



Corporate plan

2021–2024

strong corporations, strong people, strong communities

Message from the Registrar

Over the last few years significant events have affected Aboriginal and Torres Strait Islander corporations, including bushfires, cyclones, floods and a global pandemic. These events have tested the flexibility and intent of the *Corporations (Aboriginal and Torres Strait Islander Act 2006* (CATSI Act), and prompted a more proactive regulatory approach. We know that challenges also represent opportunities. Through this difficult time, our relationship with corporations has strengthened—and we have resolved to stay on the front foot in our support.

A commitment to a more proactive regulatory approach will shape our work over the next 4 years. We will build and maintain relationships, reach out to support corporations, and encourage the sector to self-regulate. In this effort, we aspire to being an empathetic regulator.

As Professor Cary Coglianese, director of the Penn Program on Regulation, says: 'Regulatory excellence is about people excellence'.

This plan presents ORIC's approach to achieving regulatory excellence and identifies actions we will take to propagate change for the better.

To support the plan, the Office of the Registrar of Indigenous Corporations (ORIC) will develop internal business plans that prioritise actions and set clear and measurable targets. ORIC's senior management group will champion the required changes. They will also be accountable through quarterly progress reports and regular updates to all staff.

I look forward to seeing this plan come to fruition, as the Indigenous corporate sector continues to grow and as ORIC hones its skills in facing the challenges of the present and future.

Selwyn

A large, bold, black letter 'M' is positioned on the right side of the page. It is set against a white background that is part of a larger graphic element consisting of a white rectangle with a decorative border on the left and bottom edges. The border features intricate, repeating geometric patterns in a light beige color.



Who we are

The Registrar of Indigenous Corporations is an independent statutory office holder appointed by the Minister for Indigenous Australians to administer the CATSI Act. The CATSI Act requires the National Indigenous Australians Agency (NIAA) to provide an office—ORIC—to support the registrar to fulfil the functions set out in the CATSI Act.

What does ORIC do?

ORIC regulates and supports Aboriginal and Torres Strait Islander corporations, including corporations with special duties and responsibilities as registered native title bodies corporate (RNTBCs) under the *Native Title Act 1973*.

We are empowered to support transparency, accountability and good corporate governance in Aboriginal and Torres Strait Islander corporations. We are also empowered to regulate these corporations—to monitor and enforce their compliance with their legal obligations, and to intervene when required.

How we work

The CATSI Act requires us to perform our role efficiently and in a way that takes into account Aboriginal and Torres Strait Islander tradition and circumstances.

Building sustainability—encouraging corporations to adopt good practices in management and governance, to make the most of their resources and help them achieve their purpose.

Supporting Aboriginal and Torres Strait Islander ownership and control—recognising the benefits of community control in community development.

Promoting accountability—raising awareness that it is good governance and business practice to be answerable to members and the community.

Managing disputes—helping corporations to resolve disputes and develop effective dispute resolution processes to deal with future challenges.

