide Bay Aboriginal & Islander Community Health Service Aboriginal and Torres Strait Islander Corporation	QLD	
3505	Wontoup Aboriginal and Torres Strait Islander Corporation	QLD	
2632	Wulburjubur Aboriginal Corporation	QLD	
3205	Wuli Wuli Aboriginal Corporation	QLD	
2576	Wunya Australian Aboriginal Corporation	QLD	
4078	Yapatjarra Aboriginal and Torres Strait Islander Corporation for Community Health Services	QLD	
2446	Yarwathin Aboriginal Corporation	QLD	
3798	Yelangi Aboriginal and Torres Strait Islander Corporation	QLD	
1825	Youth Activities Services Torres Strait Islander Corporation	QLD	101
3237	Arabana Utjulya Aboriginal Corporation	SA	
3775	Arabunna Finnis Springs Aboriginal Corporation	SA	
2682	Kokatha Mula Aboriginal Corporation	SA	
3518	MrunMile South East Land Council Aboriginal Corporation	SA	
1940	Network Youth Workers Aboriginal Corporation	SA	
3384	Newchurch Aboriginal Corporation	SA	
2810	Southern Land and Sea Council Aboriginal Corporation	SA	
2925	Waru Tjaangi Aboriginal Corporation	SA	8
2317	United Coalition Aboriginal Corporation	TAS	1
2981	Coomburra Community Justice Panel Aboriginal Corporation	VIC	
3074	Djeetgun Kurnai Womens Aboriginal Corporation	VIC	
1692	Glenthompson Aboriginal Corporation	VIC	
1701	Jmara Aboriginal Corporation Community Justice Panel	VIC	
1401	Koorie Diabetes Services Victoria (Aboriginal and Torres Strait Islander Corporation)	VIC	
2661	Victorian Aboriginal Corporation Golf Association	VIC	
3107	Wurruwila Aboriginal Corporation	VIC	7
762	Curtin Students Aboriginal and Torres Strait Islander Corporation	WA	
1122	Gubrun Aboriginal Corporation	WA	
1192	Karijini Aboriginal Corporation	WA	
2773	Kimberley Aboriginal Pastoralists Association Aboriginal Corporation	WA	
3700	Martu Land Aboriginal Corporation	WA	
753	MSU Aboriginal Corporation	WA	
3079	Ngurra Wangkamagayi Aboriginal Corporation	WA	
3511	Upper Blackwood Aboriginal Corporation	WA	
3512	Yok Mia Mia Aboriginal Corporation	WA	9

Attachment 11

Top 100 corporations with highest known income and assets

This table lists the top 100 corporations by income and assets during 2005–06.

ICN	Corporation name	Total	Rank
29	Bawinanga Aboriginal Corporation	\$40,330,856	1
868	Julalikari Council Aboriginal Corporation	\$22,461,952	2
2719	Kaarta-Moorda Aboriginal Corporation	\$19,999,601	3
104	Marra Worra Worra Aboriginal Corporation	\$19,999,321	4
2102	Bungala Aboriginal Corporation	\$19,614,471	5
1925	Kurra Aboriginal Corporation	\$18,865,962	6
1902	Anangu Pitjantjatjara Services Aboriginal Corporation	\$16,422,242	7
2001	Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation	\$16,244,209	8
232	Southern Aboriginal Corporation	\$16,156,117	9
3027	Derby Aboriginal Health Service Council Aboriginal Corporation	\$16,028,131	10
2169	Kurtjar Aboriginal Corporation	\$15,978,181	11
500	Murchison Region Aboriginal Corporation	\$15,456,509	12
1124	Booroongen Djugun Aboriginal Corporation	\$15,405,671	13
27	Durri Aboriginal Corporation Medical Service	\$15,344,739	14
557	Ngaanyatjarra Health Service (Aboriginal Corporation)	\$14,545,380	15
319	Western Desert Puntukurnuparna Aboriginal Corporation	\$14,014,684	16
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation	\$13,901,498	17
1034	Mildura Aboriginal Corporation	\$13,111,614	18
21	Kimberley Land Council Aboriginal Corporation	\$12,997,335	19
181	Illawarra Aboriginal Corporation	\$12,674,755	20
447	Mawarnkarra Health Service Aboriginal Corporation	\$11,858,978	21
3068	Katherine West Health Board Aboriginal Corporation	\$11,771,705	22
267	Tjuwanpa Outstation Resource Centre (Aboriginal Corporation)	\$11,272,940	23
4170	Sunrise Health Service Aboriginal Corporation	\$11,238,046	24
178	Indigenous Tasmanians Aboriginal Corporation	\$11,026,542	25
1195	Granites Mine Affected Area Aboriginal Corporation	\$10,885,151	26
1065	Winnam Aboriginal and Torres Strait Islanders Corporation	\$10,331,040	27
12	Broome Regional Aboriginal Medical Service (Aboriginal Corporation)	\$10,077,154	28
2570	Maari Ma Health Aboriginal Corporation	\$9,482,826	29
1725	Coen Regional Aboriginal Corporation	\$9,445,120	30

ICN	Corporation name	Total	Rank
414	Ngurratjuta/Pmara Ntjarra Aboriginal Corporation	\$8,953,314	31
2958	South-West Aboriginal Medical Service Aboriginal Corporation	\$8,910,546	32
197	Bega Garnbirringu Health Services Aboriginal Corporation	\$8,905,283	33
283	Anyinginyi Health Aboriginal Corporation	\$8,881,737	34
1084	Ramingining Homelands Resource Centre Aboriginal Corporation	\$8,450,359	35
651	Ngoonjuwah Council Aboriginal Corporation	\$8,339,674	36
1094	Bama-Ngappi-Ngappi Aboriginal Corporation	\$8,234,913	37
90	Mowanjum Aboriginal Corporation	\$8,126,058	38
2004	Goondir Aboriginal & Torres Strait Islanders Corporation for Health Services	\$8,071,109	39
1855	Wirraka Maya Health Service Aboriginal Corporation	\$8,050,312	40
1467	Julalikari Buramana Aboriginal Corporation	\$8,043,120	41
3897	Groote Eylandt and Bickerton Island Enterprises Aboriginal Corporation	\$7,995,132	42
3003	Nooda Ngulegoo Aboriginal Corporation	\$7,531,921	43
1870	Ngangganawili Aboriginal Community Controlled Health and Medical Services Aboriginal Corporation	\$7,364,400	44
1386	Wurli-Wurlinjang Aboriginal Corporation	\$7,330,482	45
1061	Mungoorbada Aboriginal Corporation	\$7,314,709	46
2043	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation	\$7,241,040	47
2458	Gundjeihmi Aboriginal Corporation	\$7,229,801	48
1274	Njernda Aboriginal Corporation	\$7,172,907	49
285	Kuwinywardu Aboriginal Resource Unit Aboriginal Corporation	\$7,148,979	50
275	Ord Valley Aboriginal Health Service Aboriginal Corporation	\$6,994,607	51
67	Central Australian Aboriginal Media Association (Aboriginal Corporation)	\$6,907,453	52
2705	Wila Gutharra Community Aboriginal Corporation	\$6,820,959	53
2065	Amangarra Aboriginal Corporation	\$6,802,461	54
2256	Pilbara Meta Maya Regional Aboriginal Corporation	\$6,752,691	55
593	Burringurrah Community Aboriginal Corporation	\$6,606,238	56
309	Yulella Aboriginal Corporation	\$6,587,732	57
4028	Southern Barkly Aboriginal Corporation	\$6,500,309	58
840	Kabi Kabi Aboriginal Corporation	\$6,462,854	59
42	Mindibungu Aboriginal Corporation	\$6,409,409	60
559	Pius X Aboriginal Corporation	\$6,323,914	61
1716	Armidale Employment Aboriginal Corporation	\$6,104,762	62
426	Djarindjin Aboriginal Corporation	\$6,092,308	63
3783	Townsville Thuringowa Indigenous Peoples Community Employment Enterprise Development Aboriginal Corporation	\$6,083,620	64
1866	Nirrumbuk Aboriginal Corporation	\$6,022,155	65
182	South Coast Medical Service Aboriginal Corporation	\$5,994,837	66

