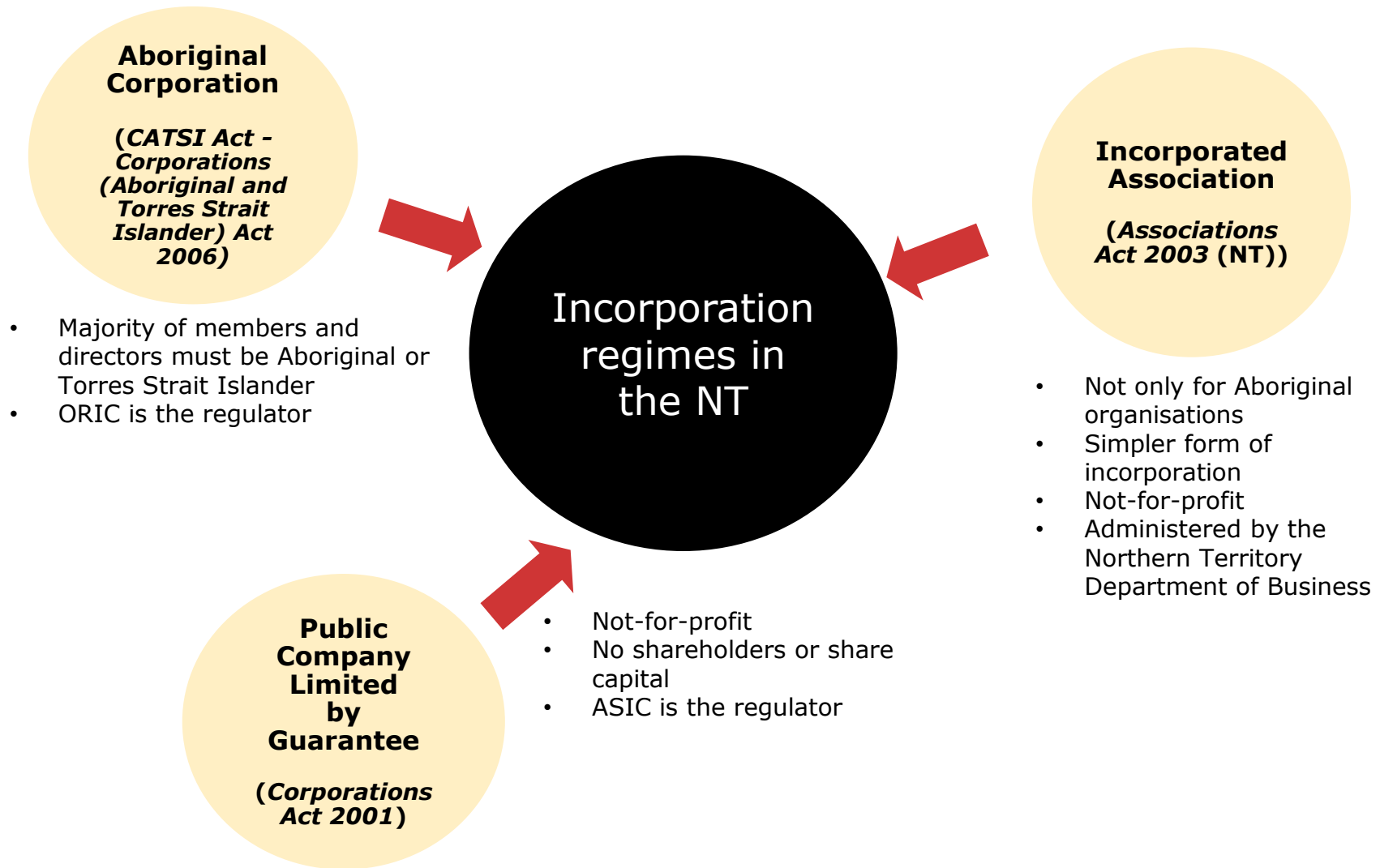


COMPARISON OF INCORPORATION REGIMES IN THE NORTHERN TERRITORY

October 2014

Overview of incorporation regimes



Pros and cons of a Public Company Limited by Guarantee (*Corporations Act*)

Pros



- A well-known corporate structure, recognised Australia-wide as suitable for not-for-profits
- It is a separate legal entity - the personal liability of members can be small
- Continues into the future, even if members change or leave
- Can operate across all States and Territories
- Greater flexibility in choosing a name than with an Aboriginal corporation
- Fewer directors and members required than for an Aboriginal corporation (CATSI Act) or NT incorporated association (NT Associations Act)

Cons



- Cannot pay dividends to members
- Fees for registration, and fees to lodge compulsory annual reports (**but** organisations can apply for an exemption)
- Greater reporting and disclosure requirements than for NT incorporated associations (NT Associations Act)
- Must have a registered office open to the public during business hours
- ASIC does not offer the same training as ORIC
- No provision in the Corporations Act for the company's constitution to reflect Aboriginal customs and traditions

Pros and cons of an Aboriginal Corporation (CATSI Act)

Pros



- It is a separate legal entity - the liability of members to contribute to the payment of its debts can be nil or small
- Continues into the future, even if members change or leave
- Can operate across all States and Territories
- Free to register, with no ongoing annual fees
- Rule book that governs the corporation can take into account Aboriginal customs and traditions
- Can earn and distribute profits

Cons



- ORIC regularly exercises its powers (eg, to call general meetings or annual general meetings, inspect or require production of books and records etc)
- Greater reporting and disclosure requirements than for NT incorporated associations (NT Associations Act) and a public company limited by guarantee (Corporations Act)
- The name of the Aboriginal corporation must include one of the required phrases
- The directors cannot be paid anything unless the constitution provides otherwise

Pros and cons of an Incorporated Association (*Associations Act NT*)

Pros



- It is a separate legal entity - the liability of members can be small
- Less reporting obligations than Aboriginal corporations (CATSI Act) or for some public companies limited by guarantee (Corporations Act)
- Only a one-off fee to register (much lower than the cost of registering a public company limited by guarantee)
- Greater flexibility to choose a name (provided the name includes the word "Incorporated" or "Inc")

Cons



- To operate outside of NT, must register as a "Registrable Australian Body" in all States/Territories - involves additional cost and effort
- Non-profit only (cannot distribute profits or assets to members)
- Must be formed for "prescribed purposes" in the legislation
- No provision for the association's rules to reflect Aboriginal customs and traditions

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