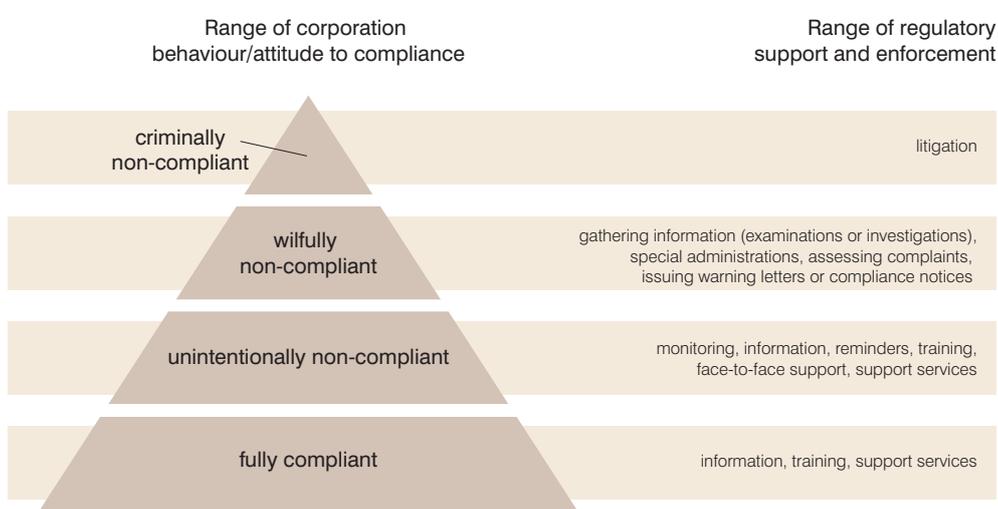
Fitting with culture—making sure that incorporation models, processes and support services fit the specific culture of the community and locality, and that any dealings with corporations are appropriate and relevant.

Shaping our services—tailoring our information and services to the needs of our clients and making sure they are easy to access and use.

Building capability—equipping corporations, their directors and members with the necessary skills and knowledge to build sustainable and vibrant corporations.

How we regulate

We base our regulatory support and enforcement activities on a responsive (pyramid) model. The shape of the pyramid indicates the number of corporations that might be found at each level of behaviour / attitude. It recognises that the majority of corporations seek to be—and are—compliant, and others will be compliant with assistance. We offer these corporations support to build their governance skills and further their corporate objectives. The pyramid also indicates that corporations or individuals within corporations that are disengaged or deliberately doing the wrong thing are in the minority. For those choosing not to comply, we have a graduated response culminating in criminal or civil litigation.



Our values

Independence—the registrar is independent.

Integrity—we behave ethically and honestly and uphold confidentiality. We focus on results, work productively and constantly build our expertise. We are committed to delivering high-quality products and services that help Aboriginal and Torres Strait Islander people build self-determination and achieve results.

Respect—we acknowledge Aboriginal and Torres Strait Islander people as the first Australians and respect their cultures, traditions, views and ways of life. We are continually developing our understanding about Aboriginal and Torres Strait Islander people.

Accountability—we take responsibility for the decisions we make.

Innovation—we value what works, are receptive to fresh ideas and always look to improve efficiency and effectiveness.

Our operating environment

ORIC's operating environment is shaped by the Australian legislative and policy context as well global events like the COVID-19 pandemic.

COVID-19

From February 2020, the COVID-19 pandemic forced the shutdown of activity around the world, and posed a grave risk to Aboriginal and Torres Strait Islander communities.

ORIC's response was rapid. Leveraging the flexibility of the CATSI Act, we introduced temporary special rules for Indigenous corporations to allow online meetings, postponement of meetings, and easier resolutions without a meeting. We also provided guidance for corporations to navigate through the pandemic.¹ Recognising the benefits of online engagement, we have made the special rules option permanent, and continue to support corporations to meet and make decisions online.

Indigenous affairs policy directions

Indigenous affairs has seen significant developments in both national and state and territory contexts. Nationally, key policy developments include:

- a refresh of Closing the Gap priorities and targets—4 priority reform areas and 17 socio-economic targets—through an inaugural joint commitment by all levels of government and a coalition of Aboriginal and Torres Strait Islander peak organisations.²
- consultation on a model of national and regional representation for Aboriginal and Torres Strait Islander Australians—also known as the Indigenous Voice.³
- continued support for pilot models of local decision-making in Indigenous communities such as the 'empowered communities' model.⁴

At a state/territory level, the Victorian, Northern Territory and Queensland governments have progressed their versions of Indigenous recognition through treaty negotiations, design and consultation,⁵ while South Australia and New South Wales continue to explore alternative models of governance such as local decision making and regional authorities.⁶

The above policies emphasise self-determination, self-governance and self-regulation. As their national regulator, ORIC can help Indigenous corporations to grow in that direction.