ICN	Corporation name	Total	Rank
134	Walungurru Community Council Aboriginal Corporation	\$5,890,486	67
2653	Doomadgee CDEP Aboriginal Corporation	\$5,855,930	68
616	Jarlmadangah Burru Aboriginal Corporation	\$5,813,319	69
2409	Kunawarrtji (Aboriginal Corporation)	\$5,810,006	70
2273	Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region	\$5,765,264	71
1239	Winda-Mara Aboriginal Corporation	\$5,755,987	72
552	Yura Yungi Medical Service Aboriginal Corporation	\$5,717,061	73
35	Kununurra Waringarri Aboriginal Corporation	\$5,470,662	74
268	Carpentaria Land Council Aboriginal Corporation	\$5,381,386	75
1213	Kuku Djungan Aboriginal Corporation	\$5,366,348	76
1754	Kamilaroi Employment Aboriginal Corporation	\$5,364,614	77
3593	Ngarliyarndu Bindirri (Corporate CDEP) Aboriginal Corporation	\$5,335,558	78
3061	Hedland CDEP Aboriginal Corporation	\$5,150,441	79
631	Mudth-Niyleta Aboriginal and Torres Strait Islanders Corporation	\$5,149,362	80
2960	Aboriginal Movement for Outback Survival Aboriginal Corporation	\$5,140,143	81
620	Yarrowarra Aboriginal Corporation	\$4,976,753	82
1471	Ramahyuck District Aboriginal Corporation	\$4,955,451	83
1310	Warlayirti Artists Aboriginal Corporation	\$4,880,758	84
1956	Puntuturnu Aboriginal Medical Service Aboriginal Corporation	\$4,878,877	85
914	Broome Aboriginal Media Association (Aboriginal Corporation)	\$4,864,744	86
1302	Wongatha Wonganarra Aboriginal Corporation	\$4,861,262	87
3202	Guri Wa Ngundagar Aboriginal Corporation	\$4,823,798	88
3309	Kaata-Koorliny Employment and Enterprise Development Aboriginal Corporation	\$4,735,508	89
364	Goldfields Land and Sea Council Aboriginal Corporation	\$4,725,244	90
113	Kalumburu Aboriginal Corporation	\$4,723,729	91
1163	Cape York Land Council Aboriginal Corporation	\$4,640,815	92
913	Gurang Land Council (Aboriginal Corporation)	\$4,597,141	93
97	Quirindi Aboriginal Corporation	\$4,559,953	94
108	KASH Aboriginal Corporation	\$4,510,765	95
69	Walhallow Aboriginal Corporation	\$4,500,775	96
2541	Kununurra Region Economic Aboriginal Corporation	\$4,492,463	97
1998	Charleville and Western Areas Aboriginal and Torres Strait Islanders Corporation for Health	\$4,433,254	98
1996	North Queensland Land Council Native Title Representative Body Aboriginal Corporation	\$4,407,365	99
1497	Jibulwanagu Outstation Resources Association Aboriginal Corporation	\$4,404,349	100

Attachment 12

Booklet— Get in on the Act

12

What is it?

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) will replace the *Aboriginal Councils and Associations Act 1976* (the ACA Act). For most Aboriginal and Torres Strait Islander corporations it is an optional law to take account of their special needs and circumstances.

When will it start?

The CATSI Act was passed by the Australian Parliament in October 2006. It will start on 1 July 2007, to coincide with the start of the financial year 2007–08.

Who does it affect?

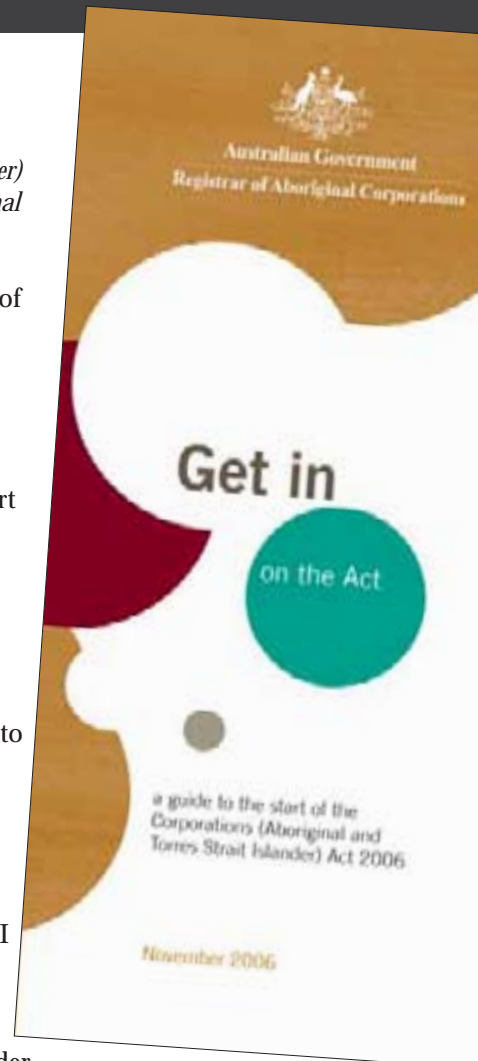
It affects all corporations incorporated under the ACA Act, and groups and corporations planning to incorporate under this Act.

What do corporations need to do?

Corporations registered with the ACA Act will not have to apply for registration under the CATSI Act. This is because a second Act, called the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*, makes sure that all corporations that are under the ACA Act will automatically be covered by the CATSI Act.

