



Australian Government

Office of the Registrar of Indigenous Corporations

THE RULE BOOK CONDENSED

'Know your rules.'
Encourage your members to learn about the rules of your corporation.

May 2016

DISCLAIMER OF LIABILITY

This document is provided for guidance only.

This guide will help corporations registered or groups seeking to register under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* to develop a rule book. It is not legal advice and the Office of the Registrar of Indigenous Corporations (ORIC) disclaims any liability arising from its use. People using this document may seek further assistance from ORIC or obtain other professional advice.

© Commonwealth of Australia 2009, 2015

ISBN: 978-1-925054-38-5 (print)

ISBN: 978-1-925054-39-2 (online)

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968* no part may be reproduced by any process without written permission from the Office of the Registrar of Indigenous Corporations. Requests and inquiries concerning reproduction and rights should be addressed to the Manager Communications, Office of the Registrar of Indigenous Corporations, PO Box 29, Woden ACT 2606.

Produced by ORIC September 2009 (4th edition)

Minor corrections June 2011

Minor corrections May 2013

Minor corrections August 2013

Revised August 2015

Minor changes May 2016

Introduction

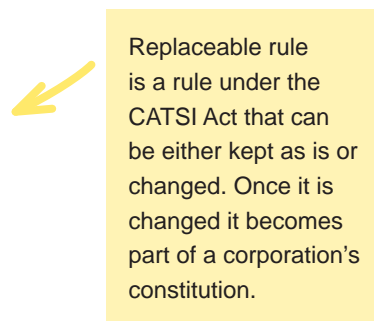
The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) says that every corporation must create and abide by a set of rules.

What is the rule book—condensed?

This condensed rule book is for groups who want to register or change their rules under the CATSI Act.

This rule book satisfies the requirements for a constitution under the CATSI Act and includes some good governance ideas. It keeps some of the ‘replaceable rules’ under the CATSI Act, and replaces others. It doesn’t include all of the set law under the CATSI Act.

Corporations adopting these rules should be aware that the laws in the CATSI Act still apply to them. They should also be aware that if their rules don’t follow the CATSI Act, the CATSI Act will apply.



Replaceable rule is a rule under the CATSI Act that can be either kept as is or changed. Once it is changed it becomes part of a corporation’s constitution.

Who is this rule book suitable for?

- This rule book satisfies the requirements for most corporations registering under the CATSI Act.
- Registered native title bodies corporate (RNTBC) or groups intending to register as an RNTBC should read *A guide for writing good governance rules for PBCs and RNTBCs*, and seek advice from their local native title representative body before deciding which rule book to use.
- Corporations that undertake complex and more difficult activities should speak with the Registrar’s office and a lawyer before deciding which rule book to use.

What do you need to do to use these rules?

To draft a new rule book

All you need to do is:

- insert the proposed name of your corporation
- insert your corporation's objectives
- choose your member eligibility requirements
- choose your director eligibility requirements
- consider whether you need to tailor your dispute resolution clause
- consider a suitable wind-up provision for your corporation.

Text shaded in orange contains information and tips to help you think about and draft your proposed rules. This text is not intended to be part of your final rule book.

You need to delete all the text shaded in orange from your final proposed rule book.

If you make changes to the rules you may need to make sure that references throughout the rule book to other rules are correct.

To adopt a new rule book

You will need to follow the steps required under the CATSI Act and your current rule book for adopting a new set of rules—for example, passing a special resolution to change your rules at a general meeting and then lodging the new rules with the Registrar.

Further help

If you have questions about rule books, please contact the Registrar's office.

The Registrar's office runs workshops for new groups wanting to register and for existing corporations who want to change their rules.

Call the Registrar's office on freecall 1800 622 431 (not free from mobiles) or email info@oric.gov.au.

Start working here.

THE RULE BOOK OF

Insert name of corporation

ICN

Insert Indigenous Corporation Number (ICN), if the corporation is already registered.

The rule book contents

1.	Name	4
2.	Objectives	4
3.	Members	5
4.	General meetings and AGMs (members' meetings)	8
5.	Directors	13
6.	Contact person or secretary	19
7.	Records	19
8.	Finances	20
9.	Application of funds	20
10.	Dispute resolution	21
11.	Changing the rule book	21
12.	Gift fund rules	22
13.	Winding up	23
	Schedule 1—Application for membership form	24
	Schedule 2—Appointment of proxy form	25
	Schedule 3—Consent to become a director form	26
Information sheets		
	How to change a rule book under the CATSI Act (existing corporations)	27
	How to adopt condensed rules under the CATSI Act (new corporations)	29

1. Name

The name of the corporation is:



2. Objectives

The objectives of the corporation are to assist in the relief of poverty, sickness, destitution, helplessness, distress, suffering, and misfortune, among Aboriginal and Torres Strait Islander people, through the process of supporting social and economic development.

The corporation aims to:

- operate community enterprises and build a strong financial base for community development activities and infrastructure.
- promote community development by acting as a resource for the community and stakeholders in the areas of education, health, housing, employment and welfare to the community.
- act as a clearing house to facilitate the exchange of information and skills, participation and maintenance of community development activities, community services, employment and housing for the community.



Including the rule above will assist the corporation apply to register as a charity with the Australian Charities and Not-for-profits Commission. For more information visit www.oric.gov.au and look under **Run a corporation > Charity registration**.



You can **add** more objectives or **change** this rule if you want.

You can also insert **key definitions** here related to the objectives—for example, identify the Aboriginal or Torres Strait Islander group or community involved with the corporation's activities.

To operate and maintain a gift fund to be known as 'The [name of corporation] Gift Fund' in accordance with the requirements of the *Income Tax Assessment Act 1997*.

