



Australian Government

Registrar of Aboriginal Corporations

Office of the Registrar of Aboriginal Corporations

Y e a r b o o k 2 0 0 3 - 2 0 0 4

The Office of the Registrar of Aboriginal Corporations (ORAC) supports and regulates 2,713 corporations controlled by Indigenous people throughout Australia, and provides an avenue for new Indigenous incorporations where these are necessary. The office does its work in a way that responds to the special needs and risks of Indigenous groups and corporations. It delivers this tailored service in line with current and emerging Australian and international law and practice on good corporate governance.

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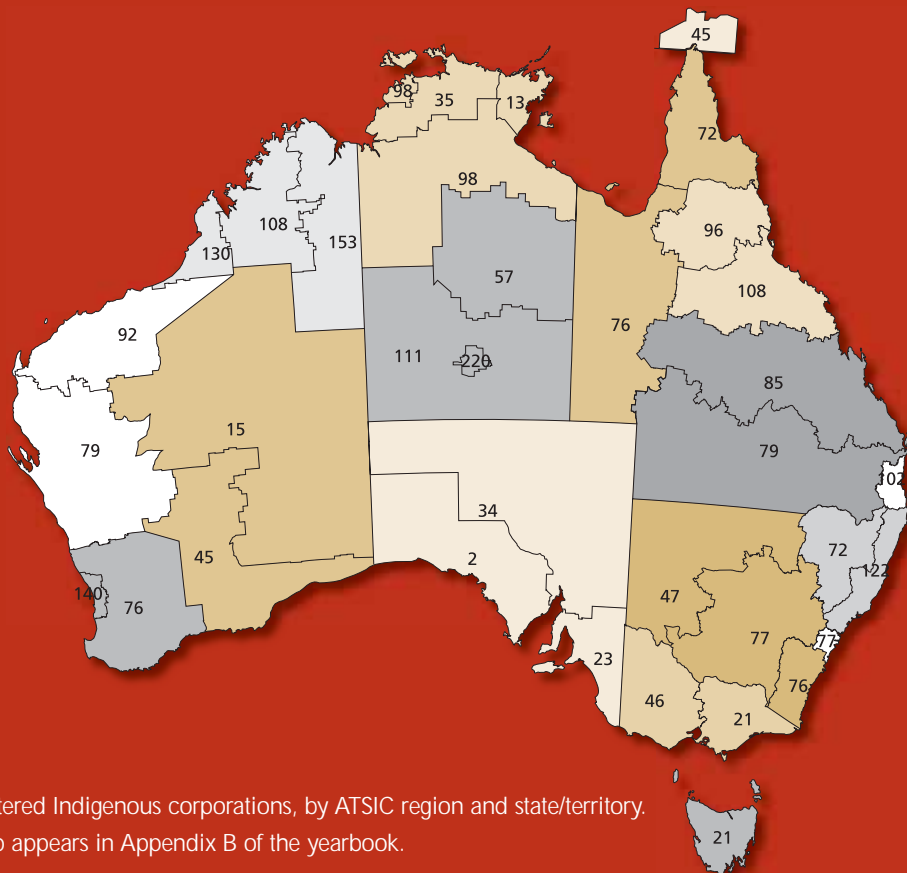
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This yearbook is available on the ORAC website—see the back cover for details of more ORAC publications.

### Location of registered Indigenous corporations, by ATSI region and state



Location of registered Indigenous corporations, by ATSI region and state/territory. Data for this map appears in Appendix B of the yearbook.



Office of the Registrar of Aboriginal Corporations  
Y e a r b o o k 2 0 0 3 - 2 0 0 4



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Some names may be mentioned, or images portrayed, of people who have died since the events recorded in this report. ORAC apologises for any hurt caused.

# Our performance in 2003–04 at a glance

## Portfolio Budget Statement targets

- ORAC's Portfolio Budget Statement targets in 2003–04, including meeting the Minister's requirements in good time, all met
- Quantity: exceeded all required measures, particularly in training workshop and information days, and examinations (corporate governance audits) of corporations
- Quality: improved our clients' corporate governance by working to improve individual corporations, and by working on systemic issues, with a strong focus on preventative measures as well as regulatory intervention

## Building relationships and working as part of 'connected up' government

- Forums conducted on good corporate governance training and on managing risk presented by Indigenous corporations, for a range of stakeholders in both government and private sectors
- Work done with a range of stakeholders in both government and private sectors to manage and treat risks associated with individual corporations and to deliver solutions to systemic problems
- Improved sharing of unique and critical information held by ORAC, through an enhanced ORAC website and expanded electronic access to the Public Register of Indigenous Corporations

- Relationships built with key partners for improving outcomes for Indigenous peoples, including the larger Commonwealth and state agencies involved with Indigenous-specific and mainstream funding of Indigenous corporations, the Australian Taxation Office, the Australian Securities and Investment Commission, all state and territory incorporating agencies, mining bodies, the National Native Title Tribunal and Reconciliation Australia

## Accessibility and responsiveness

- Over 13,000 calls received on our toll-free number
- 634 enquiries about corporate governance finalised (up by 159 per cent over three years)
- 131 complaints about corporate governance and dispute alerts finalised (up by 22 per cent since the previous year)
- Redesigned ORAC website, that provides more comprehensive and relevant information with easier retrieval, and some web access to the Public Register of Indigenous Corporations
- Improved communication with remote communities through expanded field work and language initiatives, and better tailored information sessions and training
- Case coordination and place management trialling, to support more tailored and seamless services and better treatment of systemic issues

## **Pre-incorporation, incorporation and post-incorporation assistance**

- Emphasis on incorporation only when necessary and responsible—new incorporations down to 134 (down by 27 per cent from the previous year)
- Increase in enquiries for information, support and referral (up by 159 per cent over three years)
- Increase in assistance with complaints about corporate governance and dispute resolution (up by 10 per cent over three years)
- More services for improving corporate design including constitutions, and generally a greater focus on preventive measures

## **Monitoring, examination and regulation**

- 10 per cent improvement in full and partial compliance (that is, submitting all reports or the three most critical reports) by corporations under the ACA Act
- More flexible approach to compliance with reporting requirements under the ACA Act for smaller low-risk corporations, to support small business
- Larger non-compliant corporations targeted for regulation, including examinations (corporate governance audits, which are up by 64 per cent) and deregistrations of corporations (up by 143 per cent)
- Stronger emphasis on requiring and supporting corporations to rectify problems,

resulting in only seven corporations being placed under administration (the peak was 17, in 1998–99)

- Reduction in liquidations in progress, from 44 to 34 (down by 23 per cent)

## **Information and training**

- Development of an expanded and high-quality suite of information and training products, to meet the diverse and great needs of Indigenous peoples associated with corporations
- 56 non-accredited information and training workshop days delivered (up by 21 per cent)
- Certificate IV in Business (Governance) conducted in several parts of Queensland
- Pilot for Certificate IV in remote regions conducted at Maningrida, with plans for evaluation and roll out in 2005 to other remote areas
- Planning to deliver diploma level courses in 2004–05

## **Modernising the *Aboriginal Councils and Associations Act 1976***

- Reform of the ACA Act, announced by the Minister in January 2004, following a review which found that a modernised Indigenous-specific act for Indigenous corporations was required
- Bill being drafted for consideration by Parliament in 2005

## Improving corporate governance

- New services focusing on better designs and constitutions for corporations, with work on a new model constitution progressed for completion in 2005
- Expanded rolling examinations to assess corporations' governance 'health', which is supported by improved risk analysis of Indigenous corporations to be targeted
- Progressed reforms to ACA Act which will clarify duties of board members and senior managers to be loyalty and good faith, care and diligence, and not trading while insolvent
- Reforms to ACA Act progressed to provide for
  - members' rights
  - more effective internal dispute resolution mechanisms
  - timely and relevant reporting to members and ORAC, with reporting proportional to the size of the corporation
  - independence of the Board
  - structural and decision-making transparency
  - conflict-of-interest management
- One-day corporate governance training forum co-hosted by ORAC and Reconciliation Australia in June 2004, where 40 delegates
  - identified and shared best practice in corporate governance training
  - identified challenges and strategic issues
- established a network for future collaboration and partnering
- Work progressed on a good corporate governance policy, guides to good constitutions and a new model constitution

## People and systems

- Focus on building staff skills to improve quality of service
- Director's diploma course delivered by the Australian Institute of Company Directors completed by many ORAC staff
- Critical projects progressing well, including improvement of ORAC processes, procurement of new panels for ORAC's outsourced services, and development of an ORAC risk framework
- Launch of redesigned ORAC website—further enhancements to the website and electronic access to the Public Register are being implemented in 2004–05

# Letter to the Minister



Australian Government  
Registrar of Aboriginal Corporations

Senator the Hon Amanda Vanstone  
Minister for Immigration and Multicultural and Indigenous Affairs  
Parliament House  
Canberra ACT 2600

Dear Minister

I am pleased to provide a report on the administration of the Aboriginal Councils and Associations Act 1976 and the operations of the Office of the Registrar of Aboriginal Corporations (ORAC) for the year ended 30 June 2004.

Although the current legislation does not require it, ORAC publishes this yearbook to share unique and critical information, analysis and solutions relevant to improving outcomes for Indigenous peoples in Australia. It is hoped that, in this way, the yearbook contributes to connecting up government and building stronger ties between the private and public sectors.

The content of this publication is more detailed than that in our annual report, which formed part of the Aboriginal and Torres Strait Islander Services annual report. We have included case studies and data to illustrate major issues, and we report more fully on the solutions we have found and the work we are doing for long-term improvement. Some of the material is about work in progress, included to encourage feedback and discussion.

We maintained our emphasis on performance and succeeded in achieving our targets in 2003–04. We also made changes to the way we administer the Aboriginal Councils and Associations Act 1976. Our practices and aims are evolving to meet challenges and to make a bigger difference 'on the ground' for Indigenous people, as this yearbook illustrates and explains.

Yours sincerely,

Laura Beacroft  
Registrar of Aboriginal Corporations



Senator the Hon. Amanda Vanstone, who became Minister for Immigration and Multicultural and Indigenous Affairs on 7 October 2003.



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# Abbreviations list

ABN	Australian Business Number
ACA Act	<i>Aboriginal Councils and Associations Act 1976</i>
AHL	Aboriginal Hostels Limited
AICD	Australian Institute of Company Directors
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIC/ATSIS	The two Australian Government agencies that consecutively had responsibility for ORAC in 2003–04
ATSIS	Aboriginal and Torres Strait Islander Services
BAS	business activity statement
CDEP	Community Development Employment Project
Chapter 11	Chapter 11 of the Bankruptcy Code of the United States
Corporations Act	<i>Corporations Act 2001</i>
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
EFTPOS	electronic funds transfer at point of sale
ERIC	Electronic Register of Indigenous Corporations
FOI Act	<i>Freedom of Information Act 1982</i>
GIC	general interest charge
GST	goods and services tax
JET	Jobs, Education and Training
MJETAC	Maningrida Jobs, Education and Training Aboriginal Corporation
NSWAHO	New South Wales Aboriginal Hostels Limited
OATSIH	Office for Aboriginal and Torres Strait Islander Health
OIPC	Office of Indigenous Policy Coordination
ORAC	Office of the Registrar of Aboriginal Corporations
PAYG	pay-as-you-go
PHCAP	Primary Health Care Access Program
Public Register	Public Register of Indigenous Corporations
RTO	registered training organisation
TAFE	Technical and Further Education
TSRA	Torres Strait Regional Authority

## Registrar's year in review

Laura Beacroft



The Office of the Registrar of Aboriginal Corporations (ORAC) publishes this yearbook as an aid to everyone interested in our work, especially our clients and partners. The material here is more detailed than that found in our annual report, which formed part of the Aboriginal and Torres Strait Islander Services annual report for 2003–04. Our annual report is available online at [www.orac.gov.au](http://www.orac.gov.au).

The yearbook gives us the opportunity to report in more detail on our work and performance during the year. We report on major events that impact on ORAC and key approaches, actions and solutions that shape ORAC's services. We illustrate important matters through case studies and detailed analysis, especially of ORAC's unique data held on the Public Register of Indigenous Corporations incorporated under the *Aboriginal Councils and Associations Act 1976* (the ACA Act). In the yearbook we also show the outlook for ORAC's work, through reporting on key emerging issues and important works in progress.

The 2003–04 financial year has been one of consolidation by ORAC in identifying and contributing to more sustainable solutions to systemic issues in the Indigenous corporate sector, while working locally in very effective and personal ways. This year saw a continued focus by ORAC on ensuring the best use of its services and powers to deliver long-term solutions, while also partnering with others to deliver solutions.

During the year the Australian Government implemented new administrative arrangements which resulted in substantial change for

everybody in the Indigenous Affairs portfolio. This change culminated in the abolition of ATSIC/ATSIIS, the transfer of funding programs to a number of other agencies, and the creation of a new Office of Indigenous Policy Coordination (OIPC) within the Department of Immigration and Multicultural and Indigenous Affairs. From 1 July 2004 ORAC is within OIPC for the purposes of administrative support and otherwise operates under the ACA Act. This major administrative change has required us to actively manage both its impact on ORAC and its business, today and in the future, and its impact on our partnerships and clients. This is an ongoing task.

As OIPC's name suggests, the primary rationale for this administrative change is to promote better whole-of-government responses in Indigenous affairs. Whole-of-government work requires new ways of doing business, which are well set out in *Connecting government: whole of government responses to Australia's priority challenges*, the 2004 report by the Australian Public Service Commission's Management Advisory Committee.<sup>1</sup> ORAC has successful experience in working in a whole-of-government setting, since the 2,713 corporations it regulates are funded by many agencies, from all levels of government and the private sector.

In response to this increased emphasis on whole-of-government work, and its challenge of moving beyond the 'surface of coordination', ORAC has focused on delivering improvements to sharing its knowledge and information.

<sup>1</sup> Australian Public Service Commission Management Advisory Committee 2004, *Connecting government: whole of government responses to Australia's priority challenges*, Commonwealth of Australia, p. v.

This has included:

- expanding partnerships with key agencies such as the Australian Securities and Investments Commission and other incorporation agencies, the Australian Taxation Office (ATO), and agencies with responsibility for Indigenous-specific programs under the new arrangements
- fast-tracking technological improvements such as the redesigned website and reports from ORAC's unique Public Register of Indigenous Corporations
- convening and publishing reports, on forums about key matters such as corporate governance training for Indigenous people, and on risks associated with funding Indigenous corporations.

ORAC is continuing to review how we can contribute to whole-of-government work better and welcomes views about this.

A key strategy identified in the *Connecting government* report is to improve engagement with Indigenous groups and individuals.

ORAC has a long history of direct engagement through its commitment to personal service, its well-used toll-free enquiry service, the extensive field work it conducts to support good governance, the interactive training programs that it delivers around Australia, its rolling program of 'good governance' examinations, and its practice of intervening early to avoid the liquidation of essential

community resources. Also ORAC actively pursues criminal and civil proceedings against corporations and individuals associated with them, where appropriate.

During the year new incorporations decreased by 27 per cent and overall corporation numbers decreased by 5 per cent, as a result of ORAC and others focusing on supporting only necessary and responsible incorporation. Many Indigenous communities are burdened by having too many competing rather than complementary corporations, and the demands that makes on good governance skills. Agencies can do more to assist with turning this around. Part of the problem is a continuing assumption by agencies that 'community power is or should be made a unified centralised sovereignty', when dispersed complementary governance is a key to good governance in many Indigenous communities.<sup>2</sup>

One result of unchecked demand for corporations may be that Indigenous groups incorporate in haste, in order to engage with external parties and/or obtain funds. This compounds the problem by allowing inadequate time for development of corporations designed well for the contexts in which they operate. 'Good governance is as much about process as structures.'<sup>3</sup> ORAC's services aim to build more effective processes for corporations while offering sound guidance and direction about standards of good governance as necessary.

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<sup>2</sup> Tim Rowse, as quoted in Sanders, W 2004, *Thinking about indigenous community governance*, discussion paper, Centre for Aboriginal Economic Policy Research, Australian National University, p. 25.

<sup>3</sup> Will Sanders 2004, *Thinking about indigenous community governance*, discussion paper, Centre for Aboriginal Economic Policy Research, Australian National University, p. 20.

ORAC's great advantage is that it has a presence on the ground throughout Australia, and can work with individual corporations and groups while also raising systemic problems at the highest levels, to ensure they are targeted by government and the private sector together. As I said in last year's yearbook, the case studies particularly show that quick fixes are not to be found; instead, solutions arise from conducting methodical and thoughtful work in partnership with agencies and corporations and their members.

ORAC offers specialised services not offered by other regulating agencies to incorporate groups where incorporation is necessary, to support responsible governance and to actively regulate Indigenous corporations. Most of ORAC's corporations are operating in remote or very remote locations. Many are successful in their fields despite the challenges of remoteness and high need: two ORAC corporations, namely Wangka Maya Pilbara Aboriginal Language Centre and Durri Aboriginal Corporation Medical Service, were showcased in a recent study for their successful operation.<sup>4</sup>

Our administration of the ACA Act has continued to evolve in line with its being a special measure to assist Indigenous people to engage equally in Australian society. An independent review of the ACA Act concluded that a modernised and strengthened Act is needed to support ORAC's key role in Indigenous Affairs, and it is anticipated that reformed legislation will be in place in 2006

subject to its passage through the Australian Parliament in 2005–06.

In 2003–04 ORAC continued and built on the previous financial year's work by identifying, supporting and advertising better practice and successful Indigenous corporations. We know that the success of Indigenous corporations has internal and external causes, and depends on the successful management of adverse factors. We have continued to target:

- unsustainable, non-viable corporations
- poorly designed corporations
- unmanaged disputes and conflicts of interest
- poor capacity to govern and manage
- limited support for local problem solving
- unscrupulous individuals who prey on vulnerable corporations
- the unhelpful practices of some stakeholders, which contribute to these problems.

ORAC has continued to acknowledge and target the many compliance and tax-related problems of Indigenous corporations, including:

- non-compliance under the ACA Act
- poor fraud control and debt recovery by corporations
- incapacity to deal with taxation requirements, made worse by some funding agencies' limited monitoring of Indigenous corporations' tax liabilities

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<sup>4</sup> Finlayson, Julie 2004, *Success in Aboriginal communities: a pilot study*, The Australian Collaboration.

- overlooked employer superannuation contributions
- overlooked or wrongly calculated fringe benefits tax
- salary sacrifice arrangements that do not accord with guidelines
- poor internal controls for EFTPOS transactions.

Non-compliance with tax obligations is a key cause of Indigenous corporate insolvency, and partnerships with the ATO and key funding agencies are assisting in managing this problem.

Also ORAC continues to target non-compliance under the ACA Act. We are pleased to record that the non-compliance rate under the ACA Act decreased by 10 per cent during the year. However, non-compliance remains a problem and will be further targeted in 2004–05. ORAC's next task in improving compliance under the ACA Act is to identify the significant number of non-trading land trusts incorporated under the ACA Act in order to stream them, under the new legislation, to the most minimal reporting requirements. This will reduce the scope for non-compliance and, at the same time, will free up ORAC resources to intensely target the trading and higher risk corporations that should be compliant under the ACA Act and other legislation.

ORAC moved to larger premises in early 2004, and improved its work space to allow for better teamwork and more secure record keeping. We expanded to reach an average staffing level of 28 (which translates to 36 actual staff, allowing for part-time

and temporary officers), to support our new services, such as the training program, and our work on the new legislation. During the year we augmented our excellent, long-serving and highly skilled staff with a number of younger, very intelligent and enthusiastic personnel. I am delighted to congratulate the many ORAC staff who successfully completed the Company Directors Diploma accredited by the Australian Institute of Company Directors and other courses during the year.

ORAC staff are dedicated to offering a personal service to our clients, and are very conscious of and responsive to special needs. I thank all the staff members for their wonderful dedication and good humour, even while sometimes working long days and travelling vast distances to so effectively serve our clients.

Please take the opportunity to browse through our yearbook and take note of our many great achievements during 2003–04.



**Laura Beacroft**  
Registrar of Aboriginal Corporations





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**About the Office of the Registrar of  
Aboriginal Corporations**

## Our vision

Aboriginal and Torres Strait Islander corporations assist Indigenous people to manage their own affairs well. A key priority is that disputes within corporations are resolved internally.

## Our key responsibility

To deliver incorporation, regulation and related services for Indigenous people in accordance with the *Aboriginal Councils and Associations Act 1976* (the ACA Act), in a manner consistent with the special needs, requirements and risks of Indigenous corporations and within the context of current and emerging Australian and international law and practice on good corporate governance.