The main thing that existing corporations should do to prepare is to learn about the changes.

In the coming months, the Registrar's office will publish a set of rules that corporations can adopt before the CATSI Act starts so that they are as ready as possible. Groups and corporations planning to incorporate under the ACA Act before 1 July 2007 will be able to adopt these rules so that they do not need to make as many changes after the CATSI Act starts.



Will corporations be given time to make changes?

While the CATSI Act will apply from 1 July 2007, corporations will have up to two years to make the necessary changes to comply with the new law. This is called the 'transitional period' and the Registrar can allow corporations an extra period of six months to comply if they have special reasons.

More information on this transitional period is available in ORAC's fact sheet *Arrangements for corporations to move to the new CATSI Act*.

Why a new Act?

Since 1976 there have been many changes in the role and functions of Aboriginal and Torres Strait Islander corporations. There are now about 2500 of them registered under the ACA Act. Many deliver essential services such as medical care, and infrastructure such as power stations, to remote Indigenous communities or they might hold land for Indigenous groups. Most native title corporations are registered under the ACA Act, as are most remote Indigenous arts centres.

There have also been many changes to the law of corporate governance and regulation. The ACA Act is 30 years old and is out-of-date with these modern corporate governance laws.

The new Act has been developed from an independent review of the ACA Act.

Since the new Act was introduced into parliament in June 2005, amendments have been made to take into account people's concerns. To support the Act, two other Acts have been passed:

- the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*, which will help corporations transfer to the new law
- the *Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006*, which amends the Corporations Act, removing any contradictions or gaps between the two laws.

Why is it so big?

The new Act creates more flexibility for corporations to design a set of rules that better suit their own culture and circumstances. While this creates more sections, it will be of great benefit to the corporations themselves.

The Act also reduces red tape by, for example, streamlining how corporations have to report. Most small and medium corporations will have reduced reporting requirements whereas large corporations are likely to have more. Setting out all these different reporting requirements makes the Act larger but will benefit most corporations.

It also includes new provisions such as the rights and obligations of directors and other managers, the rights of members and the support that is available.

The ACA Act was unclear about which parts of modern corporations law applied to Aboriginal and Torres Strait Islander corporations. To understand the ACA Act you needed to read case law and parts of the Corporations Act. The new Act includes the parts of the Corporations Act that are mirrored in the new Act.

Impact on corporations

Rights

NEW The Act says it is a special measure intended to benefit Indigenous people, providing a safeguard for how it is interpreted and administered.

Registration

NEW To register, corporations must have at least five members, although the Registrar can exempt small corporations from this requirement under certain circumstances.

NEW People wanting to incorporate must give evidence that they are ready for it—for example, that 75 per cent of the group have agreed to apply for registration and that they have agreed to the rules. This encourages registration of corporations that will be sustainable.

NEW A body corporate registered under another law will be able to seamlessly transfer its registration to the CATSI system if certain requirements are met. A CATSI corporation will also be able to easily transfer its registration to the Corporations Act or a state or territory law. A large corporation, for example, may decide that its future development would be best served by becoming a Corporations Act company.

NEW Corporations will be able to amalgamate, either by an administrative process approved by the Registrar or by applying to a court. Amalgamations will be voluntary and may be desirable when a number of different corporations service a particular area or Indigenous group.

Names

NEW A corporation will be required to have the words ‘Aboriginal corporation’, ‘Torres Strait Islander corporation’, ‘Indigenous corporation’, ‘Aboriginal and Torres Strait Islander corporation’ or ‘Torres Strait Islander and Aboriginal corporation’ as part of its name. This replaces the requirement for all corporations registered under the ACA Act to use the words ‘Aboriginal Corporation’ or ‘Torres Strait Islanders Corporation’ as part of its name.

NEW A registered native title body corporate will have to use these words or the abbreviation ‘RNTBC’ as part of its name to signal to third parties that the corporation looks after native title rights and interests.

Indigeneity

NEW Corporations can choose whether to allow non-Indigenous people, for example, experts, spouses and step children, as members or directors through their constitution. Indigenous people will always be in the majority so even if a corporation chooses to allow non-Indigenous members the corporation will always be controlled by Indigenous people. This is an option for corporations—it is not compulsory to allow non-Indigenous people to be members or directors; it just gives corporations a new option.

Native title

NEW The new Act makes sure that requirements imposed on a corporation or individual by native title legislation does not conflict with obligations under the Act.

Internal governance framework

NEW A sensible approach to internal governance is built into the Act to set corporations up to succeed, with room to tailor rules to their own special circumstances.

NEW All corporations will be required to have a constitution which sets out the corporation's aims, its name, a process for resolving disputes and any other matters the corporation wishes. An eligibility requirement, such as that a member must live in a particular region, is an example of a matter that the corporation may wish to include in its constitution.

NEW Like the Corporations Act, the new Act provides a system of replaceable rules which gives guidance on critical matters related to internal governance. These rules can be modified or replaced by the corporation in its constitution. An example of a replaceable rule is that directors appoint the chair of a general meeting. A corporation could replace this with a rule, for example, that members appoint the chair.

NEW There are also provisions of the Act related to internal governance that the corporation must apply. These cannot be modified or replaced by the corporation unless the Registrar provides an exemption. An example is the rule that a corporation must hold an annual general meeting every year. The Registrar could, for example, exempt small corporations from this requirement and instead require that they only have to hold an annual general meeting every second year.

NEW The Registrar has the power to change the constitution in some circumstances, especially if the corporation acts against the interests of the members.

Registered office

NEW Large corporations must have a registered office to make sure members and others can get hold of important documents such as the corporation's rules and to make sure that people who need to can contact the corporation.

NEW Small and medium corporations must have a 'document access address' which is a place where people can inspect important documents. This can be a person's home and people wanting to inspect documents have to give seven days written notice.

Secretaries and contact persons

NEW Large corporations will be required to have a corporation secretary who is responsible for making sure that the corporation meets certain responsibilities such as lodging documents with the Registrar.

Small and medium corporations will have a contact person which is essentially a 'mailbox' role for receiving and passing on information to the directors. This is a simpler mechanism than requiring a registered office or a corporation secretary.

Members' rights

NEW Aboriginal and Torres Strait Islander corporations have members, not shareholders. The Act brings members' rights into line with the Corporations Act—for example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.

NEW The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards them.

Reporting

NEW Corporations will be streamed into small, medium and large for reporting purposes. Most small corporations won't have to provide as many reports as they did under the ACA Act. Large corporations will prepare a more comprehensive report.

NEW All corporations will have to prepare a general report. The general report will contain the basic details of directors, current members, the contact person and the document access address. Keeping this information up to date and keeping proper financial records are the key compliance requirements for small and medium corporations.

