

Indigenous corporations

Legal information for community organisations

This fact sheet covers:

- ▶ what is an Indigenous corporation?
- ▶ legislation that governs Indigenous corporations
- ▶ what does 'Indigenous owned and controlled' mean?
- ▶ the advantages of incorporating as an Indigenous corporation
- ▶ organisations that aren't suitable for the Indigenous corporation structure
- ▶ setting up an Indigenous corporation
- ▶ the legal duties of directors of an Indigenous corporation



An Indigenous corporation is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.



Disclaimer

This fact sheet provides general information about setting up (incorporating) a group as an Indigenous corporation. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

What is an Indigenous corporation?

An Indigenous corporation is an incorporated legal structure that is only available for organisations that are Indigenous owned and controlled (ie. organisations that meet the 'Indigeneity' requirement).

The Indigenous corporation legal structure is not available to organisations that do not meet the 'Indigeneity' requirement (this requirement is explained below).

An Indigenous corporation may not necessarily be the most suitable legal structure for your organisation and Indigenous organisations are free to choose another more suitable structure (such as an incorporated association, company limited by guarantee or co-operative).

Like companies limited by guarantee, Indigenous corporations are incorporated under Commonwealth law and can operate anywhere in Australia (unlike, for example, incorporated associations and cooperatives which can typically only operate in the state or territory where they are registered with some exceptions).

Members of an Indigenous corporations can choose not to be liable for the corporation's debts and the rule book that governs the corporation can include rules relevant to Aboriginal and Torres Strait Islander culture and customs.



For a comparison of common legal structures for not-for-profit organisations, see the relevant fact sheet for your state or territory '[Which incorporated legal structure should you choose?](#)'.

Legislation that governs Indigenous corporations

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* (**CATSI Act**) regulates how Aboriginal and Torres Strait Islander organisations set up and run an Indigenous corporation.

The *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 (Cth)* (**CATSI Regulations**) set out provisions necessary for the effective operation of the CATSI Act, including provisions dealing with certain substantive matters such as setting out the detail required in corporation reports.

The government office responsible for regulating Indigenous corporations is the [Office of the Registrar of Indigenous Corporations \(ORIC\)](#).



Note

Some corporations are required by law to be registered under the CATSI Act.

For example:

- the *Native Title Act 1993 (Cth)* requires that a Registered Native Title Body Corporate (**RNTBC**) is registered under the CATSI Act
- the *Victorian Aboriginal Heritage Act 2006 (Vic)* requires that Recognised Aboriginal Parties (**RAPs**) are registered under the CATSI Act

Registration under the CATSI Act is mostly voluntary. However, sometimes a funding body will require, or prefer, that a corporation is registered under the CATSI Act, providing assurance that the corporation is Indigenous owned and controlled.

Directors of Indigenous corporations are now required to have a Director Identification Number (**DIN**). See below for more information.



What is a director identification number?

A Director Identification Number (**DIN**) is a unique 15-digit number that is issued to a director (or someone who intends to be a director) by the [Australian Business Registry Services](#) after their identity has been verified.

A director (or an alternate director who is acting for a director) of an Indigenous corporation (or a company registered under the *Corporations Act 2001 (Cth)*) must have a DIN.

From 1 November 2022, a person who will be appointed as a director of an Indigenous corporation must obtain a DIN before being appointed.

Penalties and fines may apply if a person is required to have a director ID and doesn't have one.

You can apply for a DIN online, by phone or by filling in a paper form.



For more information, see:

- [ORIC's webpage on 'Director ID for CASTI Act directors'](#), and
- [the Australian Business Registry Services webpage on 'who needs to apply for a DIN and when'](#)

What does 'Indigenous owned and controlled' mean?

A key feature of Indigenous corporations is that they must always be 'Indigenous owned and controlled' (called the 'Indigeneity requirement' in the CATSI Act).

