



Australian Government
Office of the Registrar of
Indigenous Corporations



Regulatory posture

Regulatory posture of the
Registrar of Aboriginal and Torres Strait Islander Corporations

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INTRODUCTION

Aboriginal and Torres Strait Islander corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) are uniquely Indigenous member owned and controlled. They carry an important mandate to deliver social, cultural and economic benefits to their members and communities, and to protect Indigenous rights and interests. A mandate that is granted and entrusted to them by their membership.

The approach taken by the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) to regulating and supporting corporations is informed by this context. The exercise of the Registrar's powers and functions are guided by a commitment to the integrity of a self-determining member controlled Indigenous corporate sector.

Supported by the Office of the Registrar of Indigenous Corporations (ORIC), the Registrar aims to build a culture of self-regulation and commitment to continuous improvement, where low risk corporations are supported to undertake self-assessments and implement remedial action when necessary.

A culture of self-regulation would also see corporations having greater responsibility and autonomy to resolve internal concerns and disputes.

Where regulatory action is required, the Registrar's powers will be used with consistency, reasonableness, and proportionality. ORIC will work with corporations to assist them to overcome challenges, but where the need arises, the Registrar may act swiftly to implement more direct regulatory responses.

PURPOSE

This document sets out the regulatory posture of the Registrar. It outlines the Registrar's posture for key responsibilities of corporations and outlines focus areas for 2024.



Regulatory focus

The Registrar expects CATSI Act corporations to meet all their legislative obligations and will focus on those that underpin accountability and transparency to members. These are fundamental to the governance integrity of self-determining member-controlled Indigenous corporations:

Annual general meetings (AGMs)	<p>Annual general meetings (AGMs) are held before the end of November each year unless an exemption has been granted.</p> <p>AGMs afford members their right to learn about the corporation's health and performance, to ask questions of the board, and to appoint or remove directors.</p>
Director duties	<p>Director duties are carried out in a manner consistent with the CATSI Act.</p> <p>Directors are appointed by the membership to govern their corporation responsibly and with care, diligence, and in good faith.</p>
Rule books	<p>Rule books are modern, transparent, and workable for members.</p> <p>Rule books where members and directors understand their responsibilities and their rights better support effective governance and support corporations to resolve internal issues in a timely manner.</p>
Corporation reports	<p>Corporation reports are complete and accurate, and lodged on time unless an exemption has been granted.</p> <p>Annual reporting is a fundamental form of accountability to members, community, and other stakeholders.</p>
Timely updating of corporation details	<p>Corporations keep their details up to date, including advising ORIC of changes to officers within 28 days.</p> <p>Accurate and timely details on the Register of Aboriginal and Torres Strait Islander Corporations assists members, community, funders and other stakeholders such as banks to have confidence when dealing with duly authorised representatives of the corporation.</p>

ORIC will focus on education and engagement to raise corporations' understanding and awareness of their obligations under the CATSI Act.

Where ORIC receives complaints against a corporation its focus will be on assessing evidence that a corporation is potentially breaching its obligations under the CATSI Act and its rule book. The Registrar does not take regulatory action or investigate all complaints made about a corporation.

The Registrar's preference is that, where it is appropriate, corporations are given opportunity to resolve lower-risk compliance matters themselves. The Registrar in these instances may work with a corporation to take necessary actions to resolve non-compliance without the need for regulatory action. The range of regulatory powers available to the Registrar and ORIC's approach to non compliance are outlined in the *ORIC Regulatory Compliance Framework*.

Where a corporation does not meet its regulatory obligations the Registrar may take proportionate regulatory action to minimise the risk of harm to the corporation, members or stakeholders. The Registrar will take into account, among other things, whether the corporation has the capacity to resolve the issues, or when other avenues of support, guidance, and direction from ORIC have not been successful.

It is not the role of the Registrar to regulate service delivery or to investigate suspected fraud and non-compliance with Commonwealth and/or state grant funding agreements by Aboriginal and Torres Strait Islander corporations. ORIC's role is to regulate the CATSI Act and to hold officers of corporations to account. Similarly, it is not ORIC's role to resolve internal disputes where a corporation is complying with its obligations under the CATSI Act and is operating in a manner consistent with its rule book.

Focus areas for regulatory action

The Registrar has identified the following areas as a regulatory focus for 2024:

Reporting of assets and income

Corporations providing housing or accommodation services

Directors and officers meeting their duties

Examinations with narrowed scope

Member rights

Reporting of assets and income – corporations that have ceased to report assets and income over time, or are suspected to be under reporting.

A decrease in reported assets and income over time is a sign that the corporation may be at risk. Where this is identified, and is appropriate, ORIC will work with the corporation to get back on track. Where corporations are found to be intentionally under reporting, appropriate regulatory action will be considered.

Sector focus – corporations that provide housing or accommodation services.

Related to the first focus area, an increase has been identified in the number of corporations that provide housing or accommodation services that have been understating their assets in annual financial reporting. Assets are a determinate of the corporation’s size which drives annual reporting requirements. Accurate reporting is an important transparency mechanism for members and other stakeholders.

Officer duties – officers of corporations fulfilling their duties consistent with the requirements of the CATSI Act, including directors meeting their duties under the CATSI Act.

Corporation officers are responsible for ensuring that they operate in the best interests of their corporation(s). The Registrar will exercise her powers and functions in relation to officers who have or are suspected to have acted in a manner inconsistent with their duties under the CATSI Act and/or a corporation’s rule book, which may also include consideration of disqualification in the appropriate circumstances.

Examinations – focusing examinations on targeted governance and/or financial management areas where there are reports of potentially serious non-compliance and/or frequent complaints regarding a corporation. Examinations may also be used to monitor the sector and undertake targeted proactive compliance.

Examinations may be used to inform decisions regarding further regulatory action. To this end, the collection of information in a more targeted examination may be used to streamline later actions, such as special administration, investigation and/or referral for prosecution.

Member rights – denying member rights in contravention of the CATSI Act and a corporation’s rule book.

A corporation’s members have rights; however, they also have a responsibility to try and resolve the matter directly with the corporation. The Registrar may act where members’ rights are at risk of being denied and a corporation is suspected of acting inconsistently with the CATSI Act or its rule book.