NEW The general report is much less than required under the ACA Act which, for example, requires all corporations to submit audited financial statements. Large corporations will still have to submit audited financial statements.

NEW Small corporations will only have to provide the minimum general report and may only have to provide this every second year.

NEW The streaming of corporations will be done according to their income, assets and number of employees. These amounts will be set down through regulations rather than in the Act because they will be easier to change to make sure the amounts remain relevant over the years to come.

NEW

A **small** corporation will have at least two of the following:

- Total gross operating income: less than \$100,000
- Total gross assets: less than \$100,000
- Less than 5 employees

A **large** corporation will have at least two of the following:

- Total gross operating income: more than \$5 million
- Total gross assets: more than \$2.5 million
- More than 25 employees.

Corporations that are neither large nor small will be classed as **medium**.

Note: CDEP participants will be treated as employees for the purposes of these thresholds.

Duties of directors and other managers

NEW

The Act clarifies the duties of directors and includes duties for chief executive officers and other people who manage the corporation. Directors and these managers are called officers. These duties are in line with the Corporations Act and are designed to make sure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.

NEW

These duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent.

Meetings

There are two kinds of meetings—directors and general meetings.

NEW

An annual general meeting must be held every year, although the Registrar can exempt corporations from having one if they have no need or no capacity to hold them. For example, the Registrar could allow a small corporation to hold an annual general meeting every second year.

NEW

Meetings can be held by video or teleconference—this is particularly important for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in language so long as some parts can be translated later if required.

NEW

The Registrar has a power to call general meetings. Sometimes members are concerned if meetings are not called, so this power can be used to prevent or minimise disputes.

NEW

The Registrar can also call a meeting of other people who might be interested in a problem that is affecting a particular corporation or a number of corporations. For example, the Registrar could ask government funding bodies, creditors and other corporations to all meet to sort out a particular problem.

Anti-nepotism

NEW Corporations will be prevented from giving financial benefits to directors or related parties (such as a spouse of a director) unless this is approved by members. These related party provisions will help prevent nepotism. The Registrar will be able to exempt corporations from these provisions if appropriate.

NEW The Act also strengthens members' capacity to participate in managing the corporation, such as being able to request information about director payments and approving related party transactions.

Penalties and offences

NEW While there are more offences under the new Act than previously existed under the ACA Act, most are based on those in the Corporations Act.

NEW People are prohibited from providing false or misleading statements and information—either to the Registrar, or by an officer or employee of a corporation to its directors, auditors and members.

NEW Also based on the Corporations Act is a new civil penalties scheme for serious contraventions of the Act and the option for a penalty notice scheme as an alternative to criminal prosecution.

Disqualification of directors and other managers

The Act retains the standard that people cannot be directors if they have been convicted of certain offences or are bankrupt.

NEW The Registrar will be able to apply to a court to disqualify a person from managing corporations if they have contravened a civil penalty provision of the Act, have repeatedly contravened provisions of the Act, or if they have been involved with two or more corporations that have experienced corporate failure. This is consistent with the Corporations Act.

NEW If a person is disqualified they must not 'participate in the management' of a corporation. This is broader than the ACA Act which just stops people being a director. This will help protect corporations from people who are disqualified from managing a corporation, such as chief executive officers or finance officers. This is consistent with the Corporations Act.

NEW If a person is disqualified from managing a corporation under the Corporations Act they are also automatically disqualified from managing Aboriginal and Torres Strait Islander corporations. Amendments are also planned for the Corporations Act to make sure that a person disqualified under the CATSI Act is also disqualified under the Corporations Act.

Registers

Like the ACA Act, the new Act requires corporations to keep a register of members and former members. The register of members is lodged with the Registrar.

NEW The CATSI Act allows Aboriginal and Torres Strait Islander corporations to keep the register of former members separate. This allows corporations to better manage cultural issues around publishing the names of people who may have passed away.

Other key information about corporations will be held on the Register of Aboriginal and Torres Strait Islander Corporations, including information about directors, the corporation's rules, reports such as financial statements etc. This free public register will provide key information to members and others interested in the corporation.

NEW The CATSI Act allows the Registrar to stop people inspecting some sensitive personal information contained on the Register of Aboriginal and Torres Strait Islander Corporations.

NEW The Act establishes a register of people disqualified from managing any corporations.

Registrar's powers

The Registrar can appoint an expert to examine a corporation's affairs. This means 'healthy organisation checks' can be carried out to help prevent any problems arising or increasing.

The Registrar can appoint a special administrator—this power can be used to provide a safety net against the possibility of corporate failure, especially for corporations providing essential services, infrastructure or holding land.

NEW The Registrar can examine a corporation's books and the corporation's holding company if they have one or more subsidiaries. If the books are not produced the Registrar can seek a warrant from a magistrate to support the Registrar's other powers.

The Registrar can investigate matters if necessary.

Review of decisions

NEW The Act gives people affected by certain decisions made by the Registrar the right to seek an internal review of these decisions.

NEW Most decisions made by the Registrar can also be reviewed by the Administrative Appeals Tribunal. This tribunal provides accessible review rights for people who don't agree with the Registrar's decisions.

Capacity building

NEW The Registrar can conduct research, training and education campaigns about good corporate governance for Aboriginal and Torres Strait Islander corporations.

NEW The Registrar can help corporations resolve disputes but cannot arbitrate any disputes because it might prevent the Registrar using other powers.

Complaints

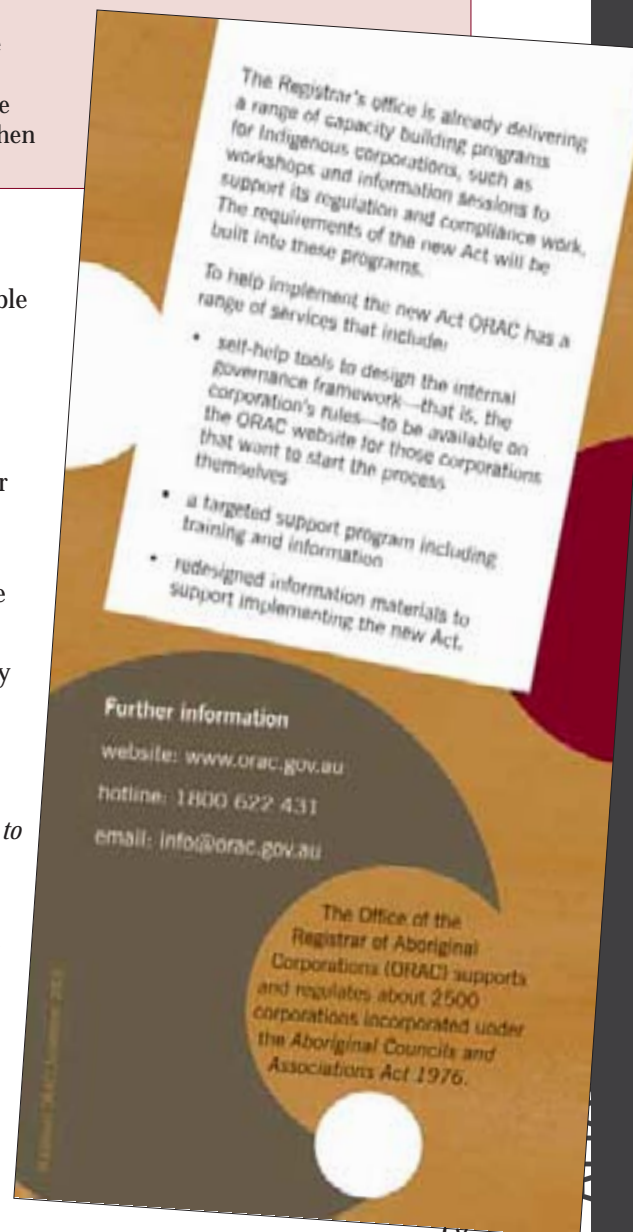
The Registrar can assist with complaints about corporations.

