



REGISTRAR'S POSITION STATEMENT

Director terms

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) states that a director must not be appointed for a period of more than 2 years. Directors may serve for a period greater than 2 years by being re-appointed at a general meeting.

Corporations can seek an exemption from the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) to this 2 year director term requirement, allowing for directors to be appointed for longer terms. The CATSI Act states that a director's term will be extended in the event that all directors' terms expire at the same time which would leave no directors in place for the corporation.

The CATSI Act sets out criteria for exemptions. Corporations should not expect a request for an exemption will be automatically granted. The following principles guide the Registrar (or their delegate) when considering such a request.

Principles

1. Shorter director terms (up to 2 years) better support members' rights to appoint and remove directors.
2. Exemptions to the 2-year director term will be considered on a case-by-case basis.
3. Exemptions are not granted in perpetuity.



Principle 1: Shorter director terms better support members' rights to appoint and remove directors.

1. Directors are appointed by the corporation's membership and serve for the period that they enjoy the trust and confidence of the members.
2. Members have the right to re-elect directors who are performing to a standard they expect, and to replace directors who are not performing. The re-election and/or replacement of directors, at an election of an annual general meeting (AGM), is the main mechanism for members. The Registrar prioritises supporting members to exercise these rights.
3. While members can at any time, outside of a scheduled AGM election, put forward a special resolution to remove directors, it is a burdensome exercise that may also require at least 10% of the membership to petition directors call a general meeting to consider the special resolution.
4. Director appointment terms that extend beyond the 2-year period provide less opportunity to remove directors who may no longer have the trust and confidence of members. These longer terms limit opportunity for members to regularly make an informed and conscious decision about directors as normal business and not only where issues arise.
5. Self-determining member-controlled corporations are supported by the membership's regular review of the board's makeup, vision and performance and the election of those they have trust and confidence in to govern on their behalf.
6. The CATSI Act provides a unique role for the Registrar to support the exercise of members' rights within their corporations, and the Registrar prioritises supporting member participation in decisions with respect to appointing directors.

Principle 2: Exemptions to the 2-year director term stated in the CATSI Act will be considered on a case by case basis.

1. Corporations should not expect that an exemption request from the 2-year director term will automatically be approved.
2. The Registrar (or their delegate) will consider exemption requests from the 2-year director term on a case-by-case basis.
3. Corporations should apply for director term exemptions if they intend on implementing those terms as soon as practicable following ORIC's approval (if granted).
4. The Registrar (or their delegate) will consider circumstances specific to that corporation. When seeking an exemption, corporations should clearly set out why director terms of up to two years are inappropriate or impose an unreasonable burden in their context and provide supporting evidence. Little weight will be given by the Registrar (or their delegate) to applications that are based on another corporation having an exemption or just simply seeking to align with a related entity.

5. When considering an unreasonable burden, the Registrar can consider any other matter relevant to an application. The Registrar (or their delegate) will also consider the balance of the impost or burden on members with members rights and cultural considerations.
6. In relation to cultural considerations, the Registrar (or their delegate) takes into consideration where corporations have entrenched traditional lore and custom into their appointment processes, and the relationship between cultural practices and elections.
7. When assessing an exemption application for directors' terms, consideration will be given to other exemptions granted to the corporation.
8. Exemptions are provided, on a limited basis, and are subject to review in the future. If the unique circumstances that provided a basis for the exemption are no longer apparent for instance, it may no longer be appropriate to maintain the exemption.

Principle 3: Exemptions are not granted in perpetuity.

1. Exemptions to the 2-year director term will be limited to a timeframe and may be subject to other conditions.
2. When applying for an exemption to the 2-year director term, corporations should indicate the length of time for which they are seeking an exemption.
3. The Registrar (or their delegate) may contact corporations with existing exemptions to ask whether the exemption remains appropriate for the corporation.
4. The Registrar (or their delegate) can revoke or vary an existing exemption. Corporations will be consulted before doing so and such a decision will not impact the length of the term of any serving director.



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Published on 2 December 2024.