## Our key clients

We focus on serving:

- Indigenous individuals, groups and corporations
- people accessing the Public Register of Indigenous Corporations
- the Minister and agencies supporting the Minister
- central agencies of the Australian Government and state and territory governments
- agencies with interests in funds and/or assets controlled by Indigenous corporations
- other agencies regulating the Indigenous corporate sector.

## Who we are

The ACA Act established the Registrar of Aboriginal Corporations as an independent statutory office holder. The Registrar is appointed by the Minister for Immigration and Multicultural and Indigenous Affairs. Ms Laura Beacroft, a solicitor, was appointed to the position from 1 August 2002 for three years. The Registrar is responsible for the administration of the ACA Act.

The ACA Act created a third arm to the Australian Government's oversight of corporations—the other two arms are the Australian Securities and Investments Commission (ASIC) under the *Corporations Act 2001* (the Corporations Act), and the Australian Competition and Consumer Commission under the *Trade Practices Act 1974*.

The ACA Act allows for flexibility in incorporation, in line with Indigenous cultural practices, while ensuring active monitoring and regulation of registered corporations.

Incorporation under the ACA Act is mainly voluntary. However, some corporations, such as the Prescribed Bodies Corporate established through the *Native Title Act 1993*, are required to incorporate under the ACA Act. Many corporations governed by Indigenous people are incorporated under the Act, but a significant number are not and are instead covered by state/territory and other Commonwealth legislation.

The Office of the Registrar of Aboriginal Corporations (ORAC), with a staff of 28, helps the Registrar to support, monitor and regulate 2,713 corporations for Indigenous people throughout

Australia, and to provide an avenue for new incorporations where these are needed.<sup>5</sup>

ORAC provides administrative services before, during and after incorporation, including dispute assistance, members' complaints services, enquiry services and searches of the Public Register of Indigenous Corporations. We also develop and deliver training in corporate governance. Figure 2 shows our key roles.

Our services respond to the special needs, requirements and risks of Indigenous groups and corporations, and take into account Australian and international standards for good corporate governance.

ORAC performs its functions and provides its services nationally to all levels of government, and to many types of agencies and people with an interest in Indigenous corporations. We work closely with other regulating bodies to maximise coordination and alignment.

The ACA Act was the subject of a major review in 2002 and will be amended in the near future to complement the role of other regulators and strengthen Indigenous corporate governance.



<sup>5</sup> At 30 June 2004, ORAC had an average staff level of 28, and an actual total staffing level of 36 (because some ORAC staff are part-time or temporary).

## OUR CORPORATE DIRECTION

As an organisation with a focus on good corporate governance, we aim to:

- administer the ACA Act efficiently and effectively
- provide support services for all matters arising out of the administration of the Act
- improve governing committees' awareness and understanding of, and compliance with, their roles and responsibilities under the Act and in their corporations
- promote the accountability of corporations to their members.

## OUR GUIDING PRINCIPLES

The following principles guide ORAC's administration of the ACA Act and delivery of services.

**Building sustainability**—good practices in management and governance that maximise the use of resources and contribute to continuing evolution and utility of organisations in achieving their purpose.

**Eliminating poverty**—commitment to the fundamental goal of eliminating poverty in Indigenous communities and the need to target the most disadvantaged and marginalised people in communities in any processes or strategies to build capacity.

**Supporting economic development**—recognition that economic development is a foundation for eliminating poverty and improving other social outcomes.

**Being accountable**—accountability to members, beneficiaries and communities underpins governance and management practices. Organisations meet their legal and other requirements in line with expectations of funders and the community.

**Managing conflict and disputes**—organisations are assisted to resolve conflicts and develop conflict resolution processes. Any such processes acknowledge different interests, build capacity and are tailored to cultural and community contexts.

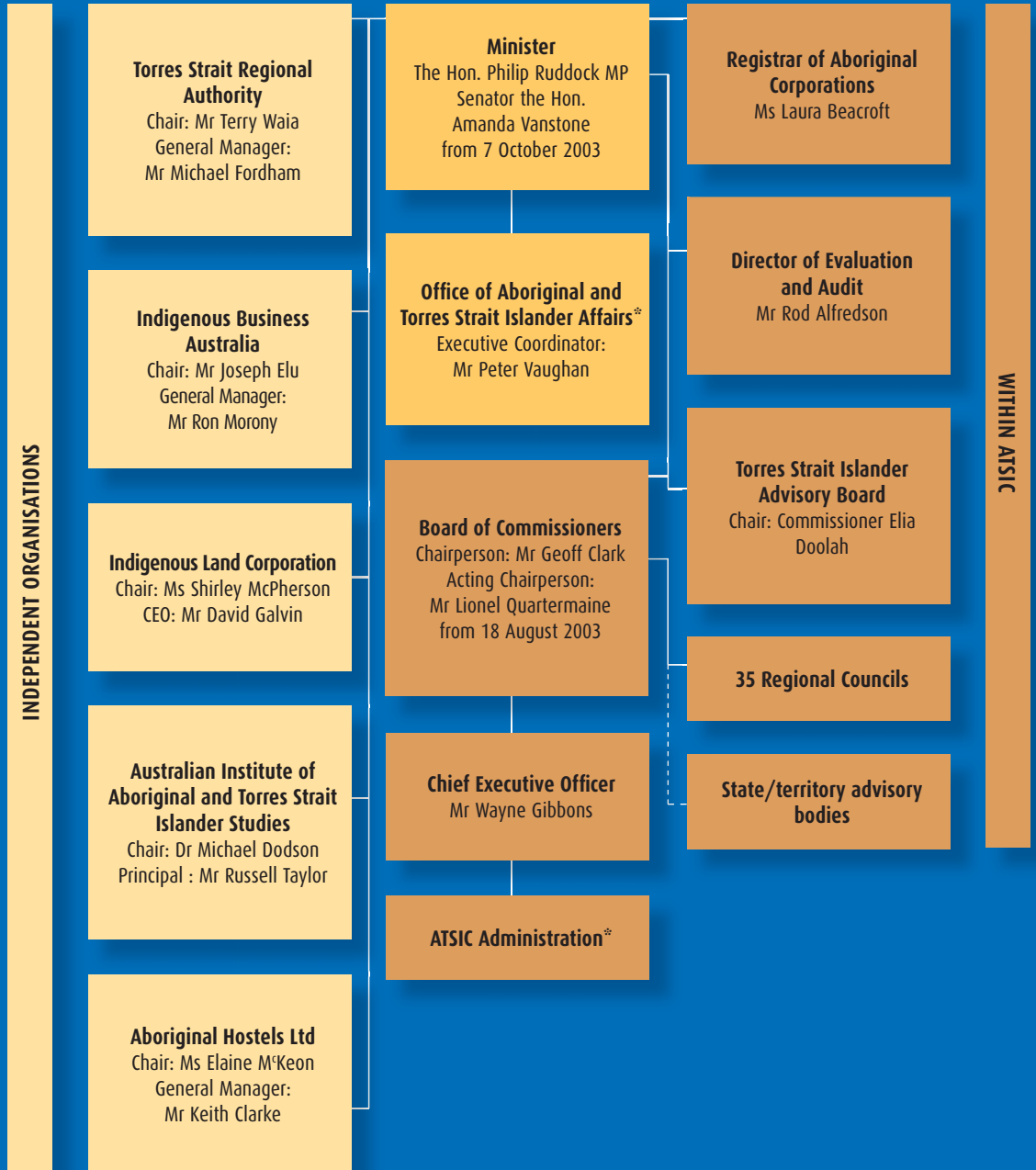
**Promoting knowledge management**—access to information, experience and knowledge is understood as an empowering process and any processes are user friendly and accessible.

**Fitting with culture**—incorporation models and processes fit with culture in specific communities and localities and interactions with Indigenous corporations are relevant to given communities and localities.

**Being responsive and accessible**—ORAC's information and services are tailored to needs of their clients and are easy to access and use.

**Building capability and social assets**—sustainability of organisations is assisted by ongoing development of capacity, knowledge and social assets.

**Figure 1 Our place in the Indigenous Affairs portfolio**



\* Note: The Australian Government decided to create an independent executive agency, Aboriginal and Torres Strait Islander Services (ATSIS), into which the majority of public servants employed by ATSIC were transferred on 1 July 2003. ATSIS was established on an interim basis to implement a 'separation of powers' from ATSIC. On 1 July 2004, ATSIS programs were absorbed by other Australian Government agencies and ORAC became part of the Department of Immigration and Multicultural and Indigenous Affairs.

## The role of the Registrar

As an independent statutory office holder, the Registrar is responsible for the administration of the ACA Act. The Act gives the Registrar powers to intervene that are similar to those exercised by ASIC. Some of the Registrar's powers, which are summarised in Appendix J, require ministerial agreement before they can be exercised.

As a statutory office holder, the Registrar is not under direction for decisions made under the Act, but is subject to performance management and review as part of an Australian Workplace Agreement with the

chief executive officer of Aboriginal and Torres Strait Islander Services (ATSIS).

In order to participate in decisions on administrative matters affecting ORAC, the Registrar is a member of the ATSIS Corporate Leadership Group. During 2003–04, various arrangements, including a formal agreement, were in place to enable ORAC and ATSIS to manage any tensions and conflict that might arise from ORAC's placement within ATSIS. Similar arrangements are being established to support the Registrar and ORAC's placement within the Department of Immigration and Multicultural and Indigenous Affairs.

## Background to the ACA Act

In the 1960s and 1970s, various reviews advised the Australian Government to legislate to make it easier for Indigenous communities and organisations to form corporations. The confirmation of Indigenous land rights made it more urgent to find an alternative to the complex commercial incorporation regime, which was unsuited to many Indigenous people, particularly those living in remote areas.

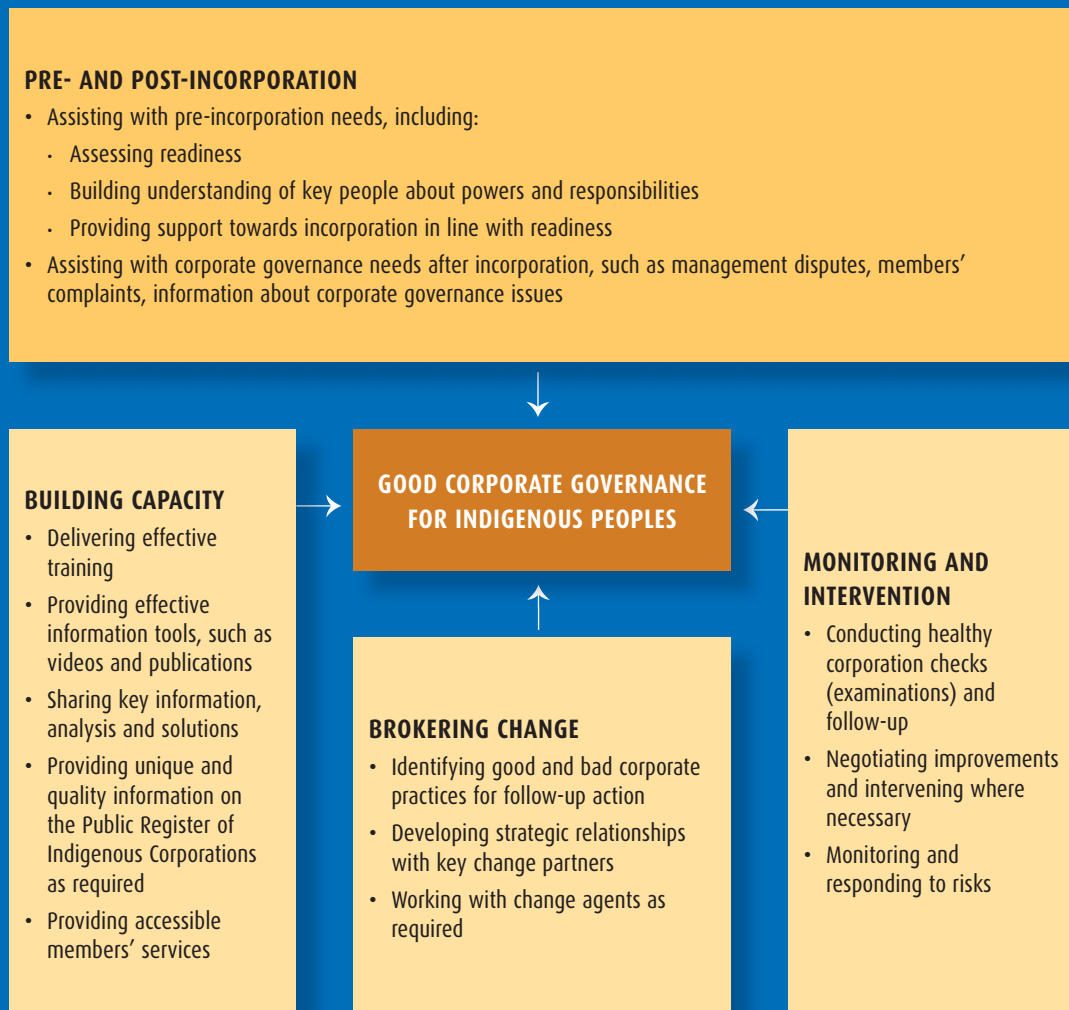
The result was the *Aboriginal Councils and Associations Act 1976*, which allows Aboriginal and Torres Strait Islander groups to form corporations for any social or economic purpose. When a group of individual members creates a body under the ACA Act, the new corporation is recognised as a person in law, and represents the members under an agreed constitution. Incorporation brings entitlements, such as access to funds, but also many responsibilities for the people associated with the corporation.

The ACA Act complements other incorporation law in Australia, such as the Corporations Act, state and territory legislation and special statutory schemes. It is suited to Indigenous groups that are disadvantaged because of their remoteness or lack of resources, but not to large, complex trading corporations, which are better incorporated under the Corporations Act.

Incorporation under the ACA Act is mostly voluntary, but some corporations—for example, the 'prescribed bodies corporate' set up under the *Native Title Act 1993*—are required to incorporate under the Act.

The Act was last amended in 1992, and the government has announced that it intends to reform it in the near future. Appendix K of this report lists the changes that ORAC has proposed for the new 'Corporations (Aboriginal and Torres Strait Islander)' legislation.

**Figure 2** ORAC'S key roles



## OUR SERVICES

ORAC offers wide, detailed support for Indigenous corporations, and responds to their special needs and risks.

Our key services are:

- providing, on the Public Register of Indigenous Corporations, information about corporations incorporated under the ACA Act
- assisting groups that are considering incorporation and supporting them through the process if incorporation proves necessary
- assisting groups once they are incorporated, including by supporting dispute resolution, helping with meetings and answering corporation queries
- assisting members of corporations with concerns or complaints about corporations
- delivering training and providing publications to clients
- monitoring compliance of corporations with reporting requirements
- examining corporate governance 'health'
- intervening where necessary
- deregistering where necessary.

## THE PUBLIC REGISTER

ORAC maintains the Public Register of Indigenous Corporations, which lists corporations incorporated under the ACA Act. The Public Register provides useful and unique information to Indigenous corporations, members of the public, and funding agencies.

The information in the Public Register includes certificates of incorporation, applications for incorporation, rules (constitutions), lists of members, details of public officers, annual financial statements, exemptions from some reporting requirements, and documentation relating to regulatory action—for example, monitoring, administration, liquidation and deregistration.

During 2004, we redesigned and rebuilt the ORAC website in order to improve electronic access from anywhere in Australia, even the most remote areas, to a range of information including the Public Register. A list of all documents held by ORAC for any individual corporation since 1978 is now available electronically.

During 2004–05 ORAC aims to enable electronic access to public documents held for each corporation and to training and constitution design tools, while building the platform for some online lodgement of documents.

## Our service charter and standards

ORAC's service charter, along with our three-year corporate plan, runs until the end of 2004. The charter binds our staff and consultants to treat our clients courteously and fairly, to preserve privacy and confidentiality, to give consistent and accurate advice, and to respect cultural diversity and Indigenous customs and traditions.

Among other matters, the service charter describes ORAC's complaints system, which



is designed to ensure that matters raised by clients are effectively responded to. During 2003–04, four complaints were received and dealt with.

During the year, we developed a Guide to Good Practice (Standards). A new service charter was also developed, to take effect in 2005.

### **Our key relationships**

ORAC's primary clients are individuals, groups and corporations covered by the ACA Act, agencies funding these corporations, and users of the Public Register of Indigenous Corporations. To deliver our services, we have links with many other organisations (see Figure 3).

We have close working relationships with agencies with interests in funds or assets held by corporations, such as ATSIIC–ATSIS and the Office for Aboriginal and Torres Strait Islander Health (OATSIH). From 1 July 2004, ORAC has been building relationships with those agencies taking up responsibilities previously

held by ATSIS. ORAC also works with state and territory government agencies to improve outcomes for Indigenous people across Australia.

In recent years, we have deepened our ties with ASIC and the state/territory incorporation and regulation agencies, with the aim of fostering better national coordination of incorporation and regulation services and responses. During 2003–04, ORAC and ASIC further developed an understanding of how we will work together, which will be finalised in 2005 when reforms to the ACA Act are passed through the Australian Parliament.

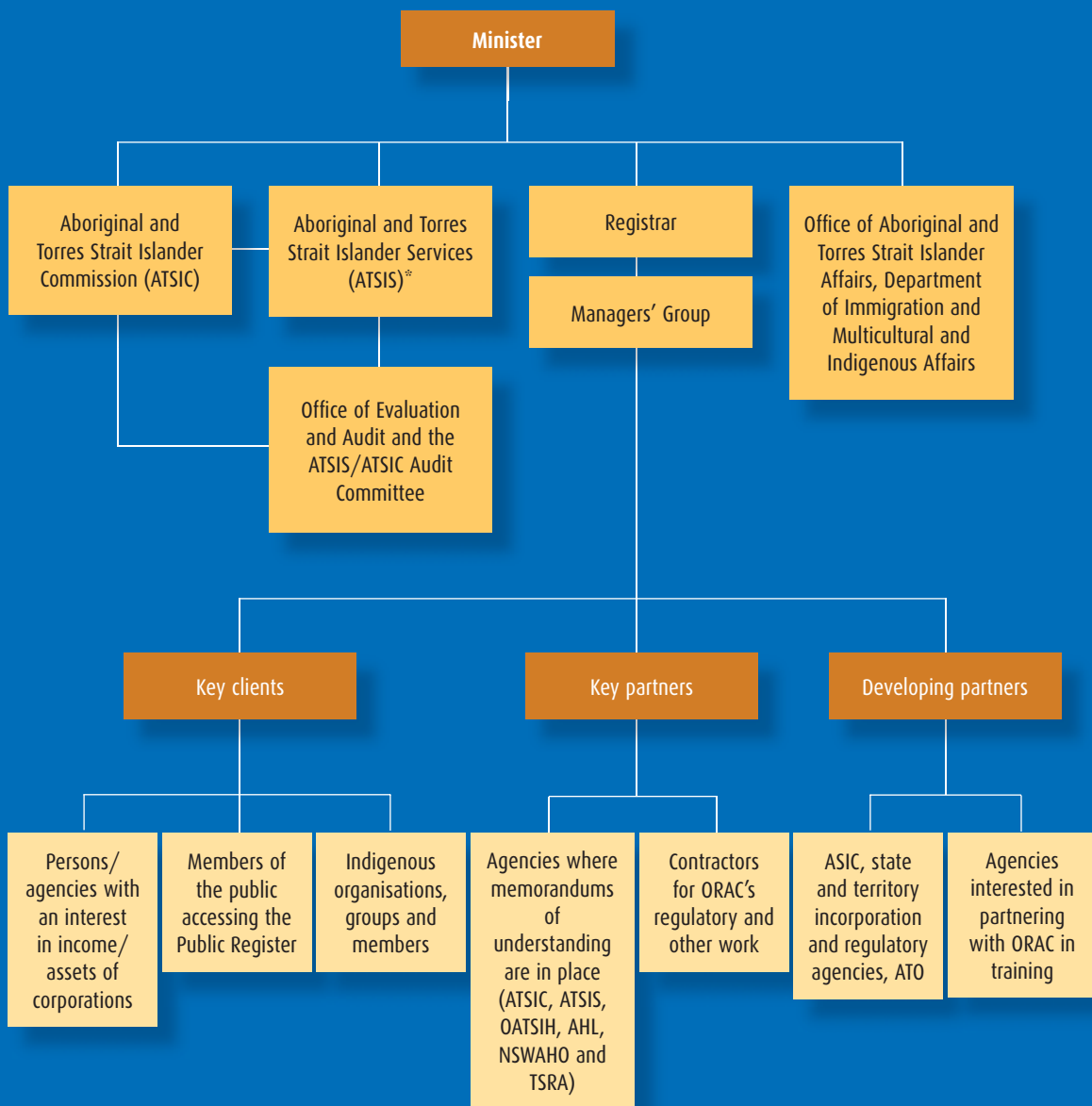
ORAC continues to focus closely on identifying and targeting key systemic concerns of Indigenous corporations. To this end, we are building closer relationships with the Australian Taxation Office, individuals and agencies providing corporate governance training, and state/territory government agencies, particularly in Queensland, the Northern Territory and Western Australia.