Your corporation's activities may entitle it to tax concessions from the Australian Tax Office as a deductible gift recipient.

If you want your corporation to be endorsed as a deductible gift recipient you will need to include the rule above.

For more information see the Registrar's fact sheet *Deductible gift recipients* at www.oric.gov.au.

3. Members



3.1 Who is eligible?

A member must be:

- at least 18 years old
- an Aboriginal or Torres Strait Islander person.

You can make the minimum age lower or higher if you want. The lowest age allowed is 15 years old.

You can allow non-Indigenous people as members. However, a majority of members must be Aboriginal or Torres Strait Islander people.

ADD

You may add extra eligibility requirements, such as:

- people must belong to a particular Aboriginal group or family group
- people must usually live in a particular community or region and have lived there for at least X months (e.g. 6 or 12 months)
- people must belong to a particular native title group
- other criteria?

WATCH OUT FOR

Some registered native title bodies incorporate under the *Native Title Act 1993* (Cth) have a statement saying all applicants in a native title determination are eligible to be members of the corporation. However, a native title group and a corporation are different entities. Membership of a corporation is not automatic. To become a member of a corporation a person must apply and their application must then be accepted by the directors.

For more information see *A guide to writing good governance rules for PBCs and RNTBCs* at www.oric.gov.au.

3.2 How to become a member

A person applies in writing.

A person needs to be eligible under rule 3.1.

The directors accept the application by resolution at a directors' meeting.

The directors must consider all applications for membership within a reasonable period after they are received.

The person's name, address and date they became a member is put on the register of members.

The directors may refuse to accept a membership application. If they do so, they must write to the applicant about the decision and the reasons for it.

A person does not become a member until their name is entered on the corporation's register of members. This must be done within 14 days after the directors accept the membership application. However, the corporation must not enter the person on the register of members until after the relevant general meeting or annual general meeting (AGM) has been held if:

- a person applies for membership after a notice has been given for a general meeting or AGM, and
- the general meeting or AGM has not been held when the directors consider the person's application.

Note: An application for membership form is at Schedule 1 of this rule book.

3.3 Members' rights

A member can:

- attend, speak and vote at general meetings
- be made a director (if the member is eligible to be a director—see rule 5.3 on eligibility of directors)
- put forward resolutions at general meetings, including under rule 4.6
- ask the directors to call a general meeting under rule 4.3
- look at the members' register free of charge
- look at the minutes of general meetings and AGMs free of charge
- look at the rule book or get a copy (free of charge)
- raise a dispute and have a dispute dealt with using rule 10
- look at the books of the corporation if the directors have authorised it or the members pass a resolution at a members' meeting which approves it.

3.4 Members' responsibilities

A member must:

- follow the corporation's rules
- let the corporation know if they change their address
- treat other members with respect.

Members should also attend general meetings (including AGMs) or give their apologies.

3.5 No membership fee

The members of the corporation are not required to pay fees to join or for ongoing membership of the corporation.

You can change this rule to charge a membership fee if you want.

3.6 Liability of members

The members do not have to pay the corporation's debts if the corporation is wound up.

3.7 How to stop being a member

A person stops being a member if:

- they resign in writing
- they pass away
- their membership is cancelled in accordance with rule 3.8 or 3.9.

When a person stops being a member the corporation must put their name, address and the date they stopped being a member on the register of former members.

3.8 Cancelling membership

A person's membership can be cancelled by members passing a special resolution at a general meeting if the member:

- can't be contacted for two years
- misbehaves
- is not an Aboriginal or Torres Strait Islander person (if this is a requirement for membership).

The directors must give the person notice of the cancellation of their membership at the person's last known address as soon as possible after the special resolution is passed.

When a person's membership is cancelled the corporation must put their name, address and the date they stopped being a member on the register of former members.

3.9 Directors' limited right to cancel membership

For grounds not covered by rule 3.8, a person's membership can be cancelled by the directors passing a resolution at a directors' meeting if the member is not or stops being eligible for membership as set out in rule 3.1.

To do this, the directors must:

- write to the member to tell them:
 - o the directors are going to cancel their membership
 - o the member has 14 days to object to the planned cancellation
 - o if the member objects, they must write to the corporation to say so
- allow the member 14 days to object in writing to the intended cancellation.

If the member does not object, the directors must cancel the membership by passing a resolution at a directors' meeting. Then give the former member a copy of the resolution.

If the member objects, the directors cannot cancel the membership. The membership can only be cancelled by members passing a resolution at a general meeting.

IMPORTANT!

Before the directors try to remove a member under this rule, they must take reasonable steps to make sure the member is not or has stopped being eligible according to rule 3.1.

3.10 The register/s of members and former members

The register/s must contain:

- the names and addresses of members and former members
- the date when each person's name was added to the register
- if a person is not an Aboriginal or Torres Strait Islander person (if rule 3.1 allows non-Aboriginal or non-Torres Strait Islander members)
- for former members, the date when they stopped being a member.

The register/s of members and former members must be kept at the corporation's document access address or, if it is a large corporation, its registered office.

The register of members must be made available at the AGM.

4. General meetings and AGMs (members' meetings)

4.1 AGM timing

An AGM must be held before the end of November each year.

4.2 AGM business

AGM business includes:

- checking the register of members
- confirming the minutes of the previous general meeting
- presenting reports: general, financial, directors'
- asking questions about how the corporation is managed
- electing directors (if required)
- choosing an auditor (if required) and agreeing on the fee.

4.3 Calling general meetings

The directors can call a general meeting or AGM by passing a resolution in a directors' meeting or by circulating resolution.

The required number of members can request the directors to call a general meeting.