1 Office of the Registrar of Indigenous Corporations, 2020, oric.gov.au/covid19

2 National Agreement on Closing the Gap, 2020, closingthegap.gov.au/national-agreement

3 Indigenous Voice, 2020, voice.niaa.gov.au

4 Wunan Foundation, 2015, Empowered Communities: Empowered Peoples, 2015, niaa.gov.au/resource-centre/indigenous-affairs/empowered-communities-report

5 Aboriginal Victoria, 2018, aboriginalvictoria.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023; Northern Territory government, 'Everyone Together' Aboriginal affairs strategy, 2020, cmc.nt.gov.au/supporting-government/office-of-aboriginal-affairs/aboriginal-affairs-strategy/everyone-together-aboriginal-affairs-strategy; Department of Aboriginal and Torres Strait Islander Partnerships (Queensland government), 2020, Strategic Plan, datsip.qld.gov.au/resources/datsima/publications/corporate/strategic-plan/datsip-strat-plan.pdf.

6 Government of South Australia, dpc.sa.gov.au/about-the-department/attached-offices/commissioner-for-aboriginal-engagement; New South Wales government, aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/

CATSI Act review

A comprehensive review of the CATSI Act proposed changes that the government is now considering, including to:

- more closely align the registrar's powers with those of the Australian Securities and Investment Commission (the regulator of corporations under the *Corporations Act 2001* (Corporations Act) by including a suite of lower-level discretionary powers
- change and expand the registrar's powers regarding members, meetings, lodgements, rule books and publishing of information
- modernise the CATSI Act to allow for electronic communication
- increase regulatory oversight of RNTBCs
- allow the registrar to use unclaimed monies to support corporations
- change mechanisms regarding special administration, insolvency and winding up of corporations.

Native title act amendments

Recent amendments to the *Native Title Act 1973* affect RNTBCs, and increase ORIC's role in supporting them. The changes include requiring directors to accept membership applications from eligible people, an additional ground for special administration, and a certification process for native title decisions. We will plan and implement our response in 2021.

The proposed changes to the CATSI Act would empower ORIC to provide further specific assistance to RNTBCs.⁷

Modernising business registers

In June 2020 parliament amended the Corporations Act to accommodate the Modernising Business Registers program. The amendments include measures to establish director identification numbers, which directors of CATSI Act corporations will require. The changes are expected to come into force in 2023.