**Increasingly, agencies are identifying a need to work in clusters to achieve common and interrelated objectives. These clusters form and change over time as outcomes are achieved and environments change. Operating in a cluster or shared environment introduces an imperative for agencies to work towards optimising the outcome for all rather than for any one agency. Achieving this balance is not easy. Agency heads and senior executives can actively ensure that such approaches achieve the best outcomes, not the easiest agreed outcomes.<sup>6</sup>**

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<sup>6</sup> Australian Public Service Commission Management Advisory Committee 2004, *Connecting government: whole of government responses to Australia's priority challenges*, Commonwealth of Australia, p. 6.

**Figure 3** ORAC's key relationships



\* Note: The Australian Government decided to create an independent executive agency, Aboriginal and Torres Strait Islander Services (ATSIS), into which the majority of public servants employed by ATSIC were transferred on 1 July 2003. ATSIS was established on an interim basis to implement a 'separation of powers' from ATSIC. On 1 July 2004, ATSIS programs were absorbed by other Australian Government agencies and ORAC became part of the Department of Immigration and Multicultural and Indigenous Affairs.

## The whole-of-government approach in action

ORAC, together with the Office of Evaluation and Audit and the Investigations Unit, Office of Indigenous Policy Coordination (OIPC), hosted the inaugural Forum on Risk Issues for Programs Funding Indigenous Corporations. The forum was attended by over 60 delegates from key funding agencies and priority stakeholders.

The forum arose from discussions at the audit committee meetings held by ATSI and ATSI in 2003–04. At those meetings, it was acknowledged that there were frequently recurring, high-impact risks related to funding Indigenous corporations, whatever the source of funds. ORAC maintained that some of these risks could be quickly and effectively treated if key funding agencies prioritised the risks and coordinated their actions.

The forum was designed to give funding agencies and stakeholders an opportunity to jointly identify priority risks, and to work together to significantly improve the treatment of those risks by the end of 2004–05. In this way, the participants hoped to improve outcomes for funding programs and their Indigenous beneficiaries. The forum acknowledged that only a finite number of matters could be resolved quickly. However, a whole-of-government approach and relationship between the participants would support the sustained effort needed into the future.

The forum identified the following priority risks for agencies to monitor and treat:

1. Failure to achieve government outcomes for Indigenous Australians
2. Capacity of communities and governments
3. Failure to implement risk management strategies
4. Not working as one—contract management failure (includes challenges related to dealing with the assets maze, risk silos, nepotism and employer responsibilities)
5. Failure of dialogue between communities and government
6. New program and restructured program 'sprints' (the establishment of new Indigenous corporations in a hurry, fuelled by unrealistic timeframes for putting new or restructured programs in place)
7. Loss of reputation for corporations and funding agencies
8. Slack on tax (a leading cause of liquidations of Indigenous corporations today is non-payment of tax liabilities, in particular the GST, by Indigenous corporations)
9. Misuse of funds (this issue is being dealt with through another forum sponsored by the Investigations Unit, OIPC).

More information about these key risks and treatments can be found in the report to be published on ORAC's website in 2004–05.

One very successful interagency relationship formed as a result of the forum is that between ORAC and the Australian Taxation Office

(ATO). The forum identified many taxation-related risks for funding programs and for Indigenous corporations. Non-payment of tax liabilities—in particular, the GST (goods and services tax)—by corporations is a leading cause of liquidations (as discussed in the case study on page 41). Other tax problems include:

- fringe benefits tax is overlooked or not calculated correctly
- pay-as-you-go deductions are not remitted and are used for other purposes
- salary sacrifice arrangements are ad hoc, verbal and questionable (including, for example, payment of grocery accounts, monthly credit card payments and cash advances).

ORAC and the ATO are working together to address these problems through better coordinated information and education programs, and by targeting corporations in urgent need of assistance for speedy assistance and/or intervention (see 'Corporations must account for GST' on page 41).

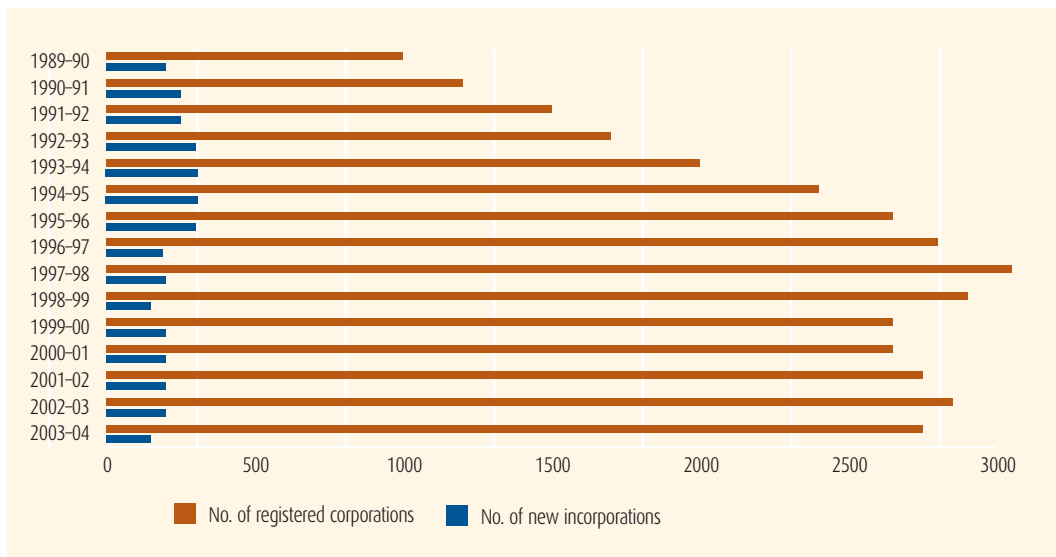
## Our Clients

At the end of 2003–04, 2,713 corporations were registered under the *Aboriginal Councils and Associations Act 1976* (the ACA Act). This represents a targeted reduction in total corporations of 5 per cent and a reduction in new corporations of 27 per cent from the previous year, reflecting a stronger emphasis on ‘responsible and necessary incorporation’ and deregistering of unnecessary non-compliant corporations. After growing rapidly under the ACA Act in the early 1990s, then steadying for some years, the number of new incorporations dropped to 134 in 2003–04 (see Figure 4.) It is estimated that at least as many Indigenous corporations are incorporated under other legislation.

Corporations vary in size, from unfunded groups through to organisations with millions of dollars in income and assets. Corporate functions are diverse, from providing services to simply holding land, and many corporations are multifunctional.

Most groups incorporated under the ACA Act are located in remote areas (see Table 1 and the map on the inside front cover), and are publicly funded. However, some generate significant private income—for example, corporations linked to mining compensation or to the Indigenous arts industry. Many hold significant community assets that were funded publicly but are now held privately

**Figure 4** Number of corporations, by year, 1987–88 to 2003–04

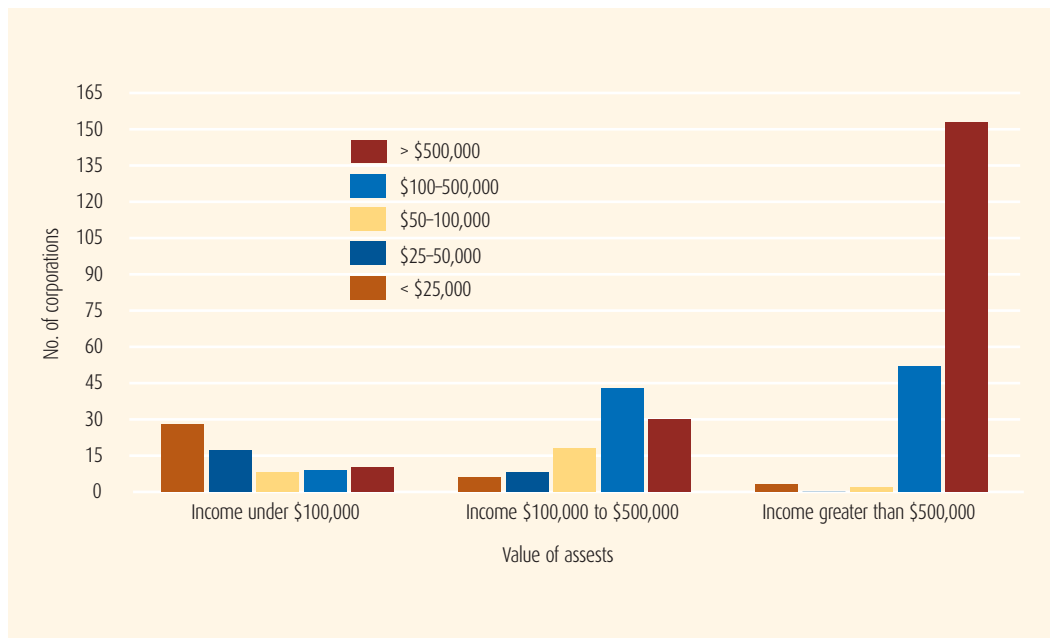


Note: The number of registered corporations is the total number of corporations registered less the total number deregistered.

by the corporations. Over the past year, the highest growth in corporation numbers was in New South Wales (where corporations increased by 27) and the largest decrease was in Queensland, where the number of corporations fell by 54 because of the deregistration program undertaken by ORAC (see pages 90). Appendix B shows the locations of ACA Act corporations by Aboriginal and Torres Strait Islander Commission (ATSIC) region.

Figure 5 shows the wealth of Indigenous corporations, where known. Those corporations with significant incomes usually also have significant assets. Analysis by ORAC indicates that most corporations under the ACA Act are small to medium in their income, assets and number of employees. However, a growing number have substantial income and assets, and a significant number have little income but substantial assets. These findings have implications for many aspects of our work, especially legislative reform and risk management.

**Figure 5** Number of corporations, by income and assets, at 30 June 2003



Notes: Due to the reporting timeframes for corporations under the Aboriginal Councils and Associations Act 1976, this figure shows data to 30 June 2003.

Information on income and assets for some corporations is not known.

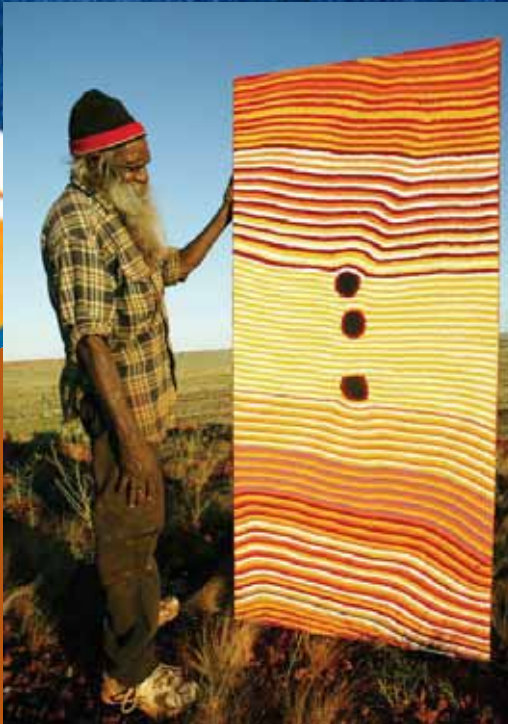
**Table 1** Number of corporations, by location, 2003–04

	Major cities	Inner regional	Outer regional	Remote	Very remote	Not known	Total
Australian Capital Territory	19	1	1	0	0	0	21
New South Wales	92	108	199	58	20	0	477
Victoria	16	29	21	8	0	0	74
Queensland	73	85	167	47	237	0	609
South Australia	18	25	2	3	13	0	61
Western Australia	111	33	58	86	509	0	797
Tasmania	0	14	6	1	0	0	21
Northern Territory	275	96	248	0	0	0	619
State not known	0	0	0	0	0	34	34
<b>Australia</b>	<b>604</b>	<b>391</b>	<b>702</b>	<b>203</b>	<b>779</b>	<b>34</b>	<b>2713</b>

The major bodies known to fund corporations covered by the ACA Act in 2003–04 were Aboriginal and Torres Strait Islander Services (ATSIS) (funding 395 corporations for approximately \$355 million, which represents approximately 37 per cent of ATSIS grant funds and 43 per cent of total ATSIS grant-funded corporations in 2003–04) and the Office of Aboriginal and Torres Strait Islander Health (OATSIH) in the Department of Health and Ageing (funding 103 corporations for approximately \$90.7 million in 2003–04). Other sources of public funds include a wide range of Australian Government agencies and state/territory agencies, especially in Western Australia and Queensland.



## Our Performance



Photograph courtesy of Monsoon Studio, Darwin NT.

Helicopter Tjungurrayi of Warlayirti Artists Aboriginal Corporation.

The Warlayirti Art and Culture Centre is located in Wirrimanu community (Balgo) 300 km south of Halls Creek in the Kimberley Region. They have a reputation both nationally and internationally for being one of Australia's premier Aboriginal Art Centres specialising in acrylic paintings. A cultural centre was opened to provide a number of programs including an outlet for locally produced silks, baskets, jewellery, carvings and works in coloured glass produced in the glass workshop.

On the edge of the Great Sandy Desert this organisation has been incorporated under the Aboriginal Councils and Associations Act (ACA Act) since 1991. The Warlayirti Art and Culture Centre is also a member of the Association of Northern Kimberley and Arnhem Aboriginal Arts (ANKAAA) which supports over 30 Aboriginal-owned Art Centres located in the top end. ANKAAA is also incorporated under the ACA Act.

## Performance information for Output 5.4

ORAC was the main mechanism through which Aboriginal and Torres Strait Islander Services (ATSIS) delivered its Output 5.4 in 2003–04—fostering Indigenous business as separate legal entities. Tables 2 and 3 summarise the year’s performance against the indicators used in the Portfolio Budget Statements.

**Table 2 Indigenous Affairs portfolio outputs structure 2003–04**

Outcome: the economic, social and cultural empowerment of Aboriginal and Torres Strait Islander peoples in order that that they may freely exercise their rights equitably with other Australians.		
Output Group 1	Promotion of cultural authority	
Output Group 2	Advancement of Indigenous rights and equity	
Output Group 3	Improvement to social and physical wellbeing	
Output Group 4	Economic development	
Output Group 5	Capacity building and quality assurance	<ul style="list-style-type: none"> <li>5.1 Advocacy support</li> <li>5.2 Ministerial services</li> <li>5.3 Planning and partnership development</li> <li>5.4 Business as separate legal entities</li> <li>5.5 Welfare reform—participation</li> </ul>

**Table 3 Performance indicators, 2003–04**

Output 5.4—Business as separate legal entities		
Measure	Target in 2003–04	Performance
<b>Quantity</b>		
Accessible incorporation for Indigenous groups	2750 corporations incorporated under the <i>Aboriginal Councils and Associations Act 1976</i>	Number of total corporations dropped by 148 (5 per cent) to 2713, in line with ORAC's and other agencies' emphasis on promoting responsible and necessary incorporation (see page 35 for details)
Enhanced training in corporate governance for governing committee members and senior managers of corporations	50 non-accredited (information session or training workshop) days	56 non-accredited days were conducted to 30 June 2004 (with over 414 graduates to 25 February 2005 (see page 45 for details))
	Five accredited programs delivered in Certificate IV in Business (Governance) (approximately 4–6 weeks for each program)	Five courses (usually involving 125 hours, held in block sessions over 14 weeks) commenced to 30 June 2004 as part of a rolling program (with 48 graduates to 25 February 2005, including many women (see page 44 for details))
Increased early diagnosis of corporation problems	40 examinations or similar reviews	54 examinations were performed, an increase of 64 per cent on previous years Corporations for examination were selected in response to evident problems or as part of a program of rolling examinations responding to risk analysis based on such criteria as size, purpose, time since last examination, compliance status and history of member or other complaints (see page 39 and Appendix C for details)
<b>Quality</b>		
Corporations are compliant with reporting requirement under the <i>Aboriginal Councils and Associations Act 1976</i>	55 per cent of corporations compliant	Compliance against at least the three key reports (that is, full or partial compliance) at the end of the period was 34 per cent, which is an improvement over the year of 10 per cent This improvement is a result of ORAC's ongoing analysis of non-compliance and implementation of a plan for appropriate follow-up (see page 37 for details)

## Accessibility and responsiveness

Most corporations covered by the *Aboriginal Councils and Associations Act 1976* (the ACA Act) are located in remote areas, which demonstrates the success of the Act in meeting the needs of some of the most disadvantaged communities in Australia.

ORAC provides a personal service to clients, much of whose initial communication with us is through our toll-free telephone service. In 2003–04, reflecting our increased emphasis on prevention, toll-free calls reached an all-time high of more than 13,000. We dealt with and finalised 634 enquiries about corporate governance (an increase of 159 per cent over three years) and 131 complaints and dispute alerts (an increase of 22 per cent since the previous year), many of which require sustained follow-up by ORAC over a long period (see Appendix A).

ORAC staff receive continuous training in quality service to Indigenous clients, and during the year further developed the *Guide to Good Practice for ORAC*. The guide is a central record for all the various aspects of ORAC's ongoing improvement process, which centres on reforms to the ACA Act. It is not a map of specific improvements, but is to be used as an induction, discussion, orientation and evaluation tool to lead to consistently good service delivery across ORAC. The guide will capture ORAC's aspirations for the way staff should work with clients from now into the future, and list what our clients should be able to expect from us.

Electronic communication is increasing as the number of corporations with email and internet access continues to grow. Our website ([www.orac.gov.au](http://www.orac.gov.au)) has been completely redesigned to be more accessible to remote communities, and now covers new topics, such as disqualified directors, while providing easier information retrieval. Visits to the site increased by 74 per cent in 2003–04. During the year, we did preparatory work to make the Public Register of Indigenous Corporations available on line, culminating in an online release of the Public Register in December 2004. Our desire to enable greater access for all has seen us begin investigations into online lodgement and web access to training resources. This project will continue in 2004–05.

Where appropriate, ORAC works on site with clients. In 2003–04, we laid the foundation for improving our communication with remote communities through expanded field work, better communication initiatives, case coordination and place planning and management.

We have a complaints system in place to ensure that client complaints are responded to. During the year, we received four complaints and dealt with them as follows:

- Two complainants were asked to provide further information to substantiate their complaints, so that detailed investigations could take place. In both cases, they chose not to reply to these requests.

- Two matters were referred to the Investigation and Compliance Unit of ATSI. In both cases, the complaints were found to be unsubstantiated and required no further action.

### **PRE-INCORPORATION, INCORPORATION AND POST-INCORPORATION ASSISTANCE**

New incorporations, which have been averaging 180 each year for some years, dropped by 27 per cent to 134 in 2003–04, reflecting our emphasis on promoting incorporation only when it is responsible and necessary (see Appendix A).

As noted under 'Accessibility and responsiveness' (see page 34 ), enquiries involving requests for information, support and referrals grew by 159 per cent over the three years to June 2004 as we expanded our support to try to resolve problems earlier. Assistance with members' complaints and dispute resolution grew by 10 per cent over the three years (and was 22 per cent greater in 2003–04 than in the previous year). Because of the increasing complexity of complaints and disputes, and the serious consequences they can have for corporations if unresolved, ORAC is devoting more resources to this area.

The number of requests for changes to constitutions finalised, (where a request was considered and a decision made to accept or not) has dropped by 20 per cent over three years, and was 10 per cent lower in 2003–04 than in the previous year). However, we devote significant resources to these matters because the compliance environments within



Participants attending an ORAC post-incorporation information session for the Wyn Health Service Aboriginal Corporation

which corporations operate and the problems they face are becoming more complex. We are also devoting more resources to the development and review of constitutions as part of our new focus on preventing problems through better corporation design, and have begun work on a new model constitution.

### **Case study Pre-incorporation support for healthy community corporations**

The Office of Aboriginal and Torres Strait Islander Health (OATSIH), the Australian Government Department of Health and Ageing, and Northern Territory Health are collaborating in the delivery of the Primary Health Care Access Program (PHCAP) initiative in the Northern Territory.

Announced in the 1999–2000 Federal Budget, PHCAP is a joint national–state–territory initiative with funding of \$78.8 million for four years. It is to be implemented in areas where joint regional planning has been completed. The 2001–02 Budget announced an additional \$19.7 million each year from 2003–04, taking total funding to \$58.4 million per year.

The three agencies have engaged a Northern Territory health provider to oversee the establishment of two community-controlled health services to deliver PHCAP in the Central Desert region.