Number of members in corporation	Number of members required to request a general meeting
2 to 10 members	1 member
11 to 20 members	3 members
21 to 50 members	5 members
51 members or more	10 per cent of members

The members' request must:

- be in writing
- state any resolutions to be proposed at the meeting
- be signed by the members making the request
- nominate a member to be the contact member on behalf of the members making the request
- be given to the corporation.

Within the 21 days of receiving the request the directors must either call the meeting or apply to the Registrar to deny the request.

Directors agree to the request

If the directors agree to the request they must call the general meeting within 21 days of receiving the members' request.

Directors apply to the Registrar to deny the request

If the directors resolve that:

- the request is frivolous or unreasonable or
- complying with the request would be contrary to the interests of the members as a whole

a director, on behalf of all of the directors, may apply to the Registrar for permission to deny the request to call a general meeting.

The directors' application to the Registrar to deny the members' request must:

- be in writing
- set out the reasons why they wish to deny holding the meeting
- be made within 21 days after the members' request for a meeting was made.

The directors must give notice to the contact member that they have applied to the Registrar to deny the request.

4.4 General meeting business

General meeting business includes:

- confirming the minutes of the previous general meeting
- considering the business or resolutions in the notice of meeting.

4.5 Notice for general meetings and AGMs

At least 21 days' notice must be given.

Notice must be given to:

- each member individually
- the directors
- the contact person or secretary
- the auditor (if the corporation has one).

The notice must set out:

- the place, date and time for the meeting
- the business of the meeting
- if a special resolution is being proposed, the exact wording of it
- any technology to be used in the meeting (if required)
- if a member can appoint a proxy.

Notices must be given to each member individually. This can be done by sending by post to their address, by fax, by email or via social media. In addition to individual notice a corporation can also give notice in a manner which follows Aboriginal or Torres Strait Islander custom.

A notice of meeting:

- sent by post is taken to be given three days after it is posted
- sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

ADD

You may add other notice requirements—for example, local newspaper advertisements, radio broadcasts, social media or community noticeboards.

4.6 Members' resolutions

The required number of members can propose a resolution by giving notice of it to the corporation.

Number of members in corporation	Number of members required to propose a resolution
2 to 10 members	1 member
11 to 20 members	3 members
21 to 50 members	5 members
51 members or more	10 per cent of members

The notice must set out the resolution in writing and must be signed by the members proposing it.

The corporation must give notice of the resolution to all members in the same way as rule 4.5.

The corporation must consider the resolution at the next general meeting which is being held more than 28 days after the notice from the members has been given to the corporation.

4.7 Quorum at general meetings and AGMs

Number of members in corporation	Number of members to make a quorum
30 or less members	2 members
31 to 90 members	5 members
91 members or more	10 members

The quorum must be present during the whole meeting. If there is no quorum after one hour, the meeting is adjourned until the next week at the same time and at the same place. If there is still no quorum, the meeting is cancelled.

How to count the quorum

To work out if there is a quorum:

- count each member present at the meeting (if a member also holds a proxy, that member is only counted once)
- if rule 4.12 allows a non-member to hold a proxy for a member, count each non-member present at the meeting holding a proxy (if the non-member proxy holder holds more than one proxy, the non-member is only counted once)
- if rule 4.12 allows proxies and a member has appointed more than one proxy and each of those proxy holders are at the meeting, count only one of them
- if rule 4.12 allows proxies and a member has appointed one or more proxies and the member is also present at the meeting, do not count the member's proxy holders.

4.8 Chairing general meetings and AGMs

The directors can elect someone to chair the meeting. If they don't, the members must elect someone.

4.9 Using technology at general meetings and AGMs

General meetings and AGMs can be held at more than one place using any technology that gives members a way of taking part but the type of technology to be used must be set out in the notice of meeting.

4.10 Voting at general meetings and AGMs


Each member has one vote.

The chairperson has one vote (if he or she is a member) plus a casting vote.

A challenge to a right to vote at a meeting may only be made at the meeting, and must be determined by the chairperson, whose decision is final.

A resolution is decided by majority on a show of hands, unless a poll is demanded under rule 4.11. The chairperson tells the meeting whether they have received any proxy votes and how they are to be cast.

The chairperson declares the results of the vote, on a show of hands, or when a poll is demanded.



You can change this rule to remove the casting vote, if that is what the members want.

4.11 Demanding a formal count (i.e. a poll)

Either the chairperson or any member entitled to vote on the resolution can demand a poll. A poll is a formal count of votes.

A poll can be held instead of, or immediately after, a vote decided by majority on a show of hands.

A poll demanded on any matter must be taken immediately. The chair of the meeting directs how the poll will be taken.

4.12 Proxies at general meetings and AGMs

If you do not want your corporation to have proxies, you can replace this rule to say:
Proxies may not be appointed to attend or vote for members at general meetings.

Members can appoint another member as their proxy to attend meetings and vote for them.

A person appointed by a member as their attorney under a power of attorney may not give a proxy to another member or person to attend meetings and vote for them.

You can change this rule to allow non-members to be appointed as a proxy.

If you allow non-members to be appointed as proxy, you should also include a rule that allows proxies to speak at meetings and join in demanding a poll.

A proxy appointment must contain the member's name and address, the corporation's name, the proxy's name, the meeting where the proxy is going, and it must be signed by the member.

Note: An appointment of proxy form is at Schedule 2 of this rule book.

The corporation must receive the proxy's appointment at least 48 hours before the meeting.

A person must not be a proxy for more than **three** members.

You can reduce this number.

4.13 Other people at general meetings and AGMs

A person appointed by a member as their attorney under a power of attorney may not in their capacity as attorney attend general meetings and AGMs or vote for the member, whether personally or through a proxy.