NEW Employees and officers can report suspected breaches of the Act to the Registrar and certain other persons, for example, auditors. Employers are prohibited from victimising them when they do so.

Implementation

Information about the Act is available on the website and from the Office of the Registrar of Aboriginal Corporations, such as:

- an overview of the CATSI Act
- the legislation itself and the other related laws that support it
- a detailed explanation of the Acts and amendments (called the explanatory memorandum)
- the minister's speeches when they were introduced in parliament
- this guide, *Get in on the Act*
- an animation featuring a bloke called Bill and others—*Say g'day to Bill*—available on CD
- fact sheets, providing more information about specific topics such as duties of directors.



13

Attachment 13

Fact sheet—What the Act means for funding bodies

What the Act means for funding bodies

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) was passed by the Australian Parliament in October 2006 and will replace the *Aboriginal Councils and Associations Act 1976* (the ACA Act) on 1 July 2007. It is the result of a review of the ACA Act in 2001, and largely reflects the review's recommendations.

Many corporations registered under the ACA Act receive funding from state and territory governments and Commonwealth government agencies. The Act makes a number of improvements that are relevant to funding bodies—such as encouraging better governed and more sustainable corporations, and providing for improved risk management by funding bodies and corporations. The measures are discussed in this fact sheet.

Corporations are set up to succeed

The Act ensures that corporations are set up to succeed. It does this by improving support for groups before and after they incorporate. Before incorporating, groups must provide:

- *evidence of readiness*: Groups wanting to incorporate must show that they are ready in a number of ways, including:
 - 75 per cent of the group has agreed to apply for registration and
 - the group has agreed on its internal governance framework.
- *an internal governance framework, which allows for tailoring rules to reflect local circumstances*: A sensible approach to internal governance for corporations is built into the Act, allowing them to tailor rules to their own special needs and circumstances while also meeting the standards set out in the Act (see a separate fact sheet—*What's in the corporation's rule book?*). For example, even though the Act is a special statute for Aboriginal and Torres Strait Islander peoples, corporations can choose to allow some non-Indigenous people as members, such as spouses, step children, directors who may be experts in a particular area or key staff members of the corporation. This will encourage better corporate governance, since it draws on expert and employee help relevant to the corporation's needs. The Act requires that Indigenous people will always be the majority, so even if a corporation chooses to allow non-Indigenous members the corporation will be controlled by Indigenous people.

Further information

website: www.orac.gov.au

hotline: 1800 622 431
(free except for mobiles)

email: info@orac.gov.au

Reporting

The Act aims to improve transparency of corporations. It does this through a number of mechanisms including:

- **group reporting:** If a corporation forms part of a larger corporate group it can report as part of the group—this is important for risk management of complex corporate and financial structures.
- **small, medium and large reporting:** Corporations will be streamed into small, medium and large for reporting purposes. Small and medium corporations will not have to provide as many reports as they did under the ACA Act. Large corporations will prepare comprehensive reports, consistent with the Corporations Act. Many already do this.

All corporations will provide a minimum 'general' report. This will contain the basic details of directors, current members, the contact person or secretary and the corporation's contact details. Keeping this information up-to-date and keeping proper financial records will be the key compliance requirements for small and medium corporations.

For small corporations this general report is the only one that they will have to provide to the Registrar, and they may only need to do so every second year. Small corporations may also only have to hold an annual general meeting every second year and can hold these by video or teleconference. This helps unfunded land holding corporations and small businesses reduce their reporting costs.

For medium corporations the general report is also the key report that they need to prepare. Some additional reporting may also be required for medium corporations. Large corporations will still have to submit audited financial statements.

If a corporation has a temporary increase in income, such as a capital grant, higher reporting may or may not be required and the Registrar may alter the registered size of a corporation to reflect this.

Ongoing support

The Act enables the Registrar to provide ongoing support to corporations such as:

- **compliance support:** The Registrar can assist Aboriginal and Torres Strait Islander corporations with compliance through training and specialist troubleshooting sessions about good corporate governance.
- **dispute resolution:** The Registrar can help corporations resolve disputes by providing non-binding advice about the registration of an Aboriginal and Torres Strait Islander corporation, the rules for the internal management of the corporation and its operations. The Registrar also aims to make sure corporations follow correct procedures during disputes to avoid litigation and if necessary refers parties to mediation (these are not funded by ORAC). The Registrar cannot mediate disputes because it might prevent the Registrar using other powers.
- **providing advice:** The Registrar can help with complaints about corporations by providing advice or referring parties to independent mediation and arbitration services (these are not funded by ORAC). The Registrar can also investigate complaints made about corporations, for example, those relating to corporate governance and compliance with legislation.
- **whistleblower provisions:** Employees and officers such as senior staff and directors can safely report suspected breaches of the Act to the Registrar and certain other people such as auditors. Corporations are prohibited from victimising whistleblowers when they report breaches. Whistleblowers whose disclosures meet certain criteria will be eligible for protection such as protection from employment termination.
- **power to call general meetings:** The Registrar has a power to call general meetings including meetings to elect boards. If members are concerned that meetings have not been called, this power can be used to step in when corporations cannot call a meeting due to quorum problems or will not call a meeting.
- **power to call meetings of interested people:** The Registrar can also call a meeting of other people interested in a problem that is affecting a corporation. For example, the Registrar could ask funding bodies, creditors and other corporations to meet to sort out a particular problem.

Clear governance standards

The CATSI Act supports clear governance standards for corporations by:

- *clarifying offences:* While there are more offences under the CATSI Act than previously existed under the ACA Act, most are based on the offences found in the Corporations Act.