In consultation with OATSIH and Northern Territory Health, the health provider asked ORAC to help with the incorporation of the two new health services. During the year, two ORAC officers participated in preparatory work for the Territory's Warlpiri and North Barkly regions.

The incorporation of the new health services is a three-phase process. The first phase generated ideas and discussion among the services' interim steering committees about how to structure their corporations. The second phase included a two-day workshop, to give the groups an opportunity to have ORAC officers 'on the ground' to help them draft their constitutions. The third phase, which will begin a few months after incorporation, will involve training in corporate governance.

The first and second stages have been a success. Feedback from all parties has been very positive, and the next step is being planned.

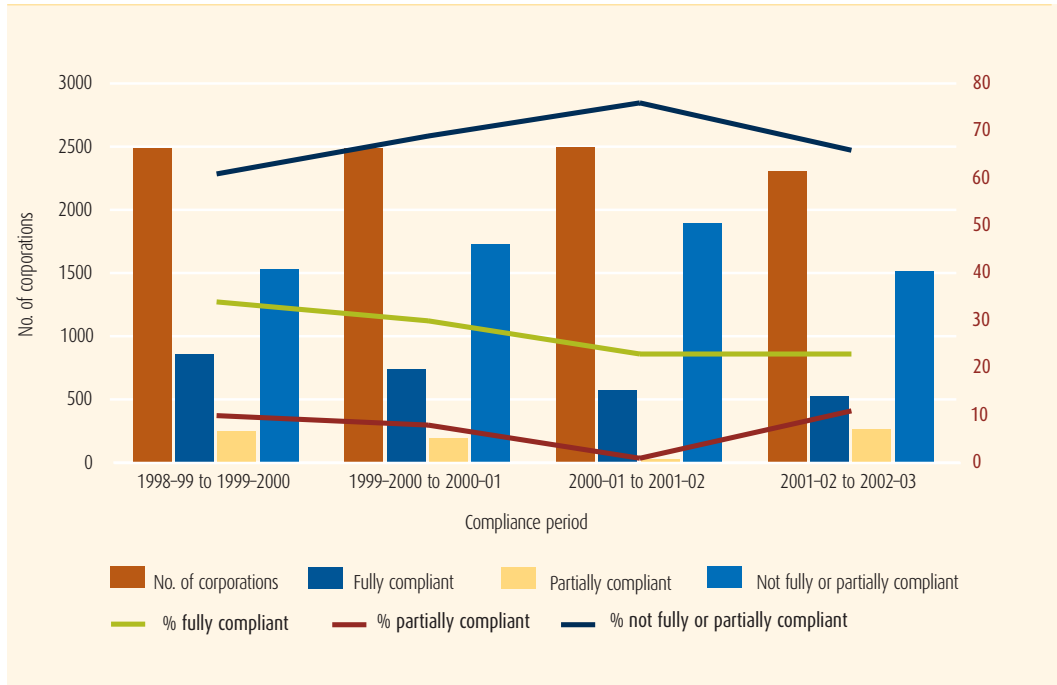
This work is an example of ORAC's new targeted service: developing constitutions with groups before incorporation to maximise the success of Indigenous corporations.

### **MONITORING, EXAMINATION AND REGULATION**

Under the ACA Act, all corporations are required to submit certain documents to ORAC unless exempted by the Registrar. The documents, which include lists of members and financial reports, are placed on the

Public Register. Approximately 34 per cent of corporations have provided the three key reports required under the Act for 2001–02 and 2002–03 (reports are not due until 31 December 2004). Compliance is set out in Figure 6 and Table 4.

**Figure 6 Compliance trends, 1998-99 to 2002-03**



Notes: The chart shows the number of corporations that were incorporated as at 31 March of the first financial year of the compliance period and not subsequently deregistered.

'Fully or partially compliant' means that either five or three key annual return documents, respectively, have been provided by the corporation for the relevant consecutive two-year period. For the current compliance period, 2001-02 to 2002-03, the table shows all returns received by ORAC as at 30 June 2004. Corporations were not required to provide annual returns for 2003-04 until 31 December 2004.

The chart shows a comparison of compliance rates to 30 June for each of the last four compliance periods.

**Table 4 Compliance trends, 1998-99 to 2002-03**

Compliance period	No. of corporations	Fully compliant	Partially compliant	Not fully or partially compliant	% fully compliant	% partially compliant	% not fully or partially compliant
1998-99 to 1999-2000	2488	855	251	1382	34	10	56
1999-2000 to 2000-01	2490	739	195	1556	30	8	62
2000-01 to 2001-02	2497	576	26	1895	23	1	76
2001-02 to 2002-03	2308	528	264	1516	23	11	66

Notes: The table shows the number of corporations that were incorporated as at 31 March of the first financial year of the compliance period and not subsequently deregistered.

'Fully or partially compliant' means that either five or three key annual return documents, respectively, have been provided by the corporation for the relevant consecutive two-year period. For the current compliance period, 2001-02 to 2002-03, the table shows all returns received by ORAC as at 30 June 2004. Corporations were not required to provide annual returns for 2003-04 until 31 December 2004.

The table shows a comparison of compliance rates to 30 June for each of the last four compliance periods.

The rate of compliance with the ACA Act for ATSIIS-funded corporations is 66 per cent, and the rate for OATSIH corporations is 62 per cent, both better than the average for Indigenous corporations under the Act and an improvement for both agencies on the previous year. There has been a significant increase in the number of corporations obtaining exemptions from some reporting requirements, in recognition of their lack of capacity to report. For example, if a corporation is not funded, an audited financial statement would not normally be required and an exemption would be granted.

Although the majority of corporations (66 per cent) remain non-compliant, during the year there was a 10 per cent improvement in the

figure for full and partial compliance (that is, providing at least three key reports required under the Act). This resulted from our analysis of non-compliance and implementation of a plan for appropriate follow-up. Many non-compliant corporations are not funded at all, hold land only and have no capacity even to apply for an exemption. Reforms to the Act will enable more streamlined exemptions for some reporting, such as exemptions for audited financial statements where warranted. The current system improvements already allow some streaming of corporations for exemption from some required reports and deadlines.

Arrangements with funding bodies have allowed us to establish which corporations



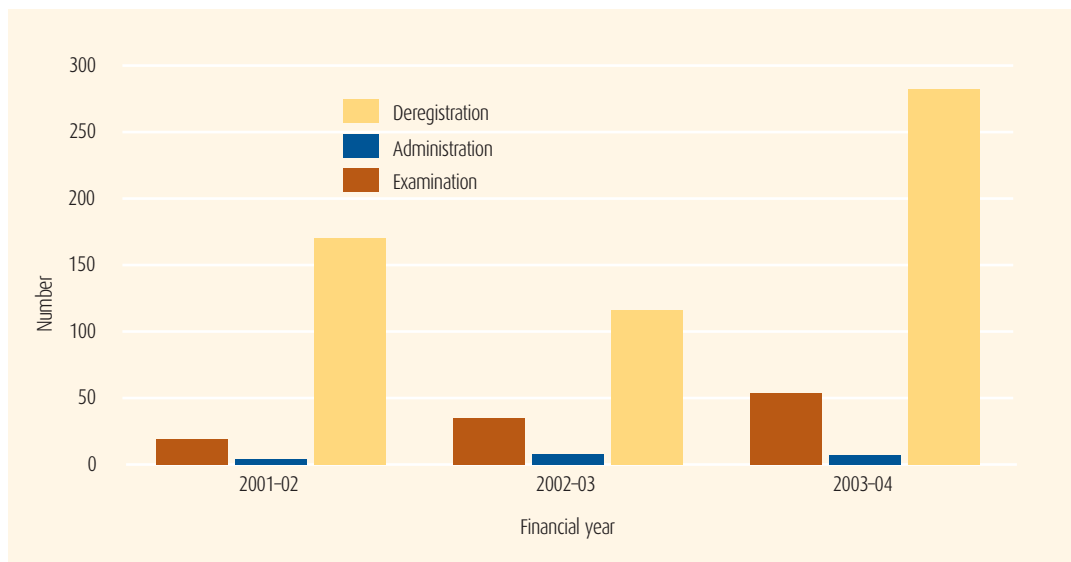
are technically non-compliant but which have, in fact, submitted reports required under the ACA Act to their funding bodies and are operating well. Avoiding duplicate reporting by corporations is an aim of the reformed Act.

Corporations that should be compliant under the Act were targeted for regulation, for example through formal follow-up and examination. Non-compliant corporations that are no longer operating were targeted for deregistration. In 2003–04, we initiated 54 examinations—an increase of 64 per cent on previous years. Corporations were selected for examination because of evident problems or as part of our program of rolling examinations, which uses risk analysis of such criteria as size, purpose, time since last examination, compliance status, and history of members’ or other complaints. As at 25 February 2005 the Registrar had instigated the following follow-up in the 54 examinations initiated:

- 4 (or 7 per cent) are operating well and require no further action
- 18 (or 33 per cent) remain under consideration for further action
- 25 (or 43 per cent) required rectification of less serious matters, involving the issue of a section 60A notice under the ACA Act
- 7 (or 13 per cent) raised serious matters and have been required to advise why an administrator should not be appointed, involving the issue of a section 71 notice under the Act; of these seven, administrators were subsequently appointed in six cases and one section 60A notice was subsequently issued
- none required the appointment of a liquidator.

The trends for examinations, administrations and deregistrations are shown in Figure 7 (and enumerated in Appendix A).

**Figure 7 Examinations, administrations and deregistrations, 2001-02 to 2003-04**



### **Case study Administrator helps a corporation sort out its very pressing problems**

In December 2003 staff from ORAC were asked to attend the annual general meeting of a corporation that administers a Community Development Employment Project (CDEP), with 275 participants, in a large regional township. ORAC staff reported that during the AGM the auditor informed the members that he did not want to continue with his appointment. He cited frustration caused by a continued lack of good financial record keeping and a lack of action by the governing committee to ensure that audit recommendations were implemented. Shortly after the AGM, the corporation's funding agency also expressed concerns about the corporation's financial position and the management of the CDEP, and advised that it intended to complete a major review of the project.

During the course of the review process, ORAC was contacted by the reviewer, who had established that the corporation was in a precarious financial position and formed the opinion that immediate ORAC intervention was needed. Amongst the reviewer's key findings, it had been established that tax obligations in relation to GST (goods and services tax) and PAYG (pay-as-you-go) arrangements had not been met.

Through the funding agency, ORAC arranged for additional governance checks to be added to the review process. Based on the findings of the report, ORAC appointed an administrator, after affording the corporation an opportunity to explain why an administrator should not be appointed.

The first report to ORAC by the administrator revealed that the corporation's financial position could be somewhat worse than first indicated, and that the exact position would remain unclear until it could be established whether certain claims against the corporation were genuine. The administrator also concluded that the rules in relation to membership were restrictive, in that all members of the corporation were members of the governing committee, and the committee had become complacent about its duties.

The financial affairs of the corporation will take some time to resolve. Meanwhile, to ensure the corporation keeps moving forward, the administrator has implemented a restructure of its operations, including the formation of a separate corporation to manage the corporation's business venture. A series of reforms aimed at ensuring all CDEP participants have meaningful activities with worthwhile training attached have also been implemented.

To assist the administrator through this process, ORAC has delivered two information sessions on good corporate governance for members of the new business entity. In addition, members from both corporations were recently invited to attend a three-day introductory corporate governance workshop which feeds into the Certificate IV Business (Governance) course.

Whilst there is still a fair amount of work ahead, there are some encouraging signs that a good outcome will be achieved on this occasion.

Appendix C contains a list of corporations for which examinations were initiated during 2003–04, and shows the follow-up action taken by the Registrar as at 25 February 2005 (not necessarily during 2003–04). Appendices D and E list the corporations issued with a section 60A notice or section 71 notice respectively during the year. Some of the actions listed were follow-up by the Registrar to examinations conducted during 2002–03.

Administrators are appointed only as a last resort, and we continued to place a stronger emphasis on requiring corporations to rectify matters of concern. Only seven corporations were placed under administration in 2003–04

(see Appendix F). This was similar to the number in the previous year and significantly less than the highest annual number of 17 in 1998–99. It should also be noted that administrations are usually received positively, once arrangements are settled, because they offer an alternative to liquidation and aim to achieve turnaround for struggling corporations.

ORAC began 2003–04 with 44 liquidations in progress and reduced this to 34 during the year (see appendices G and H). It remains our aim to further reduce the time that liquidations take.

We continued to initiate deregistrations when necessary, completing 284 during the year (see Appendix I).

### **Case study Corporations must account for GST**

A number of Indigenous corporations which receive grants from the Australian Government subject to the GST (goods and services tax) are failing to remit GST to the Australian Taxation Office (ATO) and are instead using the GST 'gross up' amounts on these grants for other purposes. The ATO may impose the general interest charge (GIC) and other penalties to unpaid tax debts. Some Indigenous corporations have become insolvent and subsequently been liquidated due to such debts.

This non-compliance with the GST relates to other common failings by Indigenous corporations, including systematic failures:

- to obtain tax invoices for purchases
- to treat correctly invoices that do not contain an ABN (Australian Business Number)
- to complete and/or submit quarterly business activity statements (BAS).

ORAC is working with the ATO on these issues and has agreed to a number of joint initiatives to better support corporations to meet their obligations under relevant legislation. These are initiatives such as encouraging education and training, ensuring that Australian Government Indigenous program funding agreements contain appropriate conditions related to taxation matters, and targeting large corporations for tax compliance.

### **Case study** No longer just a number—healing through the work of a new corporation

As the taxi made its way through the streets, our thoughts began to focus on the task ahead. This historic suburb would provide the setting for us to deliver an information session for a newly formed corporation.

As the taxi pulled up outside an old shopfront, we were eagerly greeted by Ray, who had to raise his voice to be heard over the sound of a jackhammer pounding its way through the old concrete path immediately in front. Ray, unaffected by the noise, chatted away as he led us into the old building which would serve as our venue for the day.

The venue had seen better days and had a happy feel about it. Signs of its dual purpose as a meeting place and the local Aboriginal church were evident.

We began to set up as the directors of the corporation came together. While the ages of the directors varied, they all had one thing in common: these men had spent many of their formative years in a children's' home.

Ray told us, 'The billy's on the boil out back, and tea and bikkies have been scrounged up'. As we sat around having a 'cuppa', the men spoke about their time at the children's' home. Each had a different story to tell, but it was evident that while they could now laugh about many of the things that had happened to them, their time there had been difficult.

One of the saddest revelations was that while they were residents in the home the boys were not allowed to call each other by name. Each child was issued with a number upon arrival, and referred to by that number for the rest of their time at the home. The men revealed how even brothers were forced to refer to their siblings by number. They were still able to recall their numbers, even though in some cases the events had taken place 40 years ago.

The directors then told us of how at the end of their time in the children's home they had been left with little education, no trade skills and no money. They recalled how the only thing they had been given was a warning to not try to make contact with their former families; they were told that their families did not want them. The men were also cautioned not to make contact with other Aboriginal people, and told that they didn't want them either.

So how does ORAC fit into this picture? What is our role here?

What is evident is that this group of men are determined to get their lives in order and help the hundreds of others who passed through the children's home over the years. The directors have found that some former 'boys' do not want anything to do with the corporation because it brings back too many painful memories. Many others, however, have welcomed the opportunity to get together in social activities, to visit the home to try to come to terms with the pain they suffer, and to tell their stories to their families today.

They have formed a corporation in the hope that one day they will secure financial assistance for their endeavours, and the corporation provides them with a legal vehicle for this purpose. Our information session helped them to get started on the right foot and to learn more about their roles, responsibilities and rights. They wanted to make sure their hard work would not come to grief because of a lack of understanding of their governance responsibilities. At the end, all the directors expressed gratitude for our help, saying they had learnt a tremendous amount, but recognised it was only the start of their learning process.

Feedback after the session was moving. One director came to us, shook our hands, and spoke with tears in his eyes and a wavering voice. He said how much he appreciated the fact that we had gone to the trouble of learning everyone's names and addressing them by name each time we spoke to them.

We left this group with high hopes that what we had done would in some small way assist them to achieve their goals and ultimately improve their lot in life. For us it was a privilege to be able help, and we will follow up with further support in the future.



*A typical children's home dormitory, circa 1962.*

## Information and training

As part of our training program, ORAC provides non-accredited one-day information sessions on request. Our staff visit many corporations, Australia-wide, to assist with the holding of general meetings and conduct information sessions with committees. Refer to Table 4 for details of sessions delivered in 2003–04, and to the case study on page 40.

We also deliver a rolling program of three-day workshops on corporate governance, that provides participants with a pathway into certificate and diploma courses delivered by contracted registered training organisations (RTOs).

Overall we delivered 56 non-accredited information and training days in 2003–04, a significant increase from 46 in the previous year.

In addition, we worked on arrangements for a national roll-out of the three-day workshops, and adaptations to modes of delivery to better meet needs of remote areas.

In 2003–04 five Certificate IV in Business (Governance) programs were implemented, in four locations, during the year. The Tropical North Queensland Institute of TAFE, an RTO contracted by ORAC, conducted the course in Cairns, Townsville, Brisbane and Thursday Island. The course usually consists of four Monday to Friday blocks totalling 125 hours, including assessment, and follows the three-day introductory workshop mentioned above. As at 25 February 2005 48 participants (mostly women from Queensland) had graduated.

The fifth Certificate IV course was piloted by the Maningrida Jobs, Education and Training Aboriginal Corporation in the Northern Territory, and involved developing sound practices for delivering the course to more remote Indigenous peoples. This pilot is due for completion and evaluation in 2005.

In 2004–05, we will investigate options for the delivery of diploma level courses in corporate governance. We will also carry out an evaluation of the information and training program.

**Table 5 Information sessions and three-day workshops conducted, 2003-04**

<b>New South Wales</b>	
Narrama Multi Service Aboriginal Corporation	Narooma
Katungal Aboriginal Corporation Community Medical Service	Narooma <sup>a</sup>
Twofold Aboriginal Corporation	Eden
Pius X Aboriginal Corporation	Moree
Yalbillanga Boori Day Care Centre Aboriginal Corporation	Cowra
Weigelli Aboriginal Corporation	Cowra
Gerringong Housing Aboriginal Corporation	Gerringong
Gunangar Aboriginal Corporation for Housing	Queanbeyan
Armidale Building Aboriginal Corporation	Armidale
Armidale Employment Aboriginal Corporation	Armidale
Workshops open to all corporations in the region, including corporations registered under state legislation	Coffs Harbour Sydney <sup>a</sup> Dubbo
<b>Queensland</b>	
Murrabinbee Aboriginal Corporation	Rockhampton
Workshops open to all corporations in the region, including corporations registered under state legislation	Thursday Island <sup>a</sup> Brisbane <sup>a</sup> Townsville Cairns Mt Isa
<b>South Australia</b>	
Workshops open to all corporations in the region, including corporations registered under state legislation	Adelaide
<b>Western Australia</b>	
Mulan Aboriginal Corporation	Halls Creek
Nyunbuk Moorit Booja Aboriginal Corporation	Gibbigunya Farm, via Quindanning
Kununurra Region Economic Aboriginal Corporation	Bells Springs Mud Springs Wuggabun Nulleywah Jimbulun Goose Hill Mirrawong/Gadgawong
Workshops open to all corporations in the region, including corporations registered under state legislation	Perth <sup>a</sup>

<sup>a</sup> Two workshops were conducted.

Note: No workshops were conducted in the Australian Capital Territory, the Northern Territory, Victoria or Tasmania.

*Cairns graduation ceremony. Back: (l to r) Corinne Daniel, Gregory Law, Gavin Bassini, Josey Dickson, Laney Deakin, Roberta Stanley, Kathleen Neal. Middle: Ann Clark. Front: Rhonda Brim, Victor Maund, Noralyn Harris, Vanessa Deakin*



## Case study Certificate skills breed confidence in Queensland

During 2003–04 the Tropical North Queensland Institute of TAFE delivered ORAC’s Certificate IV in Business (Governance) course in Brisbane, Cairns, Townsville and Thursday Island. At their graduation ceremonies in Cairns and Townsville, students praised the knowledge and skills of their trainer, Graeme Hooper, and his ability to relate to their problems, challenge them, and form close bonds within the group.