The chairperson may allow any person (excluding an attorney) other than a corporation director, member, proxy (if proxies are allowed) or auditor to attend general meetings and AGMs. But the person cannot propose or vote on resolutions.

You can delete this rule if you do not wish other people to attend meetings.

4.14 Postponing a general meeting or AGM

After notice has been given for a general meeting or AGM the directors can decide to postpone the meeting (this means, delay or reschedule the meeting for a later date) if there are exceptional reasons for doing so (such as the death of a community person or a natural disaster).

ADD

You can add a list of the limited circumstances where the directors have the power to postpone a meeting.

The directors postpone the meeting by passing a resolution in a directors' meeting. A postponed meeting must be held within 30 days of the date that the meeting was due to occur.

The directors must give reasonable notice of the postponement and give each member individually a notice of the postponed meeting setting the new date, time and place.

ADD

You can add other requirements for the notice of the postponed meeting.

5. Directors

5.1 Role of directors

The directors oversee the running of the corporation on behalf of all members, make decisions about the affairs of the corporation, and should always be aware of what the corporation and its employees are doing. The directors manage, or set the direction for managing, the business of the corporation.

The directors may exercise all the powers of the corporation except any that the CATSI Act or this rule book requires the corporation to exercise in a general meeting.

5.2 Number of directors

The number of directors of the corporation is *[insert number up to 12]*. This number includes up to *[insert number]* independent or specialist non-member directors.

You cannot have less than three and more than 12 directors (including independent or specialist non-member directors).

To change the number of directors, members need to pass a special resolution at a general meeting or AGM to change the rule book. Such a resolution needs to be in the notice calling that meeting.

5.3 Eligibility of directors

A director (other than a director appointed under rule 5.7) must be:

- at least 18 years old
- a member

You can change this to allow people who are not members to be directors. But the majority of directors must be members.

- an Aboriginal or Torres Strait Islander person.

You can change this to allow non-Aboriginal and Torres Strait Islander people as directors. However, a majority of directors must be Aboriginal or Torres Strait Islander people.

ADD

You may add extra criteria to your directors' eligibility rules, for example:

- people who belong to a particular Aboriginal or Torres Strait Islander group or family group
- people who usually live in a particular community or region and have lived there for at least X months (e.g. 6 or 12 months)
- other criteria?

A person is not eligible to become a director if the person:

- has been disqualified from managing corporations.

ADD

You may add extra criteria restricting who may become a director, for example:

- has been convicted of a criminal offence in the last five years and been sentenced to imprisonment for more than 12 months.

5.4 Majority of director requirements

A majority of directors of the corporation must:

- be individuals who are Aboriginal or Torres Strait Islander people (only relevant if your rule 5.3 allows non-Indigenous people as directors.)
- usually reside in Australia
- be members of the corporation
- not be employees of the corporation.

The chief executive officer (CEO) may be a director but cannot chair directors' meetings.

5.5 How to become a director

The corporation can appoint a director by the members passing a resolution at a general meeting or AGM.

If there is a casual vacancy in a directorship the other directors can pass a resolution in a directors' meeting to fill the vacancy (see rule 5.8).

Before being appointed as a director, the person must give the corporation their consent in writing to act as a director.

The corporation must notify the Registrar of the director's appointment and personal details within 28 days after they are appointed.

5.6 Directors' terms of appointment and rotation

Directors (other than those appointed under rule 5.7) are appointed for [one year/two years]. They must retire at the end of the [first/second] AGM after they take office. They are eligible to be re-elected.

If, despite the operation of section 246-25(4) of the CATSI Act, the terms of all directors expire so that there are no directors appointed at a particular time, the directors holding office immediately before the expiry will continue to hold office until the members appoint new directors or reappoint the existing directors by resolution at a general meeting.

A rotation system could be used.

Example:

For directors appointed at the AGM there is a rotation system, so that half the directors must retire at each AGM. They are eligible to be re-elected.

To implement the rotation system:

- Half of the directors of the corporation at the time these rules are approved will only hold office until the next AGM and must retire. They are eligible to be re-elected.
- The directors will agree on which directors retire at the AGM. If the directors cannot agree, they must decide by lot conducted by the directors.
- At every subsequent AGM those directors that did not retire at the previous AGM must retire. They are eligible to be re-elected.
- Newly elected directors have a term of two years, which ends at the second AGM after they take office. If a director is replaced during their term, the replacement director holds office for the remainder of the replaced director's term.
- The AGM minutes must record the term of each director appointed.

5.7 Independent or specialist non-member directors

Independent or specialist non-member directors may be selected because they are independent or have skills in financial management, corporate governance, accounting, law or a field relating to the corporation's activities.

The directors may appoint independent or specialist non-member directors by passing a resolution in a directors' meeting.

Before being appointed as an independent or specialist non-member director, the person must give the corporation their written consent to become a director.

Independent or specialist non-member directors are appointed for the term specified by the directors in their appointment. Independent or specialist non-member directors can be appointed for a term of one year, and they can be reappointed.

If you do not want directors to appoint an independent or specialist non-member director, you can delete this rule.

5.8 How to fill casual vacancies

The directors can appoint a person as a director to fill a casual vacancy.

A casual vacancy is where a person stops being a director before their term of appointment expires (see rule 5.9) and so the position of that director is vacant.

The person must meet the director eligibility criteria in rule 5.3 and any criteria that applies to the particular vacancy.

If you **do not** want directors to fill vacancies please delete this rule. If you delete this rule it means that a vacancy must be filled by members passing a resolution at a general meeting.

The term of an appointment made to fill a casual vacancy is for the balance of the term remaining on the vacant position.