An Aboriginal and Torres Strait Islander corporation meets the Indigeneity requirement if the corporation has the following required percentage of its members who are Aboriginal and Torres Strait Islander persons:

- if the corporation has five or more members – at least 51% of members
- if the corporation has fewer than five members but more than one member – all the members, or all but one of the members
- if the corporation has only one member – that member

The advantages of incorporating as an Indigenous corporation

Advantages of incorporating as an Indigenous corporation (over other forms of incorporation) include:

- the rules or constitution for the company (known as the rule book) can consider Aboriginal or Torres Strait Islander customs and traditions
- registration is free (unlike for incorporated associations and companies limited by guarantee)
- ORIC may exempt an Indigenous corporation from producing annual reports (especially if the corporation is small)
- Indigenous corporations deal with a specialist regulator (ORIC) rather than the Australian Securities and Investments Commission (**ASIC**) (for companies limited by guarantee)
- ORIC can provide more specialist support (for example, face-to-face training in remote areas, a dispute resolution service, telephone advice)
- Indigenous corporations can access free legal advice on a variety of legal issues through [the 'LawHelp' service](#) operated by ORIC
- members of an indigenous corporation can choose to have limited liability
- Indigenous corporations can operate nationally and are not limited to the state or territory where they are registered, and
- if the rule book allows, an Indigenous corporation's profits can go to members (However, note that if profits go to members, the corporation will not be considered 'not-for-profit' and will therefore not be eligible for registration as a charity with the ACNC, or eligible for other tax concessions available to not-for-profit organisations)

Indigenous corporations can also meet their governance responsibilities more flexibly in unexpected circumstances.

Organisations that aren't suitable for the Indigenous corporation structure

The Indigenous corporation structure may not be suitable for:

- organisations that will struggle to meet the requirement to be Indigenous 'owned and controlled' (the 'Indigeneity requirement' described further below)
- trade unions and corporations giving financial services (which under the CATSI Act are unable to register as Indigenous corporations)
- organisations that do not have the systems in place to comply with ongoing governance, legal and reporting conditions under the CATSI Act including directors' and officers' duties, which if breached, can attract a penalty or imprisonment or both.

Are all Indigenous corporations not-for-profit?

No. An Indigenous corporation can be structured so that the profits are put back into the corporation or distributed to members. Only Indigenous corporations that are structured so that the profits are put back into the corporation are suitable for not-for-profit groups.



For more information, see our webpage ['What does not-for-profit mean?'](#)

Setting up an Indigenous corporation

The CATSI Act sets out requirements for registration as an Indigenous corporation which include:

- the Indigenous corporation must have at least five members (unless a request is made for an exemption on one of the grounds set out in the CATSI Act)
- the majority of members must be 'Aboriginal and Torres Strait Islander persons' (as defined in the CATSI Act) who are over 15 years of age
- having a rule book or constitution (which complies with the CATSI Act) to govern the activities of the Indigenous corporation, and
- having as part of its name the words 'Aboriginal corporation', 'Torres Strait Islander corporation', 'Aboriginal and Torres Strait Islander corporation', 'Torres Strait and Islander corporation' or 'Indigenous corporation'

To be considered a not-for-profit organisation, your organisation's rule book must include rules that prohibit the distribution of profit or assets to members or board members, either while the corporation is operating or when it ends or winds up.



For more information, see:

- ORIC's [step-by-step guide](#) to setting up an Indigenous corporation for organisations that meet the criteria, and
- the ['LawHelp' service](#) operated by ORIC
- the [Indigenous Governance Toolkit](#) published by the Australian Indigenous Governance Institute (this provides guidance and information about governance for Indigenous corporations)



Can an Indigenous corporation also register as a charity?

A not-for-profit Indigenous corporation may also apply to register as a charity under the Australian Charities and Not-for-profits Commission (**ACNC**). See [our webpage 'Should your group register as a charity?'](#) for more information.

Indigenous corporations registered as charities with the ACNC continue to be regulated by ORIC.

If your Indigenous corporation is seeking registration as a charity with the ACNC, you should consider seeking legal assistance to ensure that all the relevant charity requirements are included in the Indigenous corporation's rule book.

The legal duties of directors of an Indigenous corporation

Director's duties under the CATSI Act are consistent with their duties under common law and in the *Corporations Act 2001* (Cth).

Directors are appointed by members according to the corporation's rule book. Even though they can delegate some of their duties to other officers and employees, they have ultimate responsibility for managing the Indigenous corporation.

The following legal obligations keep directors accountable to the corporation and its stakeholders:

- Directors must act with reasonable care and diligence (this includes the duty to prevent insolvent trading).
- Directors must act in good faith in the best interests of the corporation.
- Directors must not misuse their position, or information obtained as a result of their position, to gain a benefit for themselves, someone else or to cause harm to the corporation.
- Directors must disclose and manage conflicts of interest relating to the affairs of the corporation.

Consequences for breach of a duty will depend on the nature of the duty and the seriousness of the breach. They include civil action by the corporation, civil proceedings by ORIC, disqualification or criminal prosecution.