At the Cairns ceremony, graduate Ann Creek thanked everyone associated with the training and described its impact on participants:

*The governance course has made us aware of the great responsibility we carry as board members, when we sit on our communities’ organisations and councils. Each and every one of us is proud to have completed this course, and know that we can make positive contributions when making changes and strong decisions within our organisations and councils towards their successful operations.*

*It has greatly developed our self-esteem. We are more confident in participating in the decision-making processes and will ensure that these decisions are implemented for the betterment of our communities, our clan groups and our families.*

*But more importantly, it has taught us confidence within ourselves as Indigenous people, to encourage other committee members to enrol in the governance course, to move forward, make choices as board members and to maintain our cultural identity to achieve social justice and true self-determination.*

*We’ve made new friends and have developed a strong network system within our group. At the end of each adventure, a sadness blankets us; the friendships that we’ve formed and the thought of never seeing each other again weighs heavily on us, but we all know that through our strong network, a commitment of support for each other has been established.*

*We will leave here to demonstrate that we are efficient and professionals and we can ‘manage in two worlds’!*



*Mr Graeme Hooper, Tropical North Queensland Institute of TAFE’s Leading Vocational teacher (delivers the Certificate IV in Business Governance) with Dr Stuart Phillipot, the Registrar’s Consultant assisting with ORAC’s Remote Area Training Strategy.*



## Case study Local language speeds learning in Maningrida, Northern Territory

In 2003–04 ORAC selected the Maningrida Jobs, Education and Training Aboriginal Corporation (MJETAC) through tender to deliver three units of the Certificate IV in Business (Governance) course in Maningrida.

Dialogue learning uses local vernacular speakers, trainers with sound knowledge of the subject area and a discursive teaching process that enables participants to analyse, compare and contrast, Indigenous (An-Gugarliya) and non-Indigenous (Balanda) systems of governance.

The three units in the program covered managing the roles and responsibilities of a board member, using the constitution and developing the organisation's budget.

One successful participant was Helen Djimbarrwala Williams, a Kunibidji/Kunbalang woman and traditional owner and Jungay (traditional manager) for the Maningrida area. Helen is also an executive member of three boards: Maningrida, the Northern Land Council and Northern Building Consultants.

Helen says the course has helped her gain a solid understanding of what good governance is all about:

*Some of the challenges that I faced in doing this course were managing in two worlds and balancing family and cultural responsibilities. Getting the community to realise how important governance training is was hard. The CEOs have responded in different ways—some are working with us and some have felt threatened. Fitting the training in around all of the meetings that I have to go to was hard, but the Maningrida JET Centre was very flexible and understanding.*

*Some of the main changes that have come from the training are that the participants are a lot more confident. We feel stronger in our knowledge of governance.*

*Meeting procedures have improved and some managers have tried different ways of presenting financial and corporate information to us, in ways that are easier for us to understand. In the past, we were often just shown plans and not properly involved in their development but now we are more involved in the strategic planning.*

*We have more problem-solving skills because we have learnt a lot about the different laws and Acts that affect organisations. Some things that were happening that were wrong, like quorums for meetings, we have addressed and now we know how many people must be at a meeting for it to be legal.*

*I am more patient now that I have a better understanding of what is involved in running an organisation. When we have had a problem we know who to talk to for advice. Through our application of governance we have addressed some of the issues that were stopping our people from working and training. We ask a lot more questions ...*

*Since completing the training, I have now started work at the JET Centre and hope to be able to deliver governance training in the future in my own languages.*

With ORAC's assistance, MJETAC is developing a program to deliver the remaining units of the Certificate IV course in 2004–05. Its delivery of corporate governance training will aid the development of a remote-area policy and strategy suitable for other remote sites.

## Review of the ACA Act

The final report of a review of the *Aboriginal Councils and Associations Act 1976* (the ACA Act) was released in December 2002, after extensive and independent research and consultation over two years. A key finding was that a specific Indigenous incorporation statute is still needed to meet the special risks and requirements of Indigenous corporations, but that the Act needs to be modernised to meet contemporary needs. An up-to-date summary of the proposed reforms can be found at our website, and in Appendix K.

On 15 January 2004, the Minister announced that the Australian Government would reform the ACA Act. At the end of the financial year, a bill was being drafted for consideration by parliament in 2004–05.

## Review of ATSIC

ORAC made a preliminary submission to the government-initiated review of the Aboriginal and Torres Strait Islander Commission (ATSIC). Following the release of the review's public discussion paper in June 2003, we made a further submission.

The final report of the review panel, *In the hands of the regions—a new ATSIC*, was released in November 2003.

Among the recommendations of the review, four concerned the work of ORAC. A summary of ORAC's response is below.

## RECOMMENDATIONS 50 AND 51: TRAINING AND CAPACITY BUILDING

*50. The function of governance training and capacity building of Aboriginal and Torres Strait Islander organisations should not be performed by ORAC.*

*51. ATSIC should increase the level of governance training and capacity building of Aboriginal and Torres Strait Islander organisations and provide it through appropriate training organisations.*

The review recommended that ORAC not do training and capacity building, because of potential conflict of interest between the roles of trainer and regulator. Therefore, the review recommended that ATSIC and training bodies do this work.

ORAC is aware of the potential conflict of interest between its regulation work and some activities, such as conflict mediation, and avoids those activities. However, there is no conflict of interest in training activities, because the training program does not advise corporations or individuals associated with them about specific corporation matters. The training program educates participants as individuals about best-practice corporate governance, and tests their competencies.

Where specific corporation matters arise during training, they are referred to the appropriate ORAC officer for follow-up according to the ACA Act. A senior ORAC officer attends all training to provide follow-up as necessary.

Many regulators are acutely aware of the need to work on preventing non-compliance, and do substantial training for this reason. For example, the Australian Taxation Office, the Australian Consumer and Competition Commission and other corporate regulators conduct training. Several are exploring coordinated training arrangements with ORAC.

The report notes feedback to the review indicating that ORAC's training (which was piloted in Queensland and the Torres Strait during 2003, and will be conducted in the Northern Territory, Western Australia and capital cities during 2004) is well received and supported.

The need for training and capacity building is so great that we welcome a recommendation for ATSIIS to also do more, provided it has the funds available.

ORAC's training is a small but highly targeted program intended to complement the very large program funded by the Australian Government through the states. Our training is to be reviewed and evaluated in mid-2005, and ORAC will ensure that the issue of conflict of interest is covered in the terms of reference for that review.

**RECOMMENDATION 52: INCORPORATION UNDER GENERAL CORPORATIONS LAWS**

*52. Consideration should be given in the longer term to having all Aboriginal and Torres Strait Islander organisations incorporated under general corporations laws.*

The issue of whether the ACA Act should be phased out, and corporations currently covered by it moved elsewhere, was considered in the recent independent review of that Act (see page 48). The review found that, at this stage, reforms to the Act are needed to ensure the appropriate level of regulation and support for many Indigenous corporations, particularly those in remote areas.

In its submission to the review of the Act, the Australian Securities and Investments Commission (ASIC) expressed reluctance for Indigenous corporations to be transferred to the *Corporations Act 2001* if those corporations required any special assistance.

Indigenous corporations under the ACA Act largely fall 'under the radar' of ASIC because of their relatively small size. However, appropriate regulation and support is required because the collapse of Indigenous corporations can have devastating consequences, out of proportion to the corporations' net worth, for the communities they serve. Most state and territory regulating bodies do very little regulation of Indigenous corporations because of funding and legislative problems. ORAC works closely with the national forum of incorporating agencies and is developing a memorandum of understanding with ASIC to facilitate a coordinated and integrated approach to Indigenous corporations in Australia.

Proposed changes to the Act will enable the Registrar to refuse to incorporate—for example, where a group would be more

appropriately incorporated under another Act because of the group's size or purpose.

The ATSIAC review's recommendation 52 may arise partly from a misconception that ORAC promotes incorporation, producing an unsustainable number of Indigenous corporations. While there will always be a legitimate need for Indigenous corporations, we agree that some rationalisation is required: the current number of corporations in some regions and sectors is unsustainable.

We are in the process of identifying inactive corporations for deregistration, and expanding our pre-incorporation services to help groups consider alternatives to incorporation where appropriate. However, groups can easily incorporate under other state and territory incorporation regimes.

ORAC's experience is that the policies and programs of governments and funding bodies have historically driven the high number of corporations; the monthly tracking of applications for incorporation tends to follow funding cycles of the big funding agencies. Central agencies of governments, audit offices and funding bodies need to change their focus on requiring incorporation for every group and sub-group receiving public funds.

There are many alternatives to the status quo, such as allowing small groups to receive funds through capable and responsive resource or regional agencies. ORAC's proposed new legislation offers ways to rationalise the number of corporations, including easy amalgamations and more support for regional

and resource corporations that can service and support non-incorporated groups.

ORAC also proposes that we be given the power under the new Act to call conferences to find solutions to systemic problems, including the growth in numbers of Indigenous corporations, reporting back to the Minister directly and through our annual report.

### **RECOMMENDATION 53: BUSINESS TURNAROUND MECHANISM**

*53. The Aboriginal Councils and Associations Act 1976 should be amended to allow for an appropriate business turnaround mechanism to be used by organisations.*

ORAC understands that recommendation 53 is referring to business turnaround mechanisms similar to those under Chapter 11 of the Bankruptcy Code in the United States (Chapter 11), where voluntary administration is not available as it is under the *Corporations Act 2001* (the Corporations Act) and the ACA Act in Australia. Key features of the Chapter 11 bankruptcy mechanism are that directors can apply for bankruptcy even if the corporation is solvent, and once the mechanism is triggered there is a moratorium on debt recovery. Courts have a supervisory role. Unlike voluntary administration under the Corporations Act and the ACA Act, the Chapter 11 mechanism leaves the directors in control, but not subject to the duty to avoid trading while insolvent.

Two Australian committees are considering the potential for adoption in Australia of a business turnaround mechanism in line

with that contained in Chapter 11. The Joint Parliamentary Committee on Corporations and Financial Services is inquiring into improving Australia's corporate insolvency laws, and the Corporations and Markets Advisory Committee is preparing a report on rehabilitating large and complex corporations in financial difficulty.

Both committees have produced discussion papers, and are yet to produce their final reports. However, submissions made to both inquiries to date (by a broad cross-section of stakeholders) have largely opposed the adoption of a Chapter 11 mechanism in Australia.

It would be premature for ORAC to give a considered position until the committees' final reports have been produced. However, ORAC's preliminary view is that adopting a Chapter 11 business turnaround mechanism would probably not be appropriate for Indigenous corporations incorporated under the ACA Act.

It would certainly not be appropriate for the Act to adopt the mechanism until the question of whether the Corporations Act should adopt it has been resolved: one of the objectives of the reform of the ACA Act is to improve alignment with the Corporations Act.

Moreover, if Indigenous corporations operating under the ACA Act were the only corporations to limit creditors' rights in this way, their access to credit might be jeopardised. For this reason, we believe that any statutory change to the Act to support improved business

turnaround through such methods would best be done at the same time as similar changes to the Corporations Act.

Further, ORAC questions whether a Chapter 11 mechanism is necessary or appropriate to promote business turnaround in Indigenous corporations. A compulsory moratorium on payment of debts is less relevant to Indigenous corporations than to large and complex mainstream corporations. (On this point, ORAC notes that the Corporations and Markets Advisory Committee inquiry is limited to considering whether the Chapter 11 mechanism is suitable for 'large and complex enterprises'. The implication is that the mechanism is not appropriate for smaller corporations.)

In practice, the most significant creditors of Indigenous organisations are government agencies, which are usually ready to agree to a moratorium where the community can benefit. And, where cost-benefit justifies it, ORAC will initiate its unique external administration process, which aims for business turnaround in most cases. Winding-up and liquidation are used only as a last resort. Practical business turnaround processes are therefore in effect available under the Act, and similar mechanisms will be provided for under the new legislation.

## Improving corporate governance

All ORAC's work strives for improved corporate governance in Indigenous corporations. Our goal is to enable effective decisions in Western law, while maximising Indigenous cultural legitimacy for that decision making.

In Western law, corporate governance arrangements are those through which an organisation directs and controls itself and the people associated with it. Corporate governance is primarily the responsibility of the board as a group. The board performs its duties with the support of management and staff; in line with members' wishes, the constitution and the law; and, ideally, in partnership with stakeholders.

### **POLICY ON GOOD CORPORATE GOVERNANCE**

A continuing project in 2003–04 was the development of a policy on good corporate governance to inform ORAC's work, and to share best corporate governance practices with others. The policy, which ORAC aims to complete in 2005–06, will be based on mainstream principles and on success factors relevant to Indigenous corporations. The principles and success factors will be drawn from evidence-based research in Australia and overseas.

The policy emphasises that successful governance hinges partly on members clarifying for themselves why the corporation exists and then working to make sure that this is acted on by the corporation. Widespread expectations and assumptions, particularly by funding bodies, that Indigenous corporations

will somehow meet all the governance needs at a site and be a central community power, are unrealistic and will overload a corporation and its board. This overloading also can raise legal issues about the validity of a corporation's decision making. ORAC's policy will recognise that there are potentially many dimensions, even unique dimensions, to Indigenous corporate governance, and members need to be clear what their corporation does and does not do in all the dimensions in their locality. Corporations can carry a heavy and complex load, and need to manage risk continuously.

Another key factor for building success is recognition that the size of the corporation makes a big difference to how it must conduct itself. In small corporations or associations with very little funding and few liquid assets, informal arrangements can work well. Medium to large corporations (that is, those with income over \$100,000) need to formalise their practices more if they are to survive and be successful. The trend towards growth in the size of Indigenous corporations means that the process of formalising corporate governance objectives and practices as corporations grow is important and a key to improving governance in the near future. At the same time, small corporations should not be overburdened with unnecessary red tape. Reform of the ACA Act will allow ORAC to 'stream' corporations for reporting and compliance with aspects of the legislation.

Medium and large corporations need more formal arrangements in place if the board is to

do its job well. The focus of boards should be on clarifying the objectives of the corporation with members and then determining and driving the resulting goals. Mapping clearly the direction and the roads that the corporation will take is a big job for the board, and should not be underestimated. The board also needs to focus on overseeing the achievement of the goals through management, including by having a say in the employment of the chief executive officer and keeping a constant eye on risks and whether they are being managed well. Boards of medium to large corporations need to avoid micromanaging (a common mistake); instead, they should steer.

Accountability to members by board members is also a key to building success. Most corporations under the ACA Act have limited liability, which means that members do not usually have to contribute to the debts of the corporation if it fails. However, board members can be held liable if they have not fulfilled their duties as board members. The core duties of board members, which need to be understood by and required of them, are:

- loyalty and good faith—acting in the best interest of the corporation as a whole, avoiding conflict of interest, not putting personal interests first, and not misusing their positions in any way
- care and diligence—acting thoughtfully and carefully in the work of the committee
- not trading while insolvent, that is, when the corporation is unable to pay its debts when they fall due.

The reforms to the Act will clarify these duties of board members and extend them to senior managers.

The other ‘pillars’ of ORAC’s proposed policy on good governance are:

- respect for members’ rights
- agreement about and use of effective internal dispute resolution mechanisms for corporations
- availability of timely and accurate reporting to board members and members
- self-monitoring
- an agreement on to whom accountability is owed, which is put into practice
- agreed decision-making principles
- the need for the board to be equally representative of various interest groups, balanced with other requirements for skills and independence
- transparency in structure and decision making
- active and persistent conflict-of-interest management, particularly by the board as a whole and individually
- up-to-date and relevant goals and strategies for the corporation.

#### **CORPORATE GOVERNANCE TRAINING FORUM WITH RECONCILIATION AUSTRALIA**

In June 2004, ORAC organised and co-hosted a one-day corporate governance training forum with Reconciliation Australia. The forum brought together a small group of

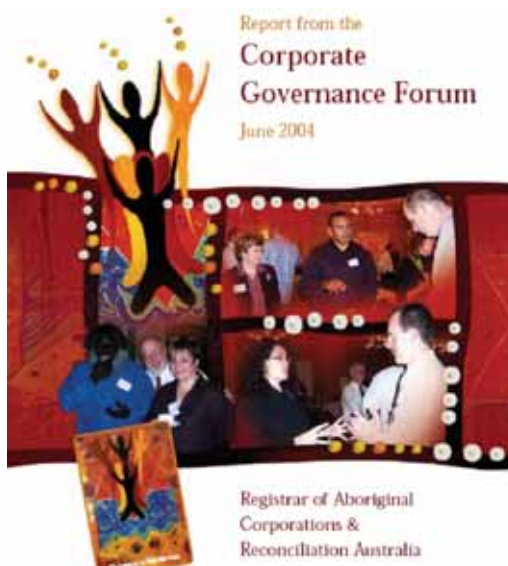
people representing a cross-section of training practitioners and those involved in developing and implementing training strategy and policy. The aim of the forum was to identify and explore the issues facing each group, share knowledge and expertise, examine the implications for Aboriginal and Torres Strait Islander corporations, and contribute to a report for public circulation and possible action.

The outcomes were:

- a report containing 16 recommendations and a record of activities, discussions and decisions to be disseminated widely, including to all participants
- a greater awareness by participants of the interplay between strategy, policy and training, and between the public, private and philanthropic sectors
- a network for participants to use in the future.

The forum agreed that corporate governance training is fundamental to healthy, sustainable organisations and communities, and essential if Indigenous people are to partner with governments to address identified priorities. Training is a long-term engagement, not a one-off intervention. It is closely related to the development of individual leaders and the uptake of broader skills such as literacy, numeracy and finance skills. Effective training needs to work with cultural and local concepts, practices and history.

The forum report has been distributed to participants and other interested parties, and is



*The report from the corporate governance forum, which is available online at [www.orac.gov.au](http://www.orac.gov.au).*

as measured by examinations against the good governance policy—to better support members of corporations and funding agencies.

#### **ASSESSMENT OF CORPORATE HEALTH**

Examinations conducted by ORAC assess the health of the corporate governance of corporations, and are undertaken on a rolling basis. The good governance policy outlined above, when completed, will be used to broaden the scope of examinations to assess governance practices and risks more comprehensively.

ORAC's aim is to provide report cards on the health of corporations on the Public Register—as measured by examinations against the good governance policy—to better support members of corporations and funding agencies.



## PEOPLE AND SYSTEMS

ORAC continues to focus on building the skills of its people to improve the quality of its service and in anticipation of reforms to the ACA Act. Our enhanced workflow and information management system—the Electronic Register of Indigenous Corporations (ERIC)—has assisted staff in a number of areas, particularly by highlighting corporations which may require assistance or review. ERIC has also provided clients with faster and more streamlined services. Improved management information tools, including the graphs in this report, are a product of ERIC.

A project to measurably improve ORAC's services, processes, systems and procedures was progressed during 2003–04 and is expected to be completed in 2005. The project involves mapping and measuring current processes, then identifying and implementing improvements, including those needed to align ORAC with reforms to the Act. It will also identify key strategies for sustaining the improvements.

During 2003–04, ORAC successfully implemented processes to improve our records management systems and reduce the number of non-compliant corporations, in line with previous audit recommendations (see page 38).

## OUTLOOK

The proposed reforms to the ACA Act support an expanding leadership role for ORAC in identifying and responding to opportunities and risks in the Indigenous corporate sector across Australia. We have a key role in supporting initiatives of all governments to build more 'connected' government responses.

About half of Australia's Indigenous corporations are incorporated under the ACA Act. ORAC has extensive knowledge, skills and data on these corporations and associated systemic issues, coupled with unique statutory powers to assess and intervene where necessary, and a growing capacity-building program, including accredited training. We are in a unique position to share our knowledge, to identify opportunities and risks in the Indigenous sector, and to deliver and facilitate coordinated and effective responses at local, state/territory and national levels. To perform this role, we are currently implementing many changes to our operations, processes, systems and relationships.



## Our Organisation

## Corporate and operational plans

ORAC has a three-year corporate plan and a service charter in place until the end of 2004. In summary, they established ORAC's performance priority as providing quality services in line with our statutory functions under the *Aboriginal Councils and Associations Act 1976* (the ACA Act).