However, a person's appointment to fill a casual vacancy must be confirmed by members passing a resolution at the next general meeting otherwise the person stops being a director at the end of the general meeting.

If the quorum for a directors' meeting is a fixed number (instead of a majority of directors) you may need the following clause: The directors may fill a casual vacancy even if the number of directors is reduced to less than the number required for a quorum.

5.9 How to stop being a director

A person stops being a director if:

- the director passes away
- the director resigns in writing
- the director's term of appointment expires
- the director is removed as a director by the members or the other directors
- the director is disqualified from managing a corporation
- the director ceases to be a member, but was a member when they became a director.

The corporation must send the Registrar a notice within 28 days after a person stops being a director.

5.10 How to remove a director

By resolution of the members in a general meeting:

- A notice for a resolution to remove a director must be given to the corporation at least 21 days before the next general meeting or AGM. (Alternatively, the members can request a meeting (rule 4.3) for the purpose of removing a director.)
- The corporation must give the director concerned a copy of the notice as soon as possible.
- The director can give the corporation a written statement and speak at the meeting. The written statement must be given to everyone entitled to notice of the meeting (see rule 4.5).

By the other directors:

- Directors can only remove a director if the director fails to attend three or more consecutive directors' meetings without a reasonable excuse.
- Directors must give the director a notice in writing and they must give the director 14 days to object in writing.
- If the director objects, they cannot remove the director. The director can only then be removed at a general meeting or AGM by resolution.

5.11 Directors' and officers' duties

The duties are:

- a duty of care and diligence
- a duty of good faith and to act in the best interests of the corporation
- a duty to disclose a conflict of interest
- a duty not to improperly use position or information
- a duty to not trade while insolvent.

For more information on duties of directors and officers see www.oric.gov.au.

5.12 Conflict of interest

A director who has, or thinks they may have, a conflict of interest in a corporation matter must tell the other directors. This includes, but is not limited to, a material personal interest.

The director must give details of what the interest is and how it relates to the corporation. These details must be given at a directors' meeting as soon as possible, and must be recorded in the minutes of the meeting.

A director who has a conflict of interest must not:

- be present at a directors' meeting while the matter in question is being considered
- vote on the matter

unless they have been granted approval by:

- the other directors (those that do not have a conflict of interest) passing a resolution, or
- the Registrar in writing.

For more information on conflict of interest see www.oric.gov.au.

5.13 Payments to directors

A director cannot be paid a salary or sitting fees for their work as directors.

If the corporation wants to pay sitting fees the members must pass a special resolution to change the rules to allow this, and the fee must be set by the members at a general meeting.

Directors may be paid if they are employed by the corporation, or if they have a contract to provide goods or services to the corporation (so long as the director has fulfilled any duty to disclose a conflict as required by this rule book and the payment is fair and reasonable to the corporation).

The corporation may pay the directors' travelling and other expenses for attending meetings or to do with other corporation business.

5.14 Related party benefit

If a corporation wants to give a financial benefit to a director or other related party (including a spouse, child or parent of a director) it must comply with Part 6.6 of the CATSI Act and, where required, follow the procedure to get the approval of the members.

For more information about related party benefits see www.oric.gov.au.

5.15 Delegation of directors' powers

The directors can pass a resolution to delegate any of their powers to:

- another director
- a committee of directors
- an employee of the corporation
- any other person.

The delegate must follow the directions of the directors when using the delegated powers.

The exercise of the power by the delegate is as effective as if the directors had exercised it themselves. This means the directors are still responsible for what the delegate does with the powers.

Delegates must report to directors on the exercise of their delegated power.

5.16 Calling and giving notice of directors' meetings

Directors must meet at least every three months.

All directors must be given reasonable notice of a directors' meeting.

The directors will usually decide at a meeting when and where the next meeting will be.

A director can call a meeting by giving reasonable notice to all the other directors.

5.17 Quorum for directors' meetings

A majority of the directors must be present at all times during the meeting.

The directors may appoint a person as a director to make up a quorum for a directors' meeting.

5.18 Chairing directors' meetings

There must be a chair elected for each directors' meeting.

If someone has not already been elected to chair the meeting, or the person previously elected as chair is not available, the directors must elect a director present to chair the meeting (other than the CEO).

When electing a chair, the directors must decide how long that director will be the chair (i.e. just for that meeting, or at every meeting over a certain period of time). The directors may also remove a chair (but not their appointment as a director) by a resolution of the directors.

5.19 Using technology

Directors' meetings can be held at more than one place using any technology, as long as all directors agree to it. The type of technology to be used may be set out in the notice for a directors' meeting.

5.20 Resolutions by directors

Directors pass a resolution at a directors' meeting by a majority of the votes.

- Each director (including independent or specialist non-member directors) has one vote.
- The chairperson of the meeting also has a casting vote (if required).

Directors can pass a resolution without a directors' meeting if all directors sign a statement saying that they are in favour of it.

6. Contact person or secretary

Small and medium corporations have a contact person. Large corporations have a secretary.

The directors appoint a contact person/secretary.

The contact person/secretary must be at least 18 years old.

The directors decide the contact person/secretary's pay and terms and conditions of employment, if any.

The contact person/secretary must pass on any correspondence received to at least one of the directors within 14 days.

The contact person/secretary must give the corporation their consent in writing to become a contact person/secretary before being appointed.

The corporation must send the Registrar a contact person's/secretary's details within 28 days after they are appointed.

7. Records

The corporation must keep the:

- minutes of meetings (in writing or as an audio or video recording)
- rule book (constitution)
- register of members and former members
- names and addresses of directors, officers and the contact person/secretary
- written financial records.

These records must be kept at the corporation's document access address or, if it is a large corporation, its registered office.