For example, the CATSI Act prohibits false or misleading statements being made either to the Registrar, or by an officer or employee of a corporation to its directors, auditors and members.

- *introducing a new civil penalties scheme for serious contraventions of the Act:* The Act includes the option for a penalty notice scheme as an alternative to criminal prosecution. The Registrar can ask the Federal Court to declare a contravention has occurred. These provisions are based on the civil penalties scheme found in the Corporations Act.

- *retaining the Registrar's ability to automatically disqualify people from managing a corporation if they have been convicted of fraud or if they are bankrupt, and introducing new disqualification measures:* The CATSI Act introduces a new power for disqualifying individuals by a court if they have contravened a civil penalty provision of the Act, have repeatedly contravened provisions of the Act, or if they have been involved with two or more corporations that have experienced corporate failure. This is consistent with the Corporations Act.

The Registrar will maintain a register of people who are disqualified from managing corporations. This register will be publicly available. At a minimum funding bodies should be checking it regarding directors of corporations from 1 July 2007.

- *clarifying the duties of directors and extending the duties to chief executive officers and other people who manage the corporation:* Directors and senior managers are referred to as officers. Their duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent. These duties are in line with the Corporations Act and ensure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.
- *providing anti-nepotism measures:* These prevent corporations from giving financial benefits to directors or related parties (such as a spouse of a director) unless approved by members.
- *strengthening members' capacity to participate in managing the corporation:* This is done by allowing members to request information about directors' payments and requiring members to approve related party transactions. These include transactions involving another business or personal interest of a director or even a relative of a director.
- *bringing members' rights into line with the Corporations Act:* For example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.

The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards members.

- *allowing for meetings to be held by video or teleconference:* This is particularly important for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in language so long as some parts can be translated later if required.

Streamlined and targeted intervention by the Registrar

The Act retains the Registrar's special powers of intervention with broader and clear grounds for intervening.

For example:

- **healthy organisation checks:** The Registrar can appoint an expert to examine a corporation's affairs, including subsidiaries. This means 'healthy organisation checks' can be carried out to stop any problems arising or increasing.
- **special administrator:** The Registrar can appoint a special administrator. This power can be used to provide a safety net against corporate failure, especially for corporations providing essential services, infrastructure or holding land.
- **examination of books:** The Registrar can examine a corporation's books and, if they are not produced, seek a warrant from a magistrate to enable the Registrar to investigate matters if necessary.
- **other investigations:** The Registrar can investigate matters such as when public or private funds might have been misused.

Protecting assets

Under the CATSI Act funding bodies and creditors are better able to protect assets through strengthened rights as an interested party. For example, corporations and creditors can use the external administration provisions of the Corporations Act:

- voluntary administration
- receiver and liquidator provisions
- applications to a court to seek an order to protect assets.

Further information

website: www.orac.gov.au

hotline: 1800 622 431
(free except for mobiles)

email: info@orac.gov.au

Information sharing

- **sharing non-public information:** The CATSI Act enables the Registrar to share non-public information with relevant agencies, in line with the Privacy Act.
- **public information:** ORAC maintains the Public Register of Indigenous Corporations. The Public Register provides useful and unique information about Indigenous corporations to members of the public, funding agencies and corporations themselves.

Currently under the ACA Act the information in the Public Register held by ORAC includes certificates of incorporation, applications for incorporation, rules (constitutions), details of public officers, annual financial statements, exemptions from some reporting requirements, and some documents relating to regulatory action—for example, monitoring, administration, liquidation and deregistration.

A list of all documents held by ORAC for any individual corporation since 1978 is available electronically. These documents are available in hard copy from ORAC and some, including corporations' rules (constitutions), are accessible online. A few corporations have requested that their lists of members not be published electronically, for justifiable reasons.

The Act improves the amount and accessibility of public information that is available.

- **register of members:** Like the ACA Act, the CATSI Act requires corporations to keep a register of members and former members. The register of members is lodged with the Registrar and is usually a public document available on ORAC's website.
- **register of disqualified people:** The Act establishes a register of people disqualified from managing corporations.
- **other information:** Other key information about corporations will be held on the Register of Indigenous Corporations, including information about directors, the internal governance framework, and reports such as financial statements and some information about assets held and subsidiaries controlled by corporations.
- **readily available information:** Public information will be free and easily accessible to members, creditors and other interested parties. Providing readily available information about corporations promotes good corporate governance and gives funding bodies, creditors and members greater access to information about corporations. ORAC is constantly developing more streamlined access to its public information about Indigenous corporations.

14

Attachment 14 Policy—Incorporation under ACA Act/CATSI Act



Incorporation under the Aboriginal Councils and Associations Act 1976 / Corporations (Aboriginal and Torres Strait Islander) Act 2006

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1. Purpose

The purpose of this paper is to provide information about the most effective use of the *Aboriginal Councils and Associations Act 1976* (ACA Act) and the legislation that will repeal and replace it, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), which will commence on 1 July 2007.

2. Background to the ACA Act and the CATSI Act

The ACA Act was envisaged as a simple and flexible means for incorporating associations of Aboriginal and Torres Strait Islander people and was reserved for the use of Aboriginal and Torres Strait Islander people only. Since it began in the late 1970s, the ACA Act has become a significant vehicle for incorporating a broad range of Aboriginal and Torres Strait Islander corporations—from holding land to delivering essential services. Today 56 per cent are located in remote areas. The ACA Act is administered by the Registrar of Aboriginal Corporations who is supported by staff within the Department of Families, Community Services and Indigenous Affairs (referred to as the Office of the Registrar of Aboriginal Corporations or ORAC).

The CATSI Act was passed by the Australian Parliament on 18 October 2006. It will commence on 1 July 2007 and will replace the ACA Act. It will also be administered by the Registrar (who will then become the Registrar of Aboriginal and Torres Strait Islander Corporations). The CATSI Act was drafted in response to the recommendations of an independent review of the ACA Act undertaken in 2001–02, which identified a number of shortcomings of the ACA Act, including inadequate protection for members, rigidity of corporate design and insufficient third party protection including for funding agencies. The CATSI Act offers a special incorporation statute to meet the needs of Aboriginal and Torres Strait Islander people. It introduces a strong but flexible legislative framework that aligns with the *Corporations Act 2001*, where practicable, but accommodates the particular needs and circumstances of individual localities and groups. To acknowledge the fact that most corporations are located in remote areas and may provide essential services or hold key assets such as land, the Act also offers additional safeguards through the Registrar's unique regulatory powers.

All corporations registered under the ACA Act will be deemed to be corporations under the CATSI Act on its commencement on 1 July 2007. Transitional arrangements setting out the process for moving from the ACA Act to the CATSI Act are in the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*.