The corporate plan, available as a pamphlet and on our website, outlines our role and vision. It also sets out:

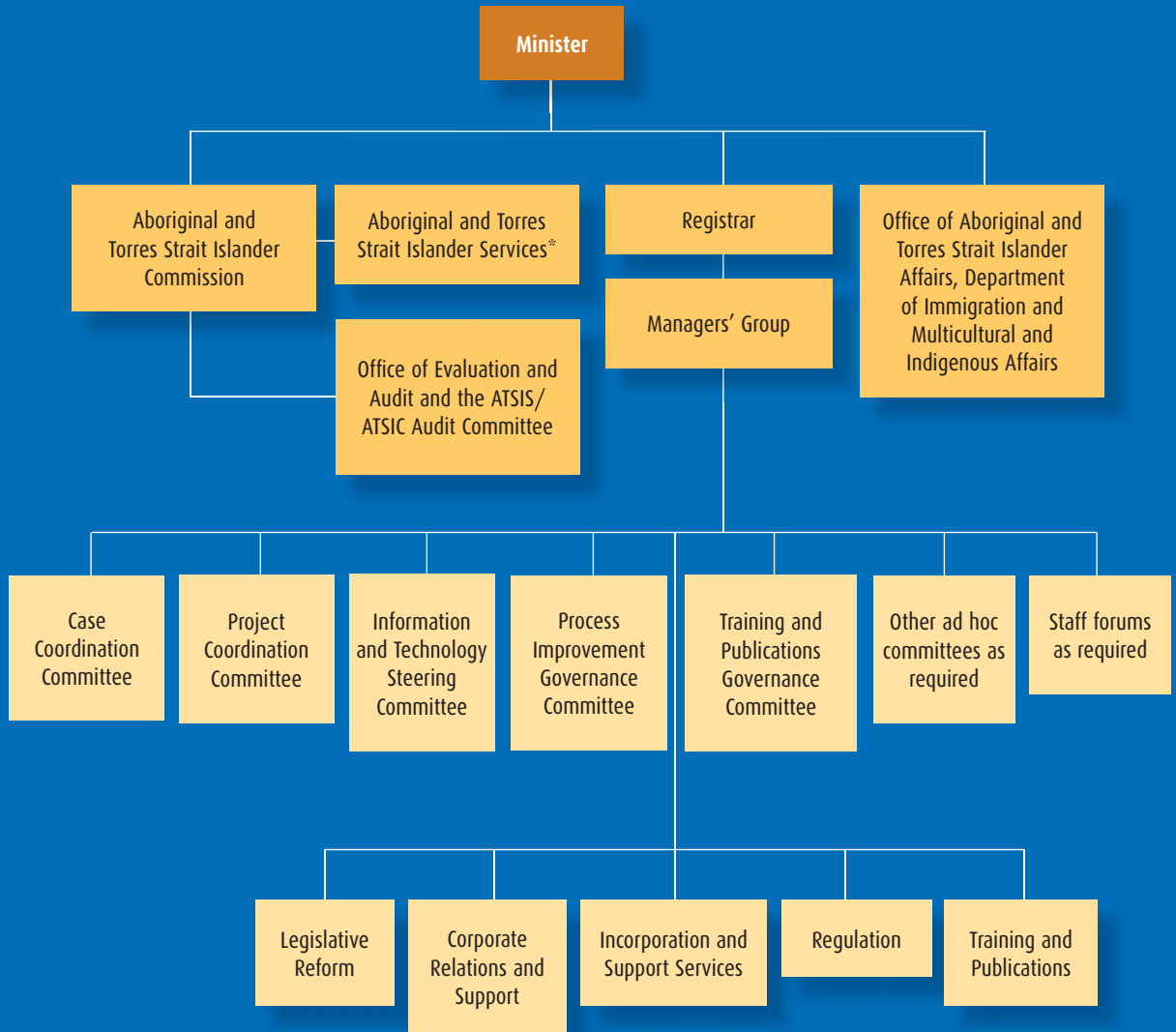
- our corporate direction
- our client focus
- our approach to regulation and intervention
- our commitment to information and training
- our strategies to deliver ORAC services
- the achievements we sought by the end of 2004, all of which have been progressed and are broadly reported against at the front of this report, under 'Our Performance in 2003–04 at a glance'.

## Portfolio arrangements

The Registrar and staff were employed by Aboriginal and Torres Strait Islander Services (ATSIS) (previously the Aboriginal and Torres Strait Islander Commission (ATSIC)) until 1 July 2004, when they became employees of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) following the Australian Government's decision to make significant administrative changes.

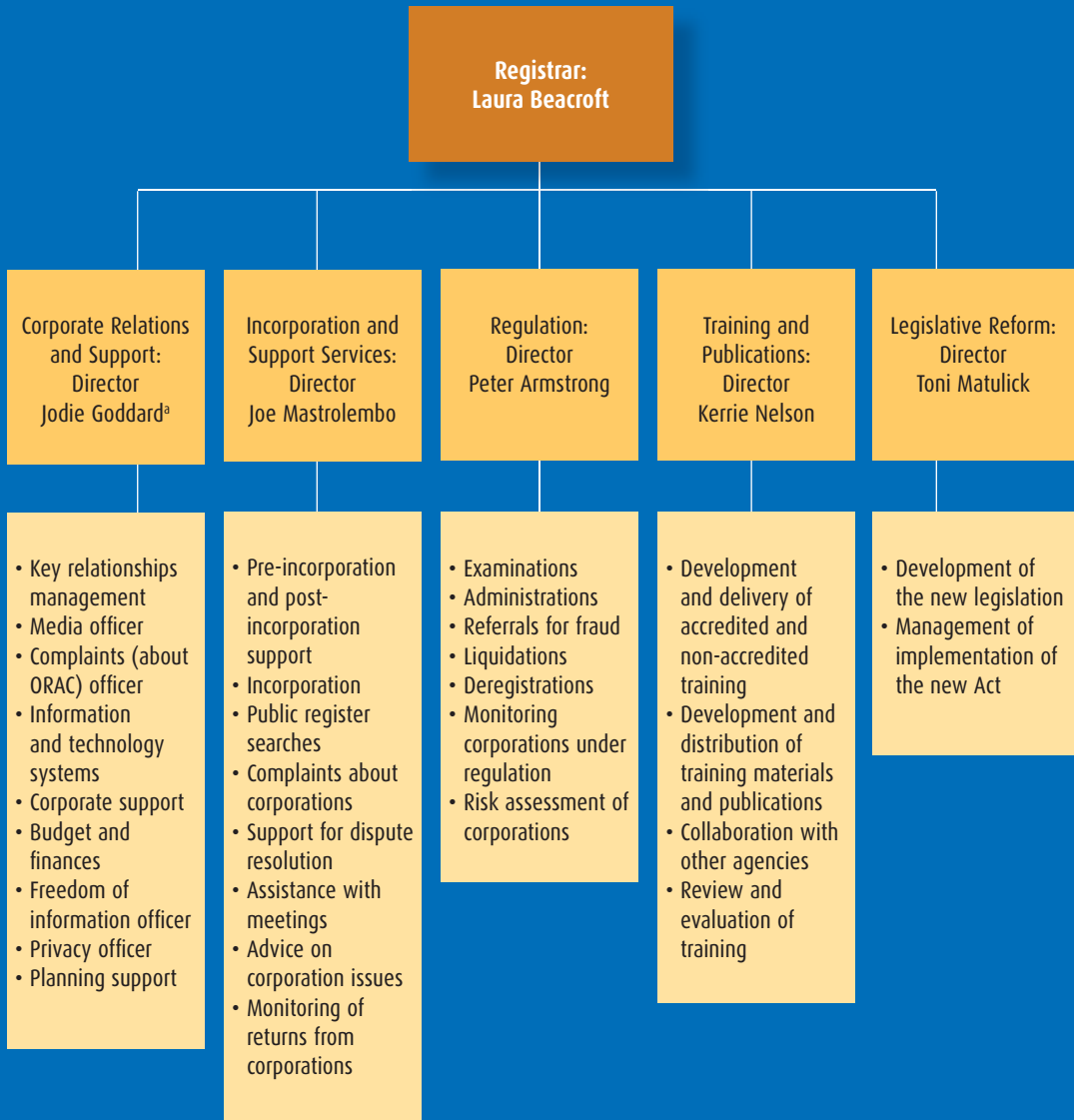
The Registrar was a member of the ATSIS Corporate Leadership Group for the purposes of participating in decisions on administrative matters. Various arrangements, including a formal agreement, were in place to enable ORAC to manage possible tensions and conflicts in its placement within ATSIC/ATSIS. Similar arrangements are being put in place to support the placement of the Registrar and ORAC within DIMIA.

**Figure 8** ORAC's corporate governance, 2003-04



\* Note: The Australian Government decided to create an independent executive agency, Aboriginal and Torres Strait Islander Services (ATISIS), into which the majority of public servants employed by ATISIC were transferred on 1 July 2003. ATISIS was established on an interim basis to implement a 'separation of powers' from ATISIC. On 1 July 2004, ATISIS programs were absorbed by other Australian Government agencies and ORAC became part of the Department of Immigration and Multicultural and Indigenous Affairs.

**Figure 9** ORAC's structure, 2003-04



a Garry Fisk to August 2004, Clive Lambert to January 2005 and Jodie Goddard from January 2005.



*ORAC's Administrators, like ORAC staff, are committed, hard working and resourceful professionals. Here one deals with a problem on his way to a corporation.*

## Structure

During 2003–04, ORAC comprised five sections: Corporate Relations and Support; Incorporation and Support Services; Regulation; Training and Publications; and Legislative Reform. The functions of each are outlined in Figure 9. At 30 June 2004, ORAC had an average staff level of 28, and an actual total staffing level of 36 (because some ORAC staff are part-time or temporary).

## Staff

ORAC staff are exceptionally committed and hard working. This is well illustrated by their readiness to assist clients, who are mostly volunteers in their corporations by performing their roles outside normal working hours, out of hours and on weekends.

ORAC staff are highly skilled, and do significant ongoing training. Many staff members are professionals, with legal, accounting, anthropology, teaching or other qualifications.

ORAC has a mature staff with many years experience at our office, in the Australian Public Service and elsewhere. We have very little staff turnover, allowing us to retain the technical and corporate expertise that we have built up over the years. During the year, ORAC significantly increased its proportion of young professional staff to respond to the aging of its workforce. Details of ORAC's staffing profile are provided in Table 6 on p.64.

ORAC has a strong team culture, with an emphasis on case coordination and



*First four graduates of the Company Directors Diploma, left to right: Garry Fisk, Lorraine Radovan, Bob Powell, Peter Armstrong. Eleven ORAC staff members have graduated with the diploma.*

multiskilling. ORAC staff are each covered by a performance agreement outlining the office's shared behaviours, agreed goals for the year, and a learning and development program. The shared behaviour framework is based on positive behavioural modelling, and embodies the seven principles of cultural awareness and respect, commitment and passion, honesty and transparency, building relationships, enabling and strengthening others, a focus on performance, and delivery of outcomes.

## STAFF TRAINING AND DEVELOPMENT

ORAC is always eager to develop and enhance the skills of staff, and during 2003–04 a number of staff undertook relevant tertiary studies and continuing professional education. Staff members also attended a range of courses linked to ORAC services and outcomes.

To build leadership skills, self-awareness and

more adaptive work practices among the more junior staff, a number of them participated in training programs designed to provide them with constructive feedback on their performance from their clients, peers and supervisors, and opportunities to build key skills. Other important staff training during the year included whole-of-office sessions on identifying and managing conflict of interest within ORAC, cultural and language awareness, best-practice standards of service and reforms to the ACA Act.

Staff also participated in various ways in ORAC's corporate governance training for clients, both experiencing the training and being involved in its refinement and improvement. This means staff can now better inform clients about our training goals, products and approaches.

Staff also undertook training in corporate governance delivered by the Australian Institute of Company Directors. It involved a non-accredited New Directors Program followed by an accredited Company Directors Diploma (as described in the case study below). All new ORAC staff are encouraged to do this diploma course within three months of joining ORAC. As at 25 February 2005 11 of our 36 actual staff members (or 31 per cent) had achieved the diploma.

### **Case study** Doing what we say—ORAC staff sharpen their board room skills

During 2003–04 ORAC celebrated many graduations. Up to 25 February 2005 48 clients have graduated from ORAC's Certificate IV in Business (Governance), and 11 out of 36 ORAC staff members have received the Company Directors Diploma accredited by the Australian Institute of Company Directors.

Developing our staff has always been valued as a necessary component of quality services. The Company Directors Diploma is the leading Australian course on the duties and responsibilities of directors, and is designed to challenge participants to go beyond compliance to improve their effectiveness in corporate governance. During 2003–04, many ORAC staff members attended the six-day Company Directors Diploma course. Eleven have since graduated, having completed the exam and assignment.

Peter Armstrong, Director of Regulation at ORAC and one of the first graduates, believes that in order to promote good governance to corporations, staff need to be aware of the newest developments in corporate governance, including the most up-to-date financial reporting requirements and latest strategy models. As Peter says, 'ORAC staff should have excellent knowledge about good corporate governance so they are capable of better serving ORAC clients.'





*Masepah Banu and Richard Hampton, staff graduates in Certificate IV in Business (Governance)*

In addition, two ORAC staff are participating in the Certificate IV in Business (Governance) course currently being delivered by Tropical North Queensland Institute of TAFE on behalf of ORAC. Masepah Banu and Richard Hampton, after their first week doing the modules on roles and responsibilities of board members, using the constitution and managing meetings, found the course 'enjoyable and rewarding'.

### **AUSTRALIAN WORKPLACE AGREEMENT AND CERTIFIED AGREEMENTS**

The Registrar is employed under an Australian Workplace Agreement. Although not under direction for statutory decisions, the Registrar is subject to performance management and review in administrative matters. During 2003–04, the Registrar had a performance agreement as part of an Australian Workplace Agreement negotiated with the Chief Executive Officer of ATSIS.

Other ORAC staff were covered by the Aboriginal and Torres Strait Islander Commission (ATSIC) Certified Agreement 2003–2004 until 30 June 2004. Since 1 July

2004, they have been covered by the DIMIA Certified Agreement 2001–2004, which will apply until a separate Office of Indigenous Policy and Coordination (OIPC) and ORAC certified agreement has been formalised. Negotiations will conclude in 2005.

### **OCCUPATIONAL HEALTH AND SAFETY**

An overview of departmental occupational health and safety (OH&S) initiatives is provided in the ATSIS annual report for 2003–04. Complementing this work by ATSIS, ORAC actively promoted good OH&S practices during the year. After moving to new premises in early 2004, all staff had OH&S workstation assessments, including eyesight and fitness tests. ORAC has assisted staff to follow through with the test recommendations. Concerns about the air temperature in the new premises have led to an upgrading of the air-conditioning.

An emergency evacuation plan for the new premises is in place and is being adhered to. Health and safety representatives, first aid officers and fire wardens are also in place and trained.

ORAC is looking at options for assisting staff manage the risk of undetected asbestos in buildings, particularly in remote and regional communities which ORAC staff visit.

### **STAFF STATISTICS**

At 30 June 2004, ORAC had an average staff level of 28, and an actual total staffing level of 36 (because some ORAC staff are part-time or temporary). Table 6 shows a profile of staff diversity by level of seniority.

**Table 6 Staff profile, 2003–04**

	APS 2	APS 3	APS 4	APS 5	APS 6	Exec 1	Exec 2	SES	Total
Aboriginal and Torres Strait Islander (ATSI) staff	1	1	1	0	0	0	0	0	3
Non-ATSI staff	1	2	6	5	3	9	6	1	33
Male	1	1	4	0	1	5	4	0	16
Female	1	2	3	5	2	4	2	1	20
Ongoing	1	2	7	5	1	8	6	0	30
Non-ongoing	1	1	0	0	2	1	0	1	6
Full-time	2	2	7	3	3	9	6	1	33
Part-time	0	1	0	2	0	0	0	0	3
Non-English speaking background	0	0	2	1	0	1	1	0	5
With disabilities	0	0	0	0	1	2	0	0	3
Totals	2	3	7	5	3	9	6	1	36

ORAC has a relatively diverse workforce by Australian Public Service (APS) standards (as reflected in the Australian Public Service Commission's *State of the service report 2003–04*):

- 8 per cent Indigenous employment (the APS standard is 2 per cent)
- 56 per cent women (54 per cent)
- 8 per cent people with disabilities (4 per cent)
- 14 per cent people from non-English speaking backgrounds (3 per cent).

## Resources

### FINANCES AND ASSETS

Funding for ORAC (approximately \$5.443 million for 2003–04, up from \$3.98 million in 2002–03) was within the ATSI's appropriation and not quarantined. From 1 July 2004, ORAC funding became part of DIMIA's appropriation.

Expenditure in 2003–04 included:

- Regulatory action—\$927,000. This was mainly for statutory examinations and the costs of administrations.
- Information and training program—\$721,000. Most of these funds were spent on three-day workshops and Certificate IV courses.

- Salaries and related costs—\$1,884,500.
- Staff development and training—\$80,500.
- Legal costs—\$176,500.
- Special projects—\$481,800. These included the review of the ACA Act and projects to improve the work processes of ORAC and to build the sustainability of corporations.

During the year, ORAC collected \$18,242.04 (excluding goods and services tax). These funds came from fees for incorporation and searches, and from liquidators reimbursing the Registrar's winding-up costs, and were placed into consolidated revenue. They did not form part of ORAC's budget.

ORAC's asset and property management were handled by ATSSIS during 2003–04.

#### **ECOLOGICALLY SUSTAINABLE OFFICE PRACTICES**

We are conscious of the need to conserve resources in performing our work, and we have adopted practices to help achieve that, including:

- using recycling bins
- turning off power when it is not needed
- printing only when necessary, using recycled paper and printing double-sided wherever possible
- minimising colour printing and photocopying
- recycling toner cartridges
- using power-saving light systems
- limiting the availability of bins
- avoiding the use of plastic bags.

#### **SYSTEMS**

All administrative support systems were provided by ATSSIS during 2003–04 (in 2004–05 and future years they will be provided by DIMIA, through the OIPC). ORAC-specific systems included ERIC, the ORAC website and several databases, including the legal advice database.

ERIC continued to be enhanced for smoother workflow processing, better reporting and the accurate transfer of information—including the electronic Public Register of Indigenous Corporations—to the redesigned website.

Refer to page 34 for details of the redesign of the website and the new electronic access to some of the data on the Public Register.

Further system improvements are planned for 2004–05.

#### **CONSULTANTS AND COMPETITIVE TENDERING AND CONTRACTING**

During 2003–04, we engaged a total of 36 different consultants or contractors to perform assignments for us. The total expenditure on these assignments was \$1,633,400.

ORAC continued to use its two panels: one for professionals to provide services related to the exercise of statutory powers, and the other for registered training organisations to provide accredited training. During 2003–04 ORAC procured, through competitive tender, the services of a legal firm to support the establishment of four new panels for ORAC's diverse work. With tenders closing in early 2005, ORAC plans to set up the panels in June 2005, and to provide an intensive induction program for all panellists.

## ADVERTISING AND MARKET RESEARCH

No significant advertising or market research was conducted during 2003–04.

### External scrutiny

Some decisions made by the Registrar and administrators appointed by the Registrar are subject to various processes of scrutiny, including through the Commonwealth Ombudsman, the Privacy Commissioner, the *Freedom of Information Act 1982* (FOI Act), the *Administrative Decisions (Judicial Review) Act 1977*, and the Administrative Appeals Tribunal.

During 2003–04, the Commonwealth Ombudsman's office requested information in relation to a complaint lodged with that office about an ORAC case. In the light of the ORAC response and other information, the Ombudsman concluded that there was no basis to the complaint and determined not to pursue enquiries further.

One application for review was processed under the FOI Act.

No other applications for review were received during the year.

# Appendices

# Appendix A Trends in incorporation and post-incorporation support services and regulatory actions

## Support services, 2001-02 to 2003-04

	2003-04	2002-03	2001-02
<b>Incorporation services</b>			
<b>Incorporations</b>			
Applications received	160	211	206
Total applications actioned during the year	143	205	207
Applications approved	134	183	187
Applications refused	-	-	-
Applications lapsed	9	22	20
<b>Constitution change requests</b>			
Requests received	122	138	134
Total requests actioned during the year	114	127	143
Requests approved	106	94	98
Requests refused	4	22	21
Requests lapsed	4	11	24
<b>Name change requests</b>			
Requests received	26	20	24
Total requests actioned during the year	18	16	32
Requests approved	14	8	22
Requests refused	-	2	1
Requests lapsed	4	6	9
<b>Post-incorporation support services</b>			
<b>Public register searches</b>			
Search requests received	283	551	858
Search requests finalised	272	557 <sup>a</sup>	844
<b>Members' complaints and dispute assistance</b>			
Matters received	139	123	120
Matters finalised	131	107	119
<b>Annual General Meeting extensions</b>			
Matters received	106		
Matters finalised	104		
<b>Advice on corporation issues</b>			
Enquiries received	774	668	251
Enquiries finalised	634	622	245

a Some services finalised during the financial year were initiated in the previous year.