8. Finances

The corporation must keep written financial records that:

- correctly record and explain its transactions, financial position and performance
- would enable true and fair financial reports to be prepared and audited.

When the corporation is a trustee it must also keep written financial records for the trust.

The corporation must follow these procedures.

- The corporation must give receipts for all money it receives.
- All money of the corporation must be deposited into a corporation bank account.
- All accounts must be approved for payment at a directors' meeting or in accordance with valid delegations.
- All cheques, withdrawal forms, electronic funds transfer (EFT) transactions, and other banking documents must be signed by at least two people authorised by the directors.
- All payments made out of the corporation's money must be supported by adequate documents which explain the nature and purpose of the payment.
- The corporation must keep adequate records for all cash withdrawals from the corporation's bank accounts (i.e. records that show the cash was used for a proper purpose and in accordance with the corporation's objectives).

The financial records must be retained for seven years after the transactions covered by the records are completed.

9. Application of funds

The corporation is a not-for-profit corporation.

The directors can use the money and property of the corporation to carry out its objectives (see rule 2).

The directors cannot directly or indirectly give any money or property of the corporation to members of the corporation. This rule does not stop the corporation from making:

- a reasonable payment to a member in their capacity as an employee or under a contract for goods or services provided
- payment to a member in carrying out the corporation's objectives.

This rule is compulsory for not-for-profit corporations. Change this rule if your corporation is for profit.

10. Dispute resolution

If a dispute arises, the parties must first try to resolve it themselves.

If the dispute is not resolved within 10 business days, any party may give a dispute notice to the other parties.

The dispute notice must be in writing and must say what the dispute is about. It must be given to the corporation.

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice.

If the directors cannot resolve the dispute, it must be put to the members to resolve it at a general meeting.

Seeking assistance from the Registrar

- If a dispute or any part of a dispute relates to the meaning of any provision of the CATSI Act or the corporation's rule book, the directors or any party to the dispute may seek an opinion from the Registrar about the correct meaning of the relevant provision.
- The Registrar's opinion will not be binding on the parties to a dispute.
- The right to request assistance from the Registrar does not create a right to request a formal mediation. However, in an appropriate case the Registrar may provide assistance in having the matter resolved.

For more information on members' rights see rule 3.3.

11. Changing the rule book

The rule book can be changed by the members passing a special resolution at a general meeting or an AGM. The proposed changes must be set out in the notice of the meeting.

Within 28 days after the resolution is passed, the corporation must send the Registrar copies of the:

- rule book changes
- special resolution
- minutes of the meeting.

The changes do not take effect until the new rule book is registered by the Registrar.

12. Gift fund rules

This rule is compulsory for not-for-profit corporations registered with the Australian Tax Office as a deductible gift recipient. Delete this rule if it does not apply to your corporation.

The corporation shall maintain for the main purposes of the corporation a gift fund:

- to be named 'The [*name of corporation*] Gift Fund'
- which must receive gifts of money or property for the purposes (objectives) of the corporation
- which must have credited to it any money received by the corporation because of those gifts.

The gift fund cannot receive any money or property other than that for the purposes (objectives) of the corporation.

The corporation shall use gifts made to the gift fund and any money received because of them only for the purposes (objectives) of the corporation.

Receipts issued for gifts to the gift fund must state:

- the full name of the corporation
- the Australian Business Number (if applicable) and the Indigenous Corporation Number (ICN) of the corporation
- the fact that the receipt is for a gift.

As soon as:

- the gift fund is wound up, or
- the corporation's endorsement as a deductible gift recipient is revoked under section 426-55 of the *Taxation Administration Act 1953*

any surplus assets of the gift fund must be transferred to another fund, authority or institution, which has similar objectives to the corporation. This body must also be able to receive tax deductible gifts under division 30 of the *Income Tax Assessment Act 1997*.

IMPORTANT!

There are special requirements for winding up of gift funds or public funds. This is distinct from the winding up the corporation itself. For more information see www.oric.gov.au.

13. Winding up

Surplus assets of the corporation

Where:

- the corporation is wound up, and
- after all debts and liabilities have been taken care of, and costs of winding up have been paid, surplus assets of the corporation exist

the liquidator can decide or the members may pass a special resolution about how the surplus assets of the corporation are to be distributed.

The surplus assets must not be given to any member or to any person to be held on trust for any member and can only be given to a charitable organisation/s with similar charitable purposes.

This rule is compulsory for not-for-profit corporations.

IMPORTANT!

Corporations which are publicly funded may need to use a clause satisfactory to their funder.

Surplus assets of gift funds

If the Australian Tax Office allows the corporation to give tax deductible receipts for donations, and the corporation is wound up, any surplus gift funds must be given to another body with similar objectives and that gives tax deductible receipts for donations.

Schedule 1—Application for membership form

Name of corporation

ICN



Insert name and ICN of Aboriginal and Torres Strait Islander corporation.

Application for membership

I,

(first name of applicant)

(last name of applicant)

of

(address of applicant)

apply for membership of the corporation.

I declare that I am eligible for membership.

I am: Aboriginal Torres Strait Islander neither

Signature of applicant

Date

Corporation use only

Application received	Date:
Application tabled at directors' meeting held on	Date:
Directors consider applicant is eligible for membership	Yes / No
Directors enter name, address and date on register of members (also Indigeneity if non-Indigenous members are allowed)	Date:
Directors have sent notification of directors' decision to the applicant	Date:

Schedule 2—Appointment of proxy form

Name of corporation

ICN



Insert name and ICN of Aboriginal and Torres Strait Islander corporation.

Appointment of proxy

I,

(full name of member)

of

(address of member)

am a member of the corporation.