3. Basics of a corporation

A corporation is a separate legal entity which can perform all the functions of an individual, and has therefore become one of the main economic vehicles for a group to participate in the modern world. Broadly a corporation's functions include:

- the ability to sue and be sued, while limiting the liability of individual members
- remaining the same legal entity despite changes in the identity of its members
- the ability to acquire, hold and dispose of property, including money obtained through grants and other funding
- the requirement to keep records of its spending and assets.

Some types of corporations, such as those established for charitable purposes, may also be eligible for taxation concessions.

The conduct and powers of the corporation are determined partly by its own rules and, for Aboriginal and Torres Strait Islander corporations, by the ACA Act or the CATSI Act. Generally, ultimate power of a corporation resides in the members in a general meeting, who own the corporation. However, its rules, which form a contract between the corporation and each member, the corporation and each director, and between each and every member, may allocate certain powers to its board of directors (known as the governing committee under the ACA Act). Directors have duties, including the duty to act honestly and diligently in exercising their powers and functions. The CATSI Act will clarify the statutory duties required of directors and other senior staff by aligning them with those required of the officers of mainstream corporations under the Corporations Act. This is particularly appropriate given that the powers are delegated to management and staff to conduct the day-to-day affairs of the corporation.

4. Alternative incorporation regimes

Depending on their individual circumstances, a group may choose to incorporate under a number of different legal regimes. Apart from the ACA Act/CATSI Act regimes, each state and territory has its own legislation to incorporate non-profit organisations. These provide a simple and inexpensive method under which such bodies can be established and also provide limited liability for their members if the corporation fails. The legislation is not uniform and is administered by regulatory authorities in each state and territory, rather than the Australian Securities and Investments Commission (ASIC).

Commercial organisations established to trade or make a profit normally choose to incorporate under the Corporations Act which ASIC administers. This may also be appropriate for non-profit organisations that want

to operate in more than one state or territory. Under the Corporations Act the two main types of corporations are proprietary companies and public companies, although there are different categories within these two broad types, based on the extent of the liability of its members. Generally, a proprietary company is a private company designed for a relatively small group of people who do not want it to be able to invite the public to subscribe for its share capital or to lend money to it. A public company, in contrast, may raise funds by making offers or inviting the public to purchase or subscribe for securities. A public company also has greater obligations regarding the public disclosure of its financial affairs.

Many non-profit organisations decide to incorporate under the Corporations Act as a public company limited by guarantee. Such a company does not have the power to issue shares and if it is wound up without adequate funds to discharge its liabilities each person who is then a member is liable to pay an agreed sum, normally a small amount. A public company limited by guarantee may raise funds needed for its operations by loans, subscriptions or fees and may earn and distribute its profits.

It should be noted that the Corporations Act was enacted by the Commonwealth in 2001 after the states referred some of their respective legislative powers over corporations to the Commonwealth. This referral addresses a gap in the Commonwealth's existing constitutional power regarding corporations. The referral implemented an intergovernmental agreement between the Commonwealth, the states and the territories. This agreement also regulates any future amendments to the Corporations Act.

Aboriginal and Torres Strait Islander groups that incorporate to trade, conduct major business or for-profit enterprises can choose to incorporate under the Corporations Act. However an important consideration is that groups can still incorporate for business or for-profit purposes under the ACA Act and CATSI Act, unlike state or territory associations legislation which prevents distribution of profits to members.

5. When should an organisation incorporate under the ACA Act or the CATSI Act?

Whether the ACA Act or the CATSI Act provides an appropriate mechanism for a particular group depends on the individual circumstances of the group and its income source.

Some of the factors to consider in determining whether to incorporate under the ACA Act or CATSI Act are discussed below.

Indigeneity

Both the ACA Act and the CATSI Act have eligibility requirements for organisations to incorporate under them. The most important relates to Indigeneity. The ACA Act requires all members of a corporation to be an

Aboriginal or Torres Strait Islander person or the spouse of an Aboriginal or Torres Strait Islander person. Under the CATSI Act a corporation may have non-Indigenous members as long as they are in the minority and if permitted under its rules. This means corporations can access non-Indigenous expertise or advice through various mechanisms. For example, under the ACA Act a board may buy contracted expert services or involve key staff who attend every board meeting and provide advice. Under the CATSI Act experts and key staff may be appointed or elected to the board, even if they are non-Indigenous, as full board members with decision making powers where the corporation's rules allow it.

This provides a new option for corporations to have non-Indigenous people as members or board members, although it is not compulsory and must be agreed by the members through the rules.

Internal governance rules

The CATSI Act strengthens the requirements for the internal governance rules of a corporation so that the rules satisfy certain minimum governance standards. For instance, the corporation's rules must be internally consistent, adequate and workable, given the context in which the corporation operates. A corporation's rules must also deal with certain matters, such as what dispute resolution process will apply and who may chair a general meeting. Under the CATSI Act the Registrar can direct a change to rules in some circumstances. This is in contrast to the Corporations Act which generally provides much less guidance and prescription regarding the internal governance of its corporations.

Ineligible organisations

Some types of organisations are inappropriate for registration under either the ACA Act or the CATSI Act. A trade union or a corporation providing financial services, such as a bank or a building society, may not be registered under the CATSI Act. Similarly, neither legislative regime can incorporate businesses that need to raise share capital from the public.

Corporate membership

The CATSI Act allows corporate membership so that peak bodies can become members of relevant corporations.

Specialised assistance

In contrast to other regulators, ORAC can provide a high level of assistance to corporations, from help with the drafting of rules to providing information and training about the conduct of meetings and the duties and

responsibilities of their directors and officers. Such assistance makes the ACA Act or the CATSI Act particularly suited to:

- developing sectors such as the Indigenous arts industry
- organisations that require ‘prudential’ or active regulation such as essential service providers or those that hold essential assets
- organisations where membership or clients are disempowered, such as child care centres, aged care facilities and schools
- organisations in remote areas of Australia, particularly where English is not commonly spoken
- organisations that require greater risk management than other legislative regimes can provide
- organisations that are operating in a sector where many others are incorporated with ORAC since this provides a common incorporation platform and generates economies in risk management, capacity building and information management
- land holding and native title corporations which operate in a complex environment where ORAC has considerable expertise
- corporations or sectors that will benefit from the opportunities that the ACA Act and CATSI Act offer, especially in preventative approaches such as stronger guidance on corporate design and a rolling program of ‘good governance audits’ or examinations and follow up, combined with capacity building.

Specialised regulatory powers

The unique regulatory powers of the Registrar, including the ability to appoint examiners and administrators to corporations in difficulty, makes the ACA Act and the CATSI Act especially well suited to corporations that require significant risk management, for instance, those funded to provide an essential service to a remote community. The Registrar also has the power, in certain circumstances, to call and conduct meetings of a corporation. The public register of Aboriginal and Torres Strait Islander corporations, administered by ORAC, contains financial statements and other lodged documents and provides a greater level of transparency than most other incorporation regimes.