## Examinations, administrations and deregistrations, 2001-02 to 2003-04

Regulatory action	2001-02	2002-03	2003-04
Examinations	19	35	54
Administrations	4	8	7
Deregistrations	170	116	282

## Appendix B Locations of registered corporations

Location of corporations registered under the Aboriginal Councils and Associations Act 1976, by Aboriginal and Torres Strait Islander Commission region, 2002-03 and 2003-04

ATSIC region	No. of corporations 2002-03	No. of corporations 2003-04	Variation (number)	Variation (%)
Alice Springs <sup>a</sup>	220	224	4	1.82
Binaal Billa (Wagga Wagga)	77	86	9	11.69
Binjirru (Wangaratta)	21	25	4	16.00
Cairns and district	96	91	-5	-5.21
Central Queensland (Rockhampton)	85	74	-11	-12.94
Central Remote Regional Council (Apatula)	111	106	-5	-4.50
Garrak-Jarru (Katherine)	98	93	-5	-5.10
Goolburri (Roma)	79	66	-13	-16.46
Gulf and West Queensland (Mt Isa)	76	77	1	1.32
Jabiru	35	34	-1	-2.86
Kamilaroi (Tamworth)	72	75	3	4.17
Kullari (Broome)	130	129	-1	-0.77
Malarabah (Derby)	108	106	-2	-1.85
Many Rivers (Coffs Harbour)	122	133	11	9.02
Miwatj (Nhulunbuy)	13	9	-4	-30.77
Murdi Paaki (Bourke)	47	48	1	2.13
Ngarda-Ngarli-Yarndu (South Hedland)	92	85	-7	-7.61
Noongar (Perth)	140	126	-14	-10.00
Noongar Country (Narrogin)	76	65	-11	-14.47
Nulla Wimila Kutja (Port Augusta)	34	33	-1	-2.94
Patpa Warra Yunti (Adelaide)	23	25	2	8.70
Peninsula (Cooktown)	72	66	-6	-8.33
Queanbeyan <sup>b</sup>	76	79	3	3.95
South East Queensland (Brisbane)	102	96	-6	-5.88
Sydney	77	77	0	0.00

ATSIC region	No. of corporations 2002-03	No. of corporations 2003-04	Variation (number)	Variation (%)
Tasmanian Regional Aboriginal Council (Hobart)	21	21	0	0.00
Torres Strait Regional Authority	45	46	1	2.22
Townsville	108	93	-15	-13.89
Tumbukka (Ballarat)	46	50	4	8.70
Wangka Wilurrara (Ceduna)	2	2	0	0.00
Western Desert (Warburton)	15	16	1	6.67
Wongatha (Kalgoorlie)	45	47	2	4.44
Wunan (Kununurra)	153	146	-7	-4.58
Yamatji (Geraldton)	79	74	-5	-6.33
Yapakurlangu (Tennant Creek)	57	57	0	0.00
Yilli Rreung (Darwin)	98	99	1	1.02
Region unknown	110	34	-76	-69.09
<b>Total</b>	<b>2861</b>	<b>2713</b>	<b>-148</b>	<b>-5.17</b>

- a Alice Springs has the highest number of corporations of the ATSIC regions. This may be due in part to some corporations located in South Australia and Western Australia choosing to use Alice Springs as their postal address.
- b Queanbeyan number includes Australian Capital Territory corporations.



## Appendix C Section 60 examinations

Corporations for which section 60 examinations were initiated during 2003–04, and follow-up action by the Registrar current to 25 February 2005.

ICN	Corporation name	Examination action
2542	Ampilatwatja Health Centre Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 2 July 2004
3824	Barambah Regional Medical Service (Aboriginal Corporation)	Rectification of less serious matters, section 60A notice issued 27 August 2003
3490	Boorabee Aboriginal Corporation	Section 71 notice issued 6 January 2004
1068	Bundybunna Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 29 April 2004
3239	Carnarvon Aboriginal Corporation	Examination report not received
499	Carnarvon Medical Service Aboriginal Corporation	Examination report not received
2885	Central Queensland Aboriginal Corporation for Media	Section 71 notice issued 23 January 2004; administrator appointed 22 March 2004
2964	Coolgaree Aboriginal Corporation for CDEP	Letter sent to board outlining relatively minor matters that require attention 12 July 2004
1766	Coolgaree Youth Movement Aboriginal Corporation	Examination report under consideration
282	Cooramah Housing and Enterprise Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 5 December 2003
768	Cudjallagong Aboriginal Corporation Lake Cargelligo	Rectification of less serious matters, section 60A notice issued 8 December 2003
3193	Cunnamulla Aboriginal Corporation for Health	Letter sent to board outlining relatively minor matters that require attention
1276	Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation	Examination report under consideration
3726	Edgerton-Kwiembal Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 16 July 2004
84	Ferdy's Haven Alcohol Rehabilitation Aboriginal Corporation	Letter sent to board outlining relatively minor matters that require attention 12 July 2004
1066	Gerringong Housing Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 2 April 2004
2708	Gunida Gunyah Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 6 July 2004

ICN=Indigenous corporation number

ICN	Corporation name	Examination action
1784	Guriwal Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 23 July 2004
181	Illawarra Aboriginal Corporation	Examination report under consideration
113	Kalumburu Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 9 July 2004
419	'Kootana' Womens Centre Palm Island Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 15 July 2004
2541	Kununurra Region Economic Aboriginal Corporation	Section 71 notice issued 23 September 2003; administrator appointed 22 November 2003
35	Kununurra Warringarri Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 12 September 2003
285	Kuwinywardu Aboriginal Resource Unit Aboriginal Corporation	Examination report not received
4072	Lower Darling Traditional Owners Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 15 January 2004
2570	Maari Ma Health Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 29 June 2004
1511	Mersey Leven Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 27 May 2004
3640	Mersey Leven Economical Aboriginal Corporation (MLEAC)	Rectification of less serious matters, section 60A notice issued 27 May 2004
54	Mount Morgan Aboriginal Corporation	Section 71 notice issued 28 January 2004; administrator appointed 12 April 2004
3246	Murrabinbee Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 16 April 2004
702	Murrin Bridge Advancement (Aboriginal Corporation)	Rectification of less serious matters, section 60A notice issued 8 December 2003
55	New England Aboriginal Corporation	Examination report under consideration
3061	Ngalikuru Ngukumarnta Aboriginal Corporation (now called Hedland CDEP Aboriginal Corporation)	Rectification of less serious matters, section 60A notice issued 15 December 2003
651	Ngoonjuwah Council Aboriginal Corporation	Examination report not received
3003	Nooda Ngulegoo Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 13 November 2003
1519	Orana Aboriginal Corporation	Examination report under consideration
560	Piccadilla Aboriginal Corporation	Section 71 notice Issued 22 July 2004

ICN=Indigenous corporation number

ICN	Corporation name	Examination action
2256	Pilbara Meta Maya Regional Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 7 June 2004
1430	Sandhills Advancement Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 19 May 2004
2645	Shoalhaven Community Development Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 1 July 2004
2379	Southside Housing Aboriginal Corporation	Examination report not received
2465	Thankakaia Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 30 June 2004
2749	Three Ways Aboriginal Corporation	Section 71 notice issued 23 July 2004
2271	Wakka Wakka Legal Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 31 March 2004
319	Western Desert Puntukurnuparna Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 30 June 2004
1785	Western Sydney Community Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 11 June 2004
2705	Wila Guthara Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 7 April 2004
289	Wirrimanu Aboriginal Corporation	Section 71 notice issued 2 October 2003; administrator appointed 31 October 2004
3411	Wonnarua Nation Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 12 July 2004
3255	Woodgamia CDEP Aboriginal Corporation	Examination report not received
3161	Workforce Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 27 May 2004
1036	Yalbillinga Boori Day Care Centre Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 17 March 2004
2001	Yamatji Marlpa Barna Baba Maaaja Aboriginal Corporation	Rectification of less serious matters, section 60A notice issued 30 June 2004
3279	Yorta Yorta Nation Aboriginal Corporation	The examination revealed a substantial number of breaches of the requirements of the <i>Aboriginal Councils and Associations Act 1976</i> and the constitution. However after careful consideration it was decided to give the corporation time to reorganise its affairs. The board has scheduled an AGM for June 2004 and ORAC will complete a regulation information session afterwards.

ICN=Indigenous corporation number

## Appendix D Section 60A notices

### Corporations for which section 60A notices to rectify matters were issued, 2003–04

ICN	Corporation name
3824	Barambah Regional Medical Service (Aboriginal Corporation)
3490	Boorabee Aboriginal Corporation
1068	Bundybunna Aboriginal Corporation
195	Central Highlands Aboriginal Corporation
1170	Central Queensland Land Council Aboriginal Corporation
3590	Coastal Housing Multi Services Aboriginal Corporation
768	Cudjallagong Aboriginal Corporation Lake Cargelligo
180	Djugerari Aboriginal Corporation
624	Dubbo Koorie Housing Aboriginal Corporation
1066	Gerringong Housing Aboriginal Corporation
3691	Kalkadoon Aboriginal Corporation
2375	Kamilaroi Aboriginal Housing Aboriginal Corporation
1375	Korrabay Aboriginal Corporation
35	Kununurra Warringarri Aboriginal Corporation
4072	Lower Darling Traditional Owners Aboriginal Corporation
104	Marra Worra Worra Aboriginal Corporation
16	Mitakoodi Aboriginal Corporation
1409	Miwatj Health Aboriginal Corporation
44	Mulan Aboriginal Corporation
3246	Murrabinbee Aboriginal Corporation
702	Murrin Bridge Advancement (Aboriginal Corporation)
3061	Ngalikuru Ngukumarnta Aboriginal Corporation (now called Hedland CDEP Aboriginal Corporation)
3593	Ngarliyarndu Bindirri (Corporate CDEP) Aboriginal Corporation
2365	Ngurrala Aboriginal Corporation
3003	Nooda Ngulegoo Aboriginal Corporation
3520	Nyunbuk Moorit Booja Aboriginal Corporation
2958	South-West Aboriginal Medical Service Aboriginal Corporation
267	Tjuwampa Outstation Resource Centre Aboriginal Corporation
28	Twofold Aboriginal Corporation
127	Urapuntja Council Aboriginal Corporation
1236	Wallaga Lake CDEP Aboriginal Corporation
2271	Wakka Wakka Legal Aboriginal Corporation
2705	Wila Guthara Aboriginal Corporation
1036	Yalbillinga Boori Day Care Centre Aboriginal Corporation

ICN=Indigenous corporation number

## Appendix E Section 71 notices

Corporations for which section 71 notices to show cause why an administrator should not be appointed were issued, 2003–04

ICN	Corporation name
1716	Armidale Employment Aboriginal Corporation
3490	Boorabee Aboriginal Corporation
893	Boree Aboriginal Corporation
2885	Central Queensland Aboriginal Corporation for Media
2029	Gunungarah Aboriginal Corporation for Housing
3691	Kalkadoon Aboriginal Corporation
2541	Kununurra Region Economic Aboriginal Corporation
54	Mount Morgan Aboriginal Corporation
2958	South-West Aboriginal Medical Service Aboriginal Corporation
289	Wirrimanu Aboriginal Corporation

ICN=Indigenous corporation number

## Appendix F Administrators appointed

Corporations to which administrators were appointed under section 71, 2003–04

ICN	Corporation name
1716	Armidale Employment Aboriginal Corporation
893	Boree Aboriginal Corporation
2885	Central Queensland Aboriginal Corporation for Media
2029	Gunangarah Aboriginal Corporation for Housing
2541	Kununurra Region Economic Aboriginal Corporation
54	Mount Morgan Aboriginal Corporation
289	Wirrimanu Aboriginal Corporation

ICN=Indigenous corporation number

## Appendix G Corporations in the process of liquidation

### Corporations in the process of liquidation at 30 June 2004

ICN	Corporation name
1825	Aboriginal and Torres Strait Islander Corporation for All Sports, Health and Recreation Association
2690	Aboriginal Building Corporation (Aboriginal Corporation)
480	Allambi Aboriginal Corporation
227	Balangarri Aboriginal Corporation
1853	Bidunggu Aboriginal Corporation
2018	Birri Gubba Aboriginal Corporation
1700	Bogong Community Aboriginal and Torres Strait Islanders Corporation
2452	Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
2441	Brisbane North Aboriginal and Torres Strait Islanders Corporation for Aged Care
1174	Camu Goun-Doi Aboriginal Corporation
164	Central Queensland Aboriginal Corporation for Training Resources
1819	Dabu Jajikal Aboriginal Corporation
699	Dhunghulla Economic Development Aboriginal Corporation.
1228	Doonooch Self-healing Aboriginal Corporation
2412	Euston Aboriginal Corporation
1122	Gubrun Aboriginal Corporation
1696	Guddoo Marddah Aboriginal Corporation
1674	Gundabooka Aboriginal Corporation
1579	Gunyah Construction Aboriginal Corporation
1192	Karijini Aboriginal Corporation
328	Kerrup Jmara Elders Aboriginal Corporation
32	Leeton and District Aboriginal Corporation
1562	Manth-Thayan Aboriginal Corporation
3639	Martidja Bunyjima Aboriginal Corporation
549	Mearu Djarula Aboriginal Corporation
1476	Narrogin Aboriginal Corporation
147	Narwon Housing Aboriginal Corporation
2201	National Aboriginal and Islanders Legal Services Secretariat Aboriginal Corporation

ICN=Indigenous corporation number

ICN	Corporation name
957	New South Wales Women's Aboriginal Corporation
1887	Ngadju Bugarla Mirning Wamu Wamu Aboriginal Corporation
1552	Noongar Language And Culture Centre Aboriginal Corporation
166	North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care
509	Nurapai Torres Strait Islanders Corporation
2704	Orana Borellan Aboriginal Corporation
1786	Queensland Aboriginal and Torres Strait Islanders Corporation for Legal Services Secretariat
87	Sports Aboriginal Corporation of Tasmania
77	Theodore Aboriginal Corporation
10	Tingha Aboriginal Corporation
1551	Wandanooka Aboriginal Corporation
2323	Warrego Aboriginal Corporation
1237	Wattle Hill Housing and Advancement Aboriginal Corporation
3221	Wiri/Yuwiburra 'Touri' Aboriginal Corporation
904	Wongaibon Women's Aboriginal Corporation
778	Yabu Bindalynga Aboriginal Corporation

ICN=Indigenous corporation number

## Appendix H Corporations liquidated

### Corporations liquidated, 2003-04

ICN	Corporation name
1700	Bogong Community Aboriginal and Torres Strait Islanders Corporation
2441	Brisbane North Aboriginal and Torres Strait Islanders Corporation for Aged Care
1819	Dabu Jajikal Aboriginal Corporation
32	Leeton and District Aboriginal Corporation
2201	National Aboriginal and Islanders Legal Services Secretariat Aboriginal Corporation
1552	Noongar Language and Culture Centre Aboriginal Corporation
166	North Queensland Aboriginal and Torres Strait Islanders Corporation for Child Care
1786	Queensland Aboriginal and Torres Strait Islanders Corporation for Legal Services Secretariat
77	Theodore Aboriginal Corporation
904	Wongaibon Aboriginal Women's Corporation

ICN=Indigenous corporation number

# Appendix I Corporations deregistered

## Corporations deregistered, 2003-04

ICN	Corporation name
2488	Aboriginal and Torres Strait Islanders Corporation Coastal Housing
2497	Aboriginal and Torres Strait Islanders Corporation Youth Training Centre
632	Aboriginal and Islander Women's Congress of Western Australia Aboriginal Corporation
2729	Aboriginal and Torres Strait Islanders Corporation for Education Workers WA
797	Aboriginal Dance Development Unit of Western Australia (Aboriginal Corporation)
1420	Aboriginal Youth Accommodation (Aboriginal Corporation)
2556	Alice River Aboriginal Corporation
999	Aliyawee Aboriginal Corporation
2688	Alkamilya Housing Aboriginal Corporation
623	Alparrinya Apungalindum Aboriginal Corporation
2253	Amtyipere Aboriginal Corporation
3234	Ana-Numbulwar-yingyung-warra- council- ana- health- jingung Aboriginal Corporation
2415	Arkwookerum Aboriginal Corporation
3046	Arnapar Aboriginal Corporation
2220	Arnmanepwenty Aboriginal Corporation
2906	ATHACC Aboriginal and Torres Strait Islanders Corporation for the Frail, Aged and Disadvantaged
2872	ATLAW Aboriginal and Torres Strait Islander Corporation for Social Justice and Community Development
505	Atnwengerrpe Aboriginal Corporation
2469	Australian Baptist Aboriginal Corporation
3178	Australian Indigenous Rugby League Aboriginal Corporation
2732	Bailai Aboriginal Corporation for Land and Culture
1391	Ballaruk Aboriginal Corporation
2456	Banakula Aboriginal Corporation
122	Barula Action Group Aboriginal Corporation
2565	Batjalar Aboriginal Corporation
3165	BBKY Traditional Owners Aboriginal Corporation
3252	Beemurra Aboriginal Corporation
2287	Bhildbit Aboriginal Corporation
3338	Bi Malu Murris Aboriginal and Torres Strait Islanders Corporation
2042	Bibalu Wangkatji Aboriginal Corporation



ICN	Corporation name
2283	Bibbulmum Advisory Aboriginal Corporation
2834	Bidjara Traditional Owners Aboriginal Corporation for Land, Culture and Heritage
2470	Biloela Women's Group Aboriginal and Torres Strait Islanders Corporation
2309	Bilya Aboriginal Corporation
3438	Binda Bunna Aboriginal and Torres Strait Islander Corporation
2681	Bindjareb Middars Aboriginal Corporation
3606	Binni Aboriginal Corporation
3312	Birriah 'Touri' Aboriginal Corporation
2564	Birrigubba Three Rivers Aboriginal Corporation
3142	Bogong Legal Aboriginal Corporation Services
2304	Bolloway Community Services Aboriginal Corporation
3055	Boola-Njee Aboriginal Corporation
2502	Boolie Yu Aboriginal Corporation
2884	Boomburra Aboriginal Corporation
2308	Boorowa Aboriginal Corporation
2893	Bralbin Sports and Recreation Aboriginal Corporation
1043	Bran Nue Dae Productions Aboriginal Corporation
3125	Bribie Island and Districts Aboriginal Corporation
2743	Broome Regional Housing Aboriginal Corporation
2286	Brunswick Aboriginal Corporation
3215	Budimia Aboriginal Corporation
2077	Buela Community Aboriginal Corporation
3425	Bulyardimanu Aboriginal Corporation
2575	Bunda Bunda Aboriginal Corporation
430	Bunuba Productions Aboriginal Corporation
1815	Buralim Media Aboriginal Corporation
2347	Burdekin Juru Aboriginal Corporation
1570	Burungga Aboriginal Corporation for Youth and Family Support
3339	Butler Bay Bulls Aboriginal Corporation Rugby League Club
630	Bwgcorman Airways Aboriginal Corporation
3236	Bwuradjen Yuat Aboriginal Corporation
2521	Camp Fire Group Aboriginal Corporation

ICN	Corporation name
156	Central Desert Outstations Council (Aboriginal Corporation)
1957	Charleville Womens Aboriginal and Torres Strait Islanders Corporation
1879	Chickety Chick Aboriginal Corporation
2890	Chuditch Aboriginal Corporation
1995	Condobolin 'Bila' Aboriginal Corporation
3238	Corporation for Aboriginal and Torres Strait Islanders Legal Services (Townsville Region)
1413	Country Ebony Aboriginal Corporation
2294	Country Teardrops Aboriginal Corporation
2145	Cunnamulla Aboriginal Corporation for Legal Services
2604	Cunnamulla Outback Centre Aboriginal Corporation
1834	Dalby Crisis and Development Aboriginal Corporation
2922	Dawson River Aboriginal Corporation
2948	Djamunda Aboriginal Corporation
3111	Djulungurr Aboriginal Corporation
1009	Djurabalak Musicians' (Aboriginal Corporation)
2927	Djuwarlu Aboriginal Corporation
3400	Dujemerrup Aboriginal Corporation
1593	Dulgubarra Aboriginal Corporation
1427	East Arnhem Aboriginal Corporation for Sport and Recreation
2180	Ekkilau Craft Torres Strait Islanders Corporation
3188	Fred Hansen Aboriginal Corporation 1998
806	Gargarthu Aboriginal Corporation
2560	Garrawurra Aboriginal Corporation
2088	Gascoyne Women's Council Aboriginal Corporation
3398	Girrgarli Aboriginal Corporation
3210	Gnoorlak (Black Cockatoo) Aboriginal Corporation
2449	Gold Coast Arts and Crafts Aboriginal Corporation
2346	Goldfields/Esperance Womens Advisory Aboriginal Corporation
3300	Gubadanga Aboriginal Corporation
2679	Gundara Aboriginal Corporation
2672	Gunggari Lands Council Aboriginal Corporation
2447	Gurrgiya Aboriginal Corporation