I appoint,

(full name of proxy)

of

(address of proxy)

as my proxy to vote for me on my behalf at the general meeting of the corporation (annual general meeting or other general meeting, as the case may be) to be held on _____ (insert date of meeting) and at any adjournment of that meeting.

Signature of member appointing proxy

Date

NOTE: A proxy vote may be given to the people listed at rule 4.12. (For more about proxies see rule 4.12 and section 201-90 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.)

Please return your completed form to the corporation **at least 48 hours before** the meeting.

Schedule 3—Consent to become a director form

Name of corporation

ICN



Insert name and ICN of Aboriginal and Torres Strait Islander corporation.

Consent to become a director

I,

(first and last name)

of

(residential address, a postal address is not sufficient)

give consent to become a director of the corporation.

I confirm my date of birth is

(date of birth)

and my place of birth was

(place of birth)

I also acknowledge I am automatically disqualified from managing corporations (ss. 279-5 and 279-10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)) if I:

- have been convicted of an offence under the CATSI Act that is punishable by imprisonment for more than 12 months
- have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
- have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
- am an undischarged bankrupt
- have signed a personal insolvency agreement and have not kept to the agreement
- have been disqualified under the *Corporations Act 2001* from managing corporations

and I will notify the corporation if any of the above events occur after my appointment.

Signature of person

Date

Note: This form should be completed and given to the corporation before the person is appointed as a director—section 246-10(1) of the CATSI Act.



How to change a rule book under the CATSI Act (existing corporations)

This information sheet includes suggested wording for a resolution so that a corporation that is already registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) can adopt a new condensed rule book.

Steps to take

The steps will differ depending on your current rule book but might include for example:

- directors preparing new draft rules
- sending to all members and officers:
 - a notice of a general meeting setting out the date, place and time of the meeting
 - a copy of the proposed resolution to change the corporation's rule book (see the attached example of minutes)
 - a copy of the proposed rule book changes.

Also follow any extra requirements for rule change in your current rule book.

What to do at the general meeting

- make sure a quorum is present at all times
- members will need to pass a **special resolution** which must be passed by 75 per cent or more of the members present and entitled to vote
- keep accurate minutes of the meeting (you can use the example attachment)
- make sure the chairperson signs the minutes.

What to send to the Registrar

This is what you need to send to ORIC after the general meeting has been held:

- a copy of the notice for the meeting
- a copy of the minutes of the meeting which includes the resolution
- a *Request to change corporation rule book* form (including a statement signed by two directors stating that the resolution was passed according to the CATSI Act and the corporation's previous rule book. If there is only one director, you only need that director's signature)
- a copy of the proposed rule book change (you can send an electronic file by email, on CD or disk).

Decision by the Registrar

The Registrar decides whether to approve the proposed rule book changes.

REMEMBER—Your new rules do not take effect until the Registrar has approved and registered them. Until then, you should use your current rule book.

Attachment— Resolution (and draft minutes) to adopt new condensed rules at a meeting of members

Corporation name: _____

ICN: _____

Minutes of meeting of members

Date: _____/_____/_____

Location: _____

Time: _____

Present: see attached attendance list

Apologies: see attached list of apologies

Chairperson: _____ was appointed chairperson of the meeting.

Notice of meeting: The notice of the meeting of members was, with the permission of the members, taken as being read.

Quorum: A quorum of members entitled to vote on the resolution was present at all times during the meeting.

Resolution: The following **special resolution** was passed by the members of the corporation according to its rule book and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*:

THE MEMBERS RESOLVED:

1. that the whole current rule book of the corporation be repealed, and
2. that the proposed rule book attached to the notice of the meeting of the members of the corporation be adopted as the rule book of the corporation.

Closure: There being no further business the meeting was declared closed at _____.

Confirmed

(Signature of chairperson)

(Name of chairperson)



How to adopt condensed rules under the CATSI Act (new corporations)

To help new corporations adopt condensed rules under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), the Registrar has prepared *The rule book—condensed*.

This information sheet includes suggested wording for a resolution so that a corporation registering under the CATSI Act can adopt a rule book which complies with the Act (meeting the pre-incorporation requirement).

What to do before adopting new rules

When applying for registration your group will need to:

1. complete the application for registration form—a copy is available from the ORIC website www.oric.gov.au
2. draft proposed rules for your proposed corporation.
3. approve those rules (and meet the pre-incorporation requirement).

The Registrar can write to the corporation asking for more information.

What is the pre-incorporation requirement?

This is when at least 75 per cent of people who have agreed in writing to become a member of the proposed corporation have done the following:

- They have authorised the applicant (the person filling out the application for registration) to apply for registration.
- They have approved the proposed rule book.
- They have agreed to adopt the replaceable rules in the CATSI Act that have not been changed or replaced in the corporation's proposed rule book.
- They have nominated who will become directors.
- They have nominated who will become contact people or secretaries.

You can complete the form at **Attachment A** to show that your group has done this or the group can pass a resolution at a pre-incorporation meeting (refer to **Attachment B** for draft minutes you can use).

What to do after adopting the rules

The corporation must send to the Registrar:

- a copy of the completed resolution (either **Attachment A** or **Attachment B**)
- a copy of the **proposed rule book** (you can send an electronic file by email, on CD or disk).
- the completed **application for registration** form.

Decision by the Registrar

The Registrar decides whether to approve the proposed rule book as set out in the special resolution (and rule book).

REMEMBER—Your new rules do not take effect until the Registrar has approved and registered them. Until then, you should use your current constitution.

What is the rule book under the CATSI Act?

The rule book includes all the relevant parts of the law that affect how a corporation is run:

- the constitution of the corporation
- 'replaceable rules' that have not been changed
- set rules under the law that the corporation cannot change.

