



At last a new Act

At last the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) was passed by the Australian Parliament on 18 October 2006. It will begin on 1 July 2007 to coincide with the start of the 2007–08 financial year.

The Act replaces the *Aboriginal Councils and Associations Act 1976* (ACA Act) which is out-of-date with how corporations should be run these days.

It has taken five years to get to this point. In 2001, an independent review of the ACA Act was begun, with a lot of consultation with Aboriginal and Torres Strait Islander communities and organisations.

The new law has adopted many of the suggestions made during the review, for example, that Indigenous people were keen to make sure **directors** and **senior employees of corporations** were bound by their responsibilities and duties.

The new law also **reduces red tape** by streamlining how corporations have to report. Small and medium sized corporations are likely to have reduced reporting requirements.

While some parts of the new law mirror those in the Corporations Act, it also has parts that apply only to Aboriginal and Torres Strait Islander organisations, so that they can **design rules better suited to their circumstances**.

Corporations will have **up to two years** to make the necessary changes to comply with the new law. This is called the 'transitional period'.

Before passing the new CATSI Act, the parliament made some amendments to it, as well as passing two other laws to help the transition.

New Acts passed by the Australian Parliament

The total package of new laws includes:

- The *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- The *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*—will help corporations transfer to the new law.
- The *Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006*—amends the Corporations Act, removing any contradictions or gaps between the two pieces of legislation.

Why did the government amend the CATSI Act?

The amendments introduce new provisions dealing with the voluntary transfer and amalgamation of corporations. These will:

- allow a body incorporated under another system to seamlessly transfer its registration to the CATSI legislation if certain requirements are satisfied
- allow a corporation to seamlessly transfer its registration to the Corporations Act or a state or territory system—a large corporation, for example, may decide that its future development would be best served by incorporation under the Corporations Act

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- allow corporations to amalgamate, either by an administrative process approved by the Registrar or by applying to a court. Such amalgamations will be voluntary and may be desirable when a number of different corporations service a particular area or Indigenous group.

Why was the Corporations Act amended?

The *Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006* amends the Corporations Act.

The most important amendments make sure that officers disqualified from managing Indigenous corporations under the CATSI legislation will also be disqualified from managing mainstream corporations. The amendments also remove duplication between similar provisions in the CATSI Act and the Corporations Act.

How long will corporations have to implement changes?

Corporations will have up to two years to comply with most internal governance rules requirements and other relevant provisions of the CATSI Act. This gives corporations a long time to hold meetings so they can make the necessary changes.

Consultations indicated that two years was an appropriate time period, making it clear to corporations when they must come into full compliance with the new system.

For the 2006–07 financial year, corporations will report under the ACA Act. They will also have the option of reporting under the old ACA Act requirements for the 2007–08 financial year. This will give them enough time to prepare for any new reporting requirements under the CATSI Act.

By the 2008–09 financial year, all corporations will have to report under the new system.

The transitional arrangements are set out in a separate law called the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006* (the Transitional Act). This Act also repeals the ACA Act and updates references to the ACA Act in a number of other Commonwealth laws.

What will happen to corporations incorporated under the ACA Act?

On 1 July 2007 all corporations incorporated under the ACA Act will become corporations under the CATSI Act.

The Transitional Act will preserve the existing legal status, office bearers, assets and liabilities of all ACA Act corporations. This will minimise the administrative burden on corporations while providing certainty of operation for corporations, their members and stakeholders.

A new model constitution

ORAC has available on its website a new model constitution for corporations under the *Aboriginal Councils and Associations Act 1976* (the ACA Act). By using this constitution, groups will also be largely consistent with the rules under the new *Corporations (Aboriginal and Torres Strait Islander) Act 2006* which begins on 1 July 2007.

This model constitution can now be used by new groups wanting to incorporate before 1 July 2007 or by existing corporations wanting to change their constitutions.

If you choose to use this model constitution, the only rules that require your input at a minimum are:

- Rule 1 name
- Rule 3 objectives
- Rule 5 membership

The *Transitional model constitution—without notes* on ORAC's website is just the constitution, which you can download and fill in yourself.

The *Transitional model constitution—with notes* on our website is the constitution with drafting notes and further notes about the new law, to help you fill in your constitution if you want to change more than just rules 1, 3 and 5.

ORAC also has extra information sheets supporting this constitution:

- Deductible gift recipient fund (which explains how to amend your constitution if you want your corporation to be able to receive gifts that are tax deductible for the donor)
- Disqualification of governing committee members (which explains the circumstances leading to a person being disqualified as a governing committee member)
- Proper accounts and records, and annual reporting (which explains the rules in the Act about keeping proper accounts and records)
- Business incorporation (which explains how you have to change some rules in your constitution if you want to run a for-profit business).