



# Disqualification from managing corporations under the CATSI Act

Under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) a person can be disqualified from managing an Aboriginal and Torres Strait Islander corporation in three ways:

- 1 automatically
- 2 by the court if the Registrar applied for a person to be disqualified
- 3 directly by the Registrar

It is an offence for a person who has been disqualified to manage an Aboriginal and Torres Strait Islander corporation. The maximum penalty is \$9,000, imprisonment for up to one year or both.

## 1 Automatic disqualification

Automatic disqualification happens when:

- a person is an **undischarged bankrupt**
- a person has signed a **personal insolvency agreement** under the *Bankruptcy Act 1966* (or a similar law) and has not kept to the agreement. (In Australia the term 'bankruptcy' only applies to a person)
- a person is convicted of certain serious offences under the CATSI Act or a foreign law that are punishable by imprisonment for a period greater than 12 months or other offences involving dishonesty that are punishable by imprisonment for at least three months
- a person has been disqualified under the *Corporations Act 2001* from managing a corporation.

### DEFINITION

A person usually becomes **discharged from their bankruptcy** three years and one day after their documents are filed with the Australian Financial Security Authority (AFSA). A person can remain an undischarged bankrupt for a longer period.

For more information go to [www.afsa.gov.au](http://www.afsa.gov.au).

### DEFINITION

A **personal insolvency agreement** is an agreement a person enters into with their creditors without being made bankrupt.

A person entering into such an agreement declares among other things their income, property and how it will be dealt with.

### How long is the disqualification for?

If a disqualified person goes to jail, they stay disqualified for five years after they are released. If the disqualified person does not go to jail, they stay disqualified for five years after they are found guilty.

The Registrar can ask the court to extend the disqualification by up to 15 years but must do so before the disqualification begins or before the end of the first year of disqualification.

## 2 Disqualification by the court

### (A) for breaching a civil penalty provision

The civil penalty provisions under the CATSI Act and the Corporations Act include duties of directors and other officers, related party rules, record keeping and reports, and trading while **insolvent**.

### DEFINITION

**Insolvent** means not being able to pay debts when they are due and payable.

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person has contravened a civil penalty provision (under the CATSI Act or the Corporations Act)—for instance, by using a position of power for their own benefit or to disadvantage the corporation and the members
- the court is satisfied the disqualification is justified.

### How long is the disqualification for?

The court can order disqualification for any amount of time it thinks appropriate.



## (B) For poor financial management

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person has been an officer of two or more corporations that have become insolvent or have not been able to pay their debts in the past seven years—the court must be satisfied that the corporations failed because of the way they were managed.

### How long is the disqualification for?

The court can order disqualification in this case for up to 20 years.



## (C) For repeatedly breaking the law

The Registrar can ask the court to disqualify a person from managing a corporation if:

- the person (or the corporations where the person has been an officer) has broken the law under the CATSI Act or the Corporations Act more than once and did not do enough to prevent this
- the person has been an officer of a body corporate (other than an Aboriginal and Torres Strait Islander corporation) and has done something that was against the duties of care and diligence and good faith under the CATSI Act.

### How long is the disqualification for?

The court can order disqualification for any amount of time it thinks appropriate.

## 3 Disqualification by the Registrar

The Registrar can disqualify a person if that person has been an officer of two or more corporations that had to wind up in the past seven years and for which a liquidator has lodged reports stating that those corporations could not pay their debts.

Before disqualifying the person, the Registrar must give them a written notice asking them to show why they should not be disqualified and giving them an opportunity to be heard.

### How long is the disqualification for?

The Registrar can disqualify the person for up to five years and must give the person a written notice of the disqualification. The disqualification starts the moment the notice is served.

## Can a disqualified person get permission to manage a corporation?

The court or the Registrar can give permission to a disqualified person to manage an Aboriginal and Torres Strait Islander corporation, depending on how the person was originally disqualified.

## Register of Disqualified Officers

The Registrar maintains a publicly available register of people who are disqualified from managing corporations on the ORIC website—the Register of Disqualified Officers. The register only records information about people disqualified either by a court or the Registrar.



## CONTACT ORIC

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NOTE: This fact sheet is intended as a quick overview of the topic **disqualification from managing corporations under the CATSI Act**. For more detail see the CATSI Act and your rule book.