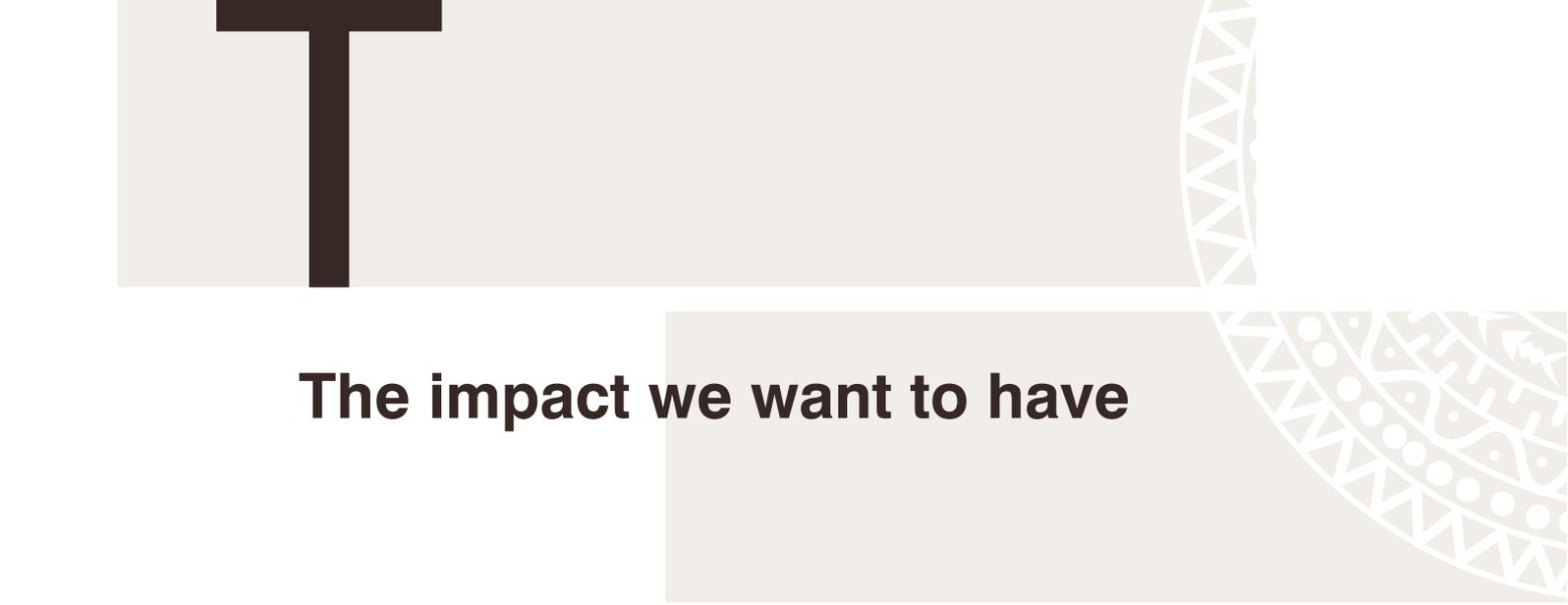
International trade trends

In terms of the value of its exports, Australia is ranked 24 in the world.⁸ Our top 3 exports are iron ore, coal and natural gas, and tourism is our top service export. All these export industries have positive economic benefits for Indigenous corporations.

As nations chart their way out of the COVID-19 pandemic, it is hoped that international trade and tourism resume their growth trajectories. And the more funds flow into Indigenous corporations, the more important it is that they have strong governance.

7 National Indigenous Australians Agency, 2021, *CATSI Act Review Final Report*, niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-final-report

8 Department of Foreign Affairs and Trade, *Trade and investment at a glance 2020*, dfat.gov.au/publications/trade-and-investment/trade-and-investment-glance-2020



The impact we want to have

We recognise the link between strong governance and positive community outcomes, and understand that great governance comes in many forms. Where Indigenous governance looks different to non-Indigenous governance, it might be just as effective, or more so.

We anticipate having an impact beyond ensuring that Aboriginal and Torres Strait Islander corporations comply with the CATSI Act. Through regulation and support, we have the potential to contribute to better social, economic, health and cultural outcomes in Aboriginal and Torres Strait Islander communities.

Vision

Our vision is well-governed, self-determining Aboriginal and Torres Strait Islander corporations that are empowered to improve social, economic, cultural and health outcomes in their communities.

Outcomes

If we are successful in our work, Aboriginal and Torres Strait Islander corporations will:

- be appropriately transparent and accountable
- make good decisions using proper processes
- be deterred from potential wrongdoing
- have good standards and models of governance.

In pursuit of these outcomes, we will direct our efforts to capacity-building, to uncovering and sharing examples of great Indigenous governance and to preventing poor governance or breaches of the law. Focusing on prevention and building knowledge has the potential to lead to greater sector self-regulation—a point where Aboriginal and Torres Strait Islander corporations are testing themselves against agreed standards and sharing their better practice with their peers.

The effect of our strategic approach will be that special administration, investigation and prosecution are a last resort.



Strategic priorities

We will continue our work with Aboriginal and Torres Strait Islander corporations while focusing on the following interrelated service and client priorities:

1. Native title

Currently organisations that hold or manage a determination made under the Native Title Act are required to register as corporations under the CATSI Act. Yet the registrar lacks power to regulate RNTBCs beyond the provisions of the CATSI Act.