Considering appropriateness of incorporation

There may also be funding programs where incorporation is unnecessary or inappropriate. For instance, an appropriate recipient corporation may already exist, or the amount, or duration, of the funding may not warrant the expense or administrative burden of incorporation. Pursuing an ‘auspice body arrangement’ to manage the grant on behalf of another group may be

more appropriate in this circumstance rather than incorporation. Where a group will only provide advisory services or advocacy type functions to assist a government agency, and will not need to manage funds or deliver services, then incorporation again may not be appropriate. For most groups incorporating is voluntary. However, corporations holding or managing native title under the *Native Title Act 1993* must be incorporated under the ACA Act—a requirement that will continue under the CATSI Act.

Assessing risk of existing corporations through the public register

Information about a corporation, including its financial standing, can be obtained by checking lodged annual information including financial statements which are available on the public register (available at www.orac.gov.au). The most recent public documents filed with ORAC by corporations are available online through the ORAC website. ORAC can also assist with information regarding aggregated data on risk of corporations that might be required by funding agencies.

Disqualification provisions

Certain people may be disqualified from managing a corporation. For instance, under the ACA Act, people who are undischarged bankrupts are automatically disqualified and also those convicted of certain offences are automatically disqualified as members of the governing committee. Similar restrictions will apply under the CATSI Act to people managing Aboriginal and Torres Strait Islander corporations. The CATSI Act will also establish a public register of people disqualified at the initiative of the Registrar. People disqualified from managing corporations under the Corporations Act will also be automatically disqualified under the CATSI Act.

Amalgamations and transfers

Under the CATSI Act corporations will be able to amalgamate; enabling economies in corporate overheads (although this has to always be balanced with the risk that larger corporations pose). Aboriginal and Torres Strait Islander corporations registered under other legislation can also transfer into the ACA Act or CATSI legislation.

The ACA Act does not allow for the seamless transfer of corporations between incorporation regimes. When considering whether to transfer funding between different organisations, or whether to reorganise existing organisations, agencies should also be aware that, under the ACA Act, a decision to wind-up a solvent corporation can only happen if agreed to by a special resolution of the members, that is, a 75 per cent of eligible voters who vote at a meeting. Also corporations normally have rules about distributing surplus assets that remain after all previous debts and liabilities are satisfied.

In contrast, the CATSI Act has express transfer provisions which will allow a corporation to voluntarily transfer to or from another incorporation regime. This will ensure a seamless transfer of assets and liabilities and will save the corporation from having to be wound up under the losing legislation and then registered under the receiving legislation. These transfers will still take some time but they offer a key opportunity to work with a corporation to ensure that its corporate structure and design, including its constitution, is most appropriate for the functions it carries out. Ensuring corporate design is appropriate and that directors and others are aware of their legal responsibilities, and are equipped to carry them out, are key risk management strategies. The transfer process requires the agreement of the members and proof of that agreement, for example, the minutes of the annual general meeting showing the agreement of the members.

The provisions in the Corporations Act dealing with the external administration of insolvent corporations also apply to Aboriginal and Torres Strait Islander corporations, and standard legal principles also apply regarding the priority of creditors. For instance, if a corporation is liquidated for insolvency, the Commonwealth, by way of a funding agency, may be one creditor among many others. Under the CATSI Act the Corporations Act provisions dealing with insolvent trading and the protection of employees' entitlements such as long service leave apply to Aboriginal and Torres Strait Islander corporations.

6. Actions by funding bodies

To support good corporate governance funding agencies can:

- ensure that their staff are well informed about the requirements of incorporation and associated processes, such as the use of powers to regulate corporations.
- remember that any decision by an incorporated body to transfer between other regimes and the ACA Act or the CATSI Act is voluntary and must be agreed to by a majority of its members at a general meeting.
- ensure that policies and operations do not require things to be done that are inconsistent with the law and best practice for incorporation, or are contrary to the interests of a corporation e.g. requiring directors or members to move assets without following proper processes under the law being followed or ignoring the ownership of assets by corporations.
- carefully consider any direct or indirect requirements for incorporation that they may have in place or are considering, such as funding conditions imposed on organisations about which legislation they should incorporate under and tendering criteria about the preferred incorporation model.
- ensure that relevant interests are protected through appropriate measures to prevent loss of capital assets if funding for services is transferred to another organisation and keeping the relevant records for these protection measures secure and accessible for future agency staff.

ORAC can assist funding agencies review their policies and operations to ensure legal requirements and best practice strategies are in place and provide information sessions to key agency staff on a range of matters relevant to good governance and risk management.

Where a new program is being set up that involves new service providers, ORAC also provides a pre-incorporation service which promotes incorporation when and where it is necessary and responsible. This includes:

- conducting workshops with groups providing information and advice to prepare groups wanting to incorporate
- providing advice and assistance to groups with decisions on incorporation options
- providing information on the key features of incorporation under the ACA Act and CATSI Act
- helping with the design of corporations' rules that support good governance.

7. Contact ORAC

Further information about Indigenous corporations and ORAC, including the ACA Act and the CATSI Act is available online at www.orac.gov.au or by contacting ORAC on 1800 622 431. ORAC can also provide information sessions on the ACA Act, the CATSI Act and Aboriginal and Torres Strait Islander corporations more generally.

Attachment 15 Poster—Steps to the Corporations (Aboriginal and Torres Strait Islander) Act

Australian Government
Registrar of Aboriginal Corporations

STEPS TO THE CORPORATIONS (ABORIGINAL & TORRES STRAIT ISLANDER) ACT



- July 2007
 - 1 July 2007
The CATSI Act begins.
 - July–August 2007
Finalise your financial statements for 2006–07 (like under the ACA Act).
- August 2007
- September 2007
 - August–December 2007
Get your financial statements for 2006–07 audited (like under the ACA Act).
 - Send your annual returns for 2006–07 to the Registrar (like under the ACA Act).
- October 2007
 - September–December 2007
Hold your annual general meeting for 2006–07—either according to your constitution or, if the directors agree, the CATSI Act. The CATSI Act says you must hold an AGM by the end of November.
- November 2007
 - At the AGM
Choose an auditor (examiner) for your 2007–08 accounts.
- December 2007
- 2008
 - 1 July 2007 to 30 June 2009
Adopt the new CATSI model rules or modify them sometime between 1 July 2007 and 30 June 2009.
 - Before 30 June 2008
In 2007–08 you can choose to report under the ACA Act or the CATSI Act. If you want to report under the ACA Act you must write and let the Registrar know before 30 June 2008.
- 1 July 2009
 - 1 July 2009
CATSI transition period ends unless you have already adopted the new rules. You should have a CATSI constitution by this date or seek an extension of up to six months.