What is the constitution under the CATSI Act?

The constitution includes all the parts of the Act that the corporation can change so that it suits your own circumstances and needs.

- corporation rules, such as name and objectives
- 'replaceable rules' that have been changed
- laws that can be changed, such as whether members are liable for the corporation's debts
- extra rules that the corporation has added itself
- rules recommended by ORIC that are a good governance idea.

List of replaceable rules (to attachment A)

List of replaceable rules in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

SUBJECT OF PROVISION	PROVISION	
Chapter 4—Members and observers		
Application to corporation	section 144-5	subsection (2) can be replaced
Determination of applications for membership	section 144-10	subsection (7) can be replaced
Resignation	section 150-10	subsection (2) can be replaced
Member not eligible for membership etc.	section 150-20	this section can be replaced
Observers	section 158-5	subsection (2) can be replaced
Corporation or directors may allow member to inspect books	section 175-15	this section can be replaced
Chapter 5—Meetings		this chapter can be exempted
Director may call meetings	section 201-1	this section can be replaced
Notice of general meeting to members, officers and observers	section 201-25	subsections (2), (5) and (6) can be replaced
Quorum	section 201-70	subsections (1), (2), (5) and (6) can be replaced
Chairing general meetings	section 201-75	this section can be replaced
Adjourned meetings	section 201-85	subsection (2) can be replaced
Who may appoint a proxy	section 201-90	this section can be replaced
How many votes a member has	section 201-115	this section can be replaced
Objections to right to vote	section 201-120	this section can be replaced
How voting is carried out	section 201-125	this section can be replaced
When and how polls must be taken	section 201-140	this section can be replaced
Calling directors' meetings	section 212-5	this section can be replaced
Chairing directors' meetings	section 212-15	this section can be replaced
Passing of directors' resolutions	section 212-25	this section can be replaced
Circulating resolutions of corporation with more than one director	section 215-1	this section can be replaced
Chapter 6—Officers		
Corporation may appoint a director	section 246-15	this section can be replaced
Directors may appoint other directors to make up a quorum	section 246-20	this section can be replaced
Term of appointment	section 246-25	subsections (1) and (3) can be replaced
Alternate directors	section 246-30	this section can be replaced
Director may resign	section 249-5	subsection (2) can be replaced
Terms and conditions of office for secretaries	section 257-45	this section can be replaced
Terms and conditions of contact person's appointment	section 257-50	this section can be replaced
Powers of directors	section 274-1	this section can be replaced
Negotiable instruments	section 274-5	this section can be replaced

Attachment B— Evidence of pre-incorporation requirement: at a pre-incorporation meeting (draft minutes)

Proposed corporation name: _____

Name of authorised applicant: _____

Date: _____ / _____ / _____

Location: _____

Time: _____

Present: see attached attendance list

Apologies: see attached list of apologies

Chairperson: _____ was appointed chairperson of the meeting.

Resolution: The following resolution was passed by the members listed on the application for registration of the corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*:

THE PROPOSED MEMBERS RESOLVED:

1. that the applicant is authorised to apply for registration
2. that the proposed rule book attached to the notice of the meeting be adopted as the rule book of the corporation
3. the attached list of replaceable rules from the CATSI Act will apply to the corporation except if they are modified or replaced in the proposed rule book
4. that the persons specified become directors on registration
5. that the person/people specified become contact persons or secretaries on registration

Closure: There being no further business the meeting was declared closed at _____.

Confirmed

(Signature of chairperson)

(Name of chairperson)

List of replaceable rules (to attachment B)

List of replaceable rules in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

SUBJECT OF PROVISION	PROVISION	
Chapter 4—Members and observers		
Application to corporation	section 144-5	subsection (2) can be replaced
Determination of applications for membership	section 144-10	subsection (7) can be replaced
Resignation	section 150-10	subsection (2) can be replaced
Member not eligible for membership etc.	section 150-20	this section can be replaced
Observers	section 158-5	subsection (2) can be replaced
Corporation or directors may allow member to inspect books	section 175-15	this section can be replaced
Chapter 5—Meetings		this chapter can be exempted
Director may call meetings	section 201-1	this section can be replaced
Notice of general meeting to members, officers and observers	section 201-25	subsections (2), (5) and (6) can be replaced
Quorum	section 201-70	subsections (1), (2), (5) and (6) can be replaced
Chairing general meetings	section 201-75	this section can be replaced
Adjourned meetings	section 201-85	subsection (2) can be replaced
Who may appoint a proxy	section 201-90	this section can be replaced
How many votes a member has	section 201-115	this section can be replaced
Objections to right to vote	section 201-120	this section can be replaced
How voting is carried out	section 201-125	this section can be replaced
When and how polls must be taken	section 201-140	this section can be replaced
Calling directors' meetings	section 212-5	this section can be replaced
Chairing directors' meetings	section 212-15	this section can be replaced
Passing of directors' resolutions	section 212-25	this section can be replaced
Circulating resolutions of corporation with more than one director	section 215-1	this section can be replaced
Chapter 6—Officers		
Corporation may appoint a director	section 246-15	this section can be replaced
Directors may appoint other directors to make up a quorum	section 246-20	this section can be replaced
Term of appointment	section 246-25	subsections (1) and (3) can be replaced
Alternate directors	section 246-30	this section can be replaced
Director may resign	section 249-5	subsection (2) can be replaced
Terms and conditions of office for secretaries	section 257-45	this section can be replaced
Terms and conditions of contact person's appointment	section 257-50	this section can be replaced
Powers of directors	section 274-1	this section can be replaced
Negotiable instruments	section 274-5	this section can be replaced