When native title holders make agreements, potential benefits emerge, and the imperative strengthens for corporations to protect their rights and interests.

Focusing our efforts on strengthening governance in RNTBCs will help to:

- support all native title holders
- provide a framework for resolving disputes as they arise
- optimise opportunities for native title holders to use their lands and waters
- sustain country, language and culture on behalf of native title holders
- clarify the process by which RNTBCs make native title decisions
- encourage RNTBCs to self-regulate.

Our most significant activities will be:

- regulating RNTBCs under the CATSI Act
- developing and implementing an internal workforce capability specific to native title
- aligning our native title efforts with the relevant policy objectives of National Indigenous Australians Agency, National Native Title Tribunal, National Native Title Council, Australian Institute of Aboriginal and Torres Strait Islander Studies and Attorney-General's Department
- identifying and promoting models of effective traditional and corporate governance and decision-making among RNTBCs
- encouraging greater transparency for native title holders on use of native title benefits
- supporting corporations to review their rule books to align with changes to the Native Title Act and the CATSI Act.



2. Prevention

As an empathetic regulator seeking sector self-regulation, it is vital for us to respond early to issues within corporations and between corporations and their members. We will analyse and assess risk, and offer to assist corporations well before more significant action is required (such as a special administration and/or an investigation that might lead to a prosecution). Preventive activities include calling meetings of interested parties, calling meetings of members; dispute management; training; capacity-building services; informal support and guidance through publications.

Focusing our efforts on prevention efforts will help to:

- ensure corporations can manage disputes effectively
- ensure disputes that come to the attention of the Registrar are planned and managed
- provide a tailored approach to dispute management
- incorporate culture, traditional owners and Elders in decision-making / dispute management
- ensure corporations can continue to function in the interests of members and the community
- reduce the number of special administrations.

Our most significant activities will be:

- training staff to manage complex complaints and disputes using a case management approach
- refining our dispute management process
- exploring the use of external dispute managers to facilitate workshops and mediation
- formalising a process with National Native Title Tribunal to jointly manage disputes relating to distribution of royalties
- developing a tool or service to enable corporations to improve their decision-making
- reviewing previous dispute outcomes for learnings and insights that can help prevent future disputes
- exploring alternative models and practices for resolving disputes.



3. Investigations

We must ensure a more strategic and targeted investment of our limited resources for investigations. For matters that cannot be resolved through preventive efforts, we will establish clear criteria to use to determine whether to pursue an investigation.

Focusing our efforts on the right investigations will help to:

- maximise deterrent value
- make decisions on which matters to investigate
- refer matters to alternative bodies for investigation or further action.

Our most significant activities will be:

- developing and implementing an internal enforcement policy, setting out the criteria for determining which matters to investigate, which to prosecute and which to discontinue
- referring matters to the Commonwealth Director of Public Prosecutions where there is evidence of serious criminal conduct
- taking civil action to disqualify people from managing corporations
- developing and implementing a strategy for targeted minor regulatory prosecutions, and issuing infringement notices.



4. Governance knowledge

As funding bodies' and members' expectations of Aboriginal and Torres Strait Islander corporations grow, so does the need for directors' knowledge and understanding of governance. Members and officers of corporations need familiarity with the minimum standard of governance required of them, and encouragement to aspire to best practice.

Focusing our efforts on generating knowledge and understanding of governance, we will:

- identify and amplify good governance models and techniques
- deepen knowledge and strengthen capability among Aboriginal and Torres Strait Islander corporations
- deepen knowledge and strengthen capability among our staff
- contribute to a broader body of knowledge of what good Indigenous governance is, and the various ways it is practised.

Our most significant activities will be:

- identifying the information and knowledge needs of our constituents
- exploring tools and channels for corporations to create and share information, techniques, templates and case studies
- creating a set of FAQs based on common inquiries we receive
- encouraging staff to continually reflect and learn.

The organisation we want to be

Activating this corporate plan, and achieving its vision, will require a cultural transformation within ORIC. We want to reach beyond the traditional role of a regulator, to empathise with Aboriginal and Torres Strait Islander corporations, to shift our relationship with them.

Being an empathetic regulator means we:

- understand the needs and experience of corporations
- favour prevention (support, capacity-building) over regulatory intervention
- base decisions on the law and our policies but also, corporations' circumstances
- build relationships within and beyond our own agency
- engage in continual critical reflection on our performance—and orient ourselves to embrace feedback and evaluation and the lessons and improvements they inspire

To evolve as an organisation, and to transform our culture, we must embody our values every day, in every constituent relationship, through every supportive and regulatory activity. Our goal is lofty, so we must arrange it into a set of manageable actions, and prioritise.

Organisational priorities and actions

To achieve the cultural transformation we are aiming for, we will continue the organisational development work outlined in the previous corporate plan, and invest additional effort as follows.

Working in a new way

If we can identify examples of great governance, provide timely support and prevent more severe regulatory action, we will build stronger relationships with Aboriginal and Torres Strait Islander corporations. To develop a more empathetic relationship with corporations we will:

- develop and implement a case management system and approach
- create and maintain a set of risk factors for Aboriginal and Torres Strait Islander corporations, and use it to identify corporations in greatest need
- evaluate and continually improve our engagement with Indigenous corporations.



Developing our people

Our big-picture vision is one where Aboriginal and Torres Strait Islander communities are thriving. To that end, we need to ensure all our team members have the right skills, knowledge and attitude to work as part of an empathetic regulator. We will therefore:

- build a staff with the right mix of technical skill (i.e. accounting, legal, dispute management, native title) and attributes (i.e. critical thinking and emotional intelligence)
- develop and implement a diverse learning framework that includes secondments, shadowing and formal education
- promote individual accountability by embedding strategic goals in learning and development plans
- develop ways to embed continuous learning into our work.

Enhancing our systems

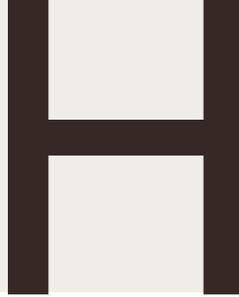
We will enhance our business systems and processes to foster consistency in our responses, to ensure continuity of our services, to leverage data to inform our decision-making. We are aiming for a system that standardises our approach and guides our actions—not a set of rigid rules that we must follow. We will:

- provide clear and consistent policies and frameworks to uphold our responsibilities under the CATSI Act
- in our procedures, embed checks and balances as well as critical reflection points
- regularly evaluate and review standard operating policies
- deploy an enhanced registry system.

Building relationships

We will raise awareness and understanding of ORIC's role, and ways we can assist before issues escalate. Building relationships requires us to articulate our powers to support other organisations to achieve their objectives. We will therefore:

- educate others about the scope and limits of ORIC's role, capability and powers—both generally and in relation to specific common issues identified by funding bodies
- continue to cultivate relationships with NIAA in Canberra and the regional network of offices
- continue to cultivate relationships with other funding bodies.



How we'll track our progress

Accountability is integral to our corporate identity. We will establish a monitoring mechanism and performance measures to ensure our progress is clear. We will:

- assign a timeframe and responsibility for achieving each priority to a senior manager
- report quarterly to the senior management group on progress toward each priority
- report annually on progress to all ORIC staff.

Performance measures

Key measures for tracking the implementation of this corporate plan:

- all priorities have an assigned lead and all milestones have an assigned timeframe
- all milestones are reached in their assigned timeframe
- annual business plans are developed and deployed
- quarterly reports are produced and reviewed
- annual performance reports are provided to all ORIC staff.