ICN	Corporation name
609	Harvey Waroona Aboriginal Corporation
2010	Holy Rosary Supportive Accommodation Aboriginal and Torres Strait Islanders Corporation
1667	Idibugar Aboriginal Corporation
2390	Ijtamay Aboriginal Corporation
1810	Inbuny Aboriginal Corporation
1868	Incas Aboriginal Corporation Tourist Resort
1283	Intouch Training and Research Consultants Aboriginal Corporation
107	Jalyirr Aboriginal Corporation
1910	Jambinbirri Nanungu Barna Aboriginal Corporation
2267	Janama Springs Aboriginal Corporation
1514	Jowagi Aboriginal Corporation
2637	Jubadubb Nookawalla Aboriginal Corporation
2855	Juddahbulk Aboriginal Corporation
2573	Julloon Yumpah Aboriginal and Torres Strait Islanders Corporation
3009	Kalkadungu Housing Aboriginal Corporation
1828	Kalungkurriji Aboriginal Corporation
2818	Kandju Social and Recreational Aboriginal Corporation
1356	Kara Le (Torres Strait Islanders Corporation)
3609	Karnanyatjarra Aboriginal Corporation
2214	Kaurareg Land Council Aboriginal Corporation
3000	Kayilka Aboriginal Corporation
1143	Keriba Torres Strait Islanders Corporation for Media
1845	Keriba Wakai Torres Strait Islanders Corporation
2528	Kimberley Aboriginal Tourism Association Aboriginal Corporation
2656	Kindamindi Care and Welfare Aboriginal and Torres Strait Islanders Corporation
1932	Kookaburra South-West Aboriginal Corporation
3258	Koori Country Music Aboriginal Corporation
1447	Kumunu Aboriginal Corporation
2767	Kunjamulla Land and Cultural Heritage Aboriginal Corporation
705	Kunma Piti Community (Aboriginal Corporation)
2303	Kuparla Aboriginal Corporation
2918	Kurtijar Pastoral Aboriginal Corporation

ICN	Corporation name
2095	Kutjala Sporting Aboriginal and Torres Strait Islanders Corporation
1968	Lagau Kazil Torres Strait Islanders Corporation
2175	Leregon Aboriginal Corporation
2555	Lewang Aboriginal Corporation
1958	Liardubirri Aboriginal Corporation
1395	Lockridge, Bassendean, Bayswater (LBB) Aboriginal Corporation
2520	Logan and Areas Aboriginal Corporation for Indigenous Legal Services
963	Lukarara Aboriginal Corporation
796	Mackay Aboriginal and Torres Strait Islanders Corporation for Child Care
1749	Mackay Meriam Tarim Le Baui Torres Strait Islanders Corporation
294	Malpa Kincha Aboriginal Corporation
2228	Mamawalgu Aboriginal Corporation
1788	Mantaka 'Shanty' Aboriginal Corporation
773	Maragami Aboriginal Corporation
618	Marillac House Aboriginal Corporation
3254	Marumali Aboriginal and Torres Strait Islanders Corporation for Health Service
1963	Matong Merringanna Aboriginal Corporation
2706	Mayi Aboriginal Corporation
2990	Menang Aboriginal Economic Corporation
1684	Meriam Zogo Le Torres Strait Islanders Corporation
2403	Midland and Districts Four Star/All Shades Aboriginal Corporation Cultural and Sporting Foundation
2518	Mindarr Kujurtu Aboriginal Corporation
754	Mindi Mindi Aboriginal Corporation
1561	Mingarri Aboriginal Corporation
1844	Mingen Aboriginal Corporation
3128	Mogo Sports and Recreation Aboriginal Corporation
2419	Moingam Aboriginal Corporation
2590	Mokana Aboriginal and Torres Strait Islanders Womens Corporation
2547	Moorditch Koolaak Housing Aboriginal Corporation
2724	Moura and Districts Aboriginal and Torres Strait Islanders Corporation
3034	Mrangalli Housing Aboriginal Corporation
1787	Mt Eaglebeak Aboriginal Corporation

ICN	Corporation name
2599	Mukurrmanja Aboriginal Corporation
2740	Munagoon Aboriginal Corporation
51	Mungindi Aboriginal Corporation
861	Mungkarta Community Store Aboriginal Corporation
2905	Mungkarta West Aboriginal Corporation
1634	Murrang Aboriginal Corporation
2961	Murricherry Aboriginal Corporation
1382	Murrie Care Aboriginal and Torres Strait Islanders Corporation
2425	Mutooroo Aboriginal Corporation
2396	Muurpa-Pungka Pre-School Aboriginal Corporation
124	Muyinda Aboriginal Corporation
1869	Mynnee Springs Aboriginal Corporation
1366	Naayakuku Aboriginal Corporation
2762	Nagarrbajian Aboriginal Corporation
1423	Namarrmu Outstation Aboriginal Corporation
2201	National Aboriginal and Islanders Legal Services Secretariat Aboriginal Corporation
2887	National Stolen Generations Aboriginal Corporation
3839	Naiyu Boys Band Aboriginal Corporation
1992	Nellie Edwards Mandandanji Culture and Heritage, Land Aboriginal Corporation
707	Netat Urupun Buai (Torres Strait Islanders Corporation)
927	New Burnt Bridge Aboriginal Corporation
1887	Ngadju Bugarla Mirning Wamu Wamu Aboriginal Corporation
787	Ngalakan Aboriginal Corporation
2920	Ngaluma Aboriginal Corporation
1050	Ngappamilarnu Aboriginal Corporation
1131	Ngarutjara Homeland (Aboriginal Corporation)
2357	Ngooni Djooken Aboriginal Corporation
935	Ngudugunya Aboriginal Corporation
2523	Ngullu Budjah Aboriginal Corporation
1414	Ngurralinji Aboriginal Cultural Centre Aboriginal Corporation
3124	Ngwauwi Jowan Aboriginal Corporation
3500	Noongar Enterprise Aboriginal Corporation

ICN	Corporation name
1552	Noongar Language And Culture Centre Aboriginal Corporation
3284	Noongar Youth Service (Aboriginal Corporation)
1341	Northside Aboriginal Corporation
2437	NT Aboriginal and Torres Strait Islanders Corporation for Educators
2982	Numbulwar Aboriginal Corporation
1445	Nunukul Land Council Aboriginal Corporation
2802	Nya Womens Aboriginal Corporation
2843	Nyaparu Town Wanti-Mili Aboriginal Corporation
1463	Nyimantiya Aboriginal Corporation
1813	Nyininy Aboriginal Corporation
2331	Palm Island Transport Aboriginal Corporation
2112	Palms Enterprise Aboriginal Corporation
2442	Pankalthun Aboriginal Corporation
2116	Pipalyatjara Mining Enterprise (Aboriginal Corporation)
1344	Planners Five Aboriginal Corporation
2684	Pmwarekenhe Aboriginal Corporation
1281	Poruma Dancing Torres Strait Islanders Corporation
2015	Proserpine and District Aboriginal and Torres Strait Islanders Corporation
3546	Putjur Aboriginal Corporation
1786	Queensland Aboriginal and Torres Strait Islanders Corporation for Legal Services Secretariat
2774	Queensland Federation of Land Councils Aboriginal Corporation
1970	Queensland Indigenous Artists Aboriginal Corporation
1625	Rak Ngungthwudi Aboriginal Corporation
3106	Ramangarli Aboriginal Corporation
3361	Ryder Aboriginal Corporation
2423	Seaeagles Amateur Boxing Club Aboriginal and Torres Strait Islanders Corporation
1857	Skipjack Aboriginal Corporation for Sports and Recreation
2368	South Metropolitan Aboriginal Corporation
2529	South West Aboriginal Media Association Aboriginal Corporation
2301	Tagira Arts Academy Aboriginal Corporation
1851	Taribelang Bunda Aboriginal Corporation
1448	The Hall Family Aboriginal Corporation

ICN	Corporation name
2561	The Kambuwal Texas Yelarbon Housing Aboriginal and Torres Strait Islanders Corporation
2491	Tjaltjraak Mooraak Aboriginal Corporation
1132	Tjara Antal Outstation (Aboriginal Corporation)
293	Tjintu (Aboriginal and Torres Strait Islanders Corporation) Family Education Centre
642	Top End Aboriginal Coalition Aboriginal Corporation
1847	Townsville Aboriginal and Islander Performing Artists Network Aboriginal Corporation
2654	Traditions Catering Aboriginal and Torres Strait Islanders Corporation
3208	Trio Aboriginal Corporation
1765	Ugarapul Tribal Aboriginal Corporation
2736	Ukali Aboriginal Corporation
1359	Umagico Whyimual Uroongoombu Aboriginal and Torres Strait Islanders Corporation
1892	Umayn Ilgu Ulumu Aboriginal Corporation
2585	Umboy Womens Resource Aboriginal Corporation
2583	United Gulf Region Aboriginal Corporation
3584	Unpayekenhe Aboriginal Corporation
1403	Urimbirra Aboriginal and Torres Strait Islanders Corporation
2068	Wadabura Aboriginal Corporation
3332	Wadjari Nugura Aboriginal Corporation
539	Wahroonga Aboriginal and Torres Strait Islanders Corporation for Education and Culture
1603	Waka-Jal Aboriginal Corporation
1638	Walkabouts Aboriginal and Torres Strait Islanders Corporation for Sport and Recreation
2087	Walkaree Community Aboriginal Corporation
2670	Walorn Aboriginal Corporation
2316	Walyada Aboriginal Corporation
739	Wangkatja Cultural Association Aboriginal Corporation
3104	Wanu Wanu Aboriginal Corporation
1672	Warangesda Family Rape Crisis Centre Aboriginal and Torres Strait Islanders Corporation
756	Wararin Aboriginal Corporation
3345	Warinypirna Aboriginal Corporation
2986	Warkarlikarli Aboriginal Corporation
2325	Warlatjunti Aboriginal Corporation
3141	Warramuli Aboriginal Corporation

ICN	Corporation name
2854	Warr-Kes Torres Strait Islanders Corporation Mackay
1988	Warwick Aboriginal Corporation for Employment
3744	Warwick Workers Aboriginal Corporation
2266	Wayngk Kmpan Aboriginal Corporation
2410	Weca Ladies Aboriginal and Torres Strait Islanders Corporation for Sports and Recreation
1981	Wellesley Islands Aboriginal Corporation
1506	Weriatto Aboriginal Corporation
1598	West Australian Aboriginal Corporation Culture and Art Centre
1663	Western Aranda Sporting and Recreational Aboriginal Corporation
3158	Whattarguttabe Aboriginal Corporation
2411	Wilarra Aboriginal Corporation
822	Winjan Aboriginal Corporation Mandurah
2495	Wirliyarrayi Sports Association Aboriginal Corporation
3673	Wonderers Aboriginal Corporation
1220	Wongai Torres Strait Islanders Corporation
904	Wongaibon Women's Aboriginal Corporation
2453	Wongie Aboriginal Corporation
3035	Wulah Aboriginal Corporation
2389	Wundargoodie Safaris Aboriginal Corporation
2428	Wunnuck Aboriginal Corporation
2673	Wurrilgi Mia Aboriginal Corporation
2479	Wyndham Medical Service Aboriginal Corporation
3370	Yagarrbulanjin Aboriginal Corporation
2499	Yingawunarr Mudbara Aboriginal Corporation
3019	Yirralka Mala Leaders (YBE) Aboriginal Corporation
2983	Yirrkala Education and Training Aboriginal Corporation
1680	Yok Yurk Aboriginal Corporation
2633	Yumbabala Womens Aboriginal Corporation
3143	Yundoo Housing Aboriginal Corporation
1319	Yurrampi Crafts Aboriginal Corporation

ICN=Indigenous corporation number



## Appendix J Registrar's regulatory powers

### Summary of the Registrar's regulatory powers under the *Aboriginal Councils and Associations Act 1976*

#### REQUEST UPDATED LIST OF MEMBERS—SECTION 58(4)

The Registrar can at any time request the board of a corporation to provide an updated copy of the register of members of the corporation. The board must comply within 14 days or such other time as specified by the Registrar. Failure to comply results in a fine of \$200 for each board member, unless the board member can prove they were not knowingly involved in the contravention, and did not contribute to it. Keeping the members' register up to date is extremely important, in particular for clarifying voting rights at meetings.

#### CALL AND CONDUCT A SPECIAL GENERAL MEETING—SECTIONS 58B(3), (4), (5)

The Registrar has the power to call and/or conduct special general meetings in three different circumstances:

- where a special general meeting was not held within 14 days of the date advertised by the corporation's board
- where a meeting is requested by the greater of five or more members or 10 per cent of the members of a corporation
- at any time, if, in the opinion of the Registrar, a meeting is needed.

#### EXAMINATION OF DOCUMENTS—SECTION 60

Under section 60, the Registrar may authorise a person to examine the documents of a corporation, and report on any irregularities in financial affairs. This is a very broad discretionary power that does not require any specific grounds for its exercise. It can therefore be used to perform spot checks on corporations.

ORAC has initiated a program of 'rolling' examinations of corporations. These will be conducted on all corporations over a number of years and more frequently on corporations at risk of breaching the *Aboriginal Councils and Associations Act 1976*, where breaches could have serious consequences for the community concerned. A corporation's risk level is assessed against a range of criteria, including size, purpose, time since last examination, compliance status and history of member or other complaints.

#### ISSUE COMPLIANCE NOTICE—SECTION 60A

Where the Registrar suspects on reasonable grounds that a corporation has failed to comply with the Act, the regulations or the corporation's constitution, or that there has been an irregularity in the corporation's financial affairs, the Registrar may issue a compliance notice. The compliance notice can require the board to take specified action, within specified timeframes, to remedy the suspected breach or irregularity.

### **ISSUE INJUNCTION SHOW CAUSE NOTICE— SECTIONS 61(2), (3)**

Where the Registrar believes that the board of a corporation is not complying with the Act, the regulations or the corporation's constitution, the Registrar may issue a 'show cause' notice. This requires the board to show cause, within a specified reasonable period, why the Registrar should not seek an injunction to prevent the board's breaching action.

### **INJUNCTION APPLICATION—SECTIONS 61(2), (3)**

After consideration of a board's response to an injunction 'show cause' notice, the Registrar may apply to the court for an injunction. The court may then grant an injunction to require the board to not breach, or to cease from breaching, the Act, regulations or constitution.

### **WINDING-UP APPLICATION (LIQUIDATION)— SECTIONS 62A, 63, 65**

The Registrar may apply to the court to wind up a corporation if this is recommended by an administrator, or if the Registrar believes that this would be in the public interest or the interests of the members of the corporation.

The Registrar may apply for winding up on any of a number of grounds, including:

- that the corporation has not commenced business within one year of incorporation, or has suspended its operation for a continuous period of one year
- that there are fewer than five members of the corporation
- that the corporation is unable to pay its debts (that is, it is insolvent)
- that board members have acted in their own interests rather than the interests of the members, or in any other manner that is unfair or unjust to other members
- that the complexity or magnitude of the activities of the corporation is such that incorporation under the Act is inappropriate
- that it is just and equitable to wind up the corporation.

If satisfied, the court may appoint a liquidator to take over control of the corporation's affairs and discharge its liabilities in preparation for its eventual deregistration. This will typically involve selling off the corporation's assets in order to pay its debts.

If there are any surplus assets after the debts have been paid, these must be distributed in accordance with the corporation's constitution. If there are no specific rules in the constitution, or the court considers the rules unjust, then the court must make orders for the distribution of the assets, having regard to the objects of the corporation.

### **INVESTIGATION—SECTIONS 68, 69, 70**

The Registrar is given very broad powers to investigate the affairs of a corporation under the Act. The Registrar can investigate a corporation where the Registrar suspects on reasonable grounds that the corporation has failed to comply with the Act, the regulations or its constitution, or that there has been an irregularity in the corporation's financial affairs.

Under the investigation powers, the Registrar can:

- require any person who the Registrar believes to have knowledge of the affairs of a corporation to attend before the Registrar, answer questions, and produce documents to which the person has access and which the Registrar requires
- enter onto land or premises occupied by the corporation, and examine, take or copy any books on the premises relating to the affairs of the corporation.

Failure to attend, answer a question or produce a document results in a penalty of \$200. Knowingly making false or misleading responses, and hindering or obstructing the Registrar's access to premises and books, carry fines of \$1,500.

#### **ISSUE ADMINISTRATION SHOW CAUSE NOTICE— SECTION 71(1)**

If the Registrar considers that there may be grounds for appointment of an administrator, the Registrar may serve a notice on the public officer of a corporation calling on the corporation to show cause, within a specified time, why an administrator should not be appointed.

#### **APPOINTMENT OF ADMINISTRATOR— SECTIONS 71–77E**

Following the issue of an administration 'show cause' notice, the Registrar can appoint an administrator to take over and manage the affairs of a corporation. Administrators are often received positively because they offer an

alternative to winding up, and aim to achieve turnaround for a struggling corporation.

An administrator can only be appointed where the Registrar is satisfied that any of certain grounds have been established, including:

- that the corporation has been trading at a loss for at least six of the previous 12 months
- that the board has failed to comply with the Act, the regulations or the constitution, and has failed to give a satisfactory explanation for the failure
- that board members have acted in their own interests rather than the interests of the members, or in any other manner that is unfair or unjust to other members
- that the appointment is required in the interests of members and creditors
- that the appointment is otherwise required in the public interest.

The approval of the Minister is required before the appointment of an administrator.

Upon the appointment of an administrator, the board is dismissed. The administrator takes control of the affairs of the corporation, has the functions and duties of the public officer, and has an express power to cancel or vary contracts of employment. The administrator must report to the Registrar from time to time, as required.

Upon termination of the administration, the Registrar must conduct an election for a new board.

The Registrar can also determine the administrator's remuneration, and who should pay it.

### **DEREGISTRATION—SECTION 82, REGULATION 18**

Deregistration is the cancellation of a corporation's registration, so that it will cease to exist as a corporation. It is intended to be used for corporations which are 'defunct' and essentially non-operational, but without debts (if a corporation had debts, winding up would be required).

The process for deregistration operates under provisions of the *Corporations Act 2001*, imported through Regulation 18 of the *Aboriginal Councils and Associations Act 1976*. Under those provisions, the Registrar may deregister a corporation if the following three conditions are met:

- the annual report is at least six months overdue
- no other documents have been lodged in the previous 18 months
- the Registrar has no reason to believe that the corporation is carrying on business.

On deregistration, any property of the corporation vests in the Registrar.

Deregistration is also the end result of a winding up (liquidation).

# Appendix K Reform of the ACA Act

## Reform of the Aboriginal Councils and Associations Act 1976—Proposed new Corporations (Aboriginal and Torres Strait Islander) Act

The *Aboriginal Councils and Associations Act 1976* (the ACA Act) was independently reviewed over a period of almost two years. Extensive research and consultation was conducted as part of the review, and the review report was publicly released in December 2002.

Since the completion of this report, the Office of the Registrar of Aboriginal Corporations (ORAC) has pursued further research and consultation to progress the reform process. A bill to reform the ACA Act is currently being drafted for consideration by the Australian Government.

### NEED FOR A NEW ACT

The review has found that an Indigenous-specific Act is relevant to achieving special measures for Indigenous people and organisations. A modernised Act is required to better achieve the following objectives:

- Promote good corporate governance and management, and create space for best practice and innovation.
- Provide for certainty in internal operations and transactions with third parties.
- Overcome known legal and technical problems with current legislation.
- Open up pathways for Indigenous organisations to move towards other

incorporation agencies such as the Australian Securities and Investments Commission (ASIC).

- Minimise incompatibility with the *Native Title Act 1993* and regulations, and other legislation.
- Regulate in a more appropriate way, keeping in mind special issues that arise in Indigenous affairs.

### PROPOSED REFORMS

In order to meet these objectives, significant reforms are proposed in the areas of incorporation, regulation, reporting, duties of directors and officers, remedies for breaches, members' remedies and breach penalties. Key reforms are summarised below.

#### 1 *Special legislation is still required but needs modernising*

- 1.1 The primary object of the legislation remains to provide culturally appropriate access to incorporation for Indigenous groups.
- 1.2 The legislation should be aligned with that of ASIC, as far as practicable, to be consistent with modern company law and to allow for easy transition to this and other incorporation regimes.
- 1.3 ASIC's legislation is based on a philosophy suited to commercial corporations but has limitations for corporations which exist for a social objective—a key reason for special legislation.

1.4 Special legislation should not compete with ASIC but offer a special measure.

## 2 *Corporate governance*

2.1 A corporation's rules will need to satisfy minimum standards as established by the Act and any regulations made under the Act. The Act will also establish a system of 'model rules', which may be modified by a corporation's constitution to suit its individual circumstances.

2.2 The Registrar will also have the power to reject a corporation's constitution, or any changes to an existing constitution, when the constitution or the changes do not satisfy the minimum standards or they are not internally consistent, adequate and workable.

## 3 *Membership*

3.1 The current requirement for corporations to have a minimum of 25 members will be reduced to five members consistent with other incorporation regimes.

3.2 Corporate membership will be permitted so that resource agencies and peak bodies can be accommodated.

3.3 The Act will give corporations the flexibility to allow a limited number of non-Indigenous persons to be members or directors. The current Act prohibits non-Indigenous persons from being members of corporations, as well as from being members of the board.

## 4 *Directors, secretaries and contact persons*

4.1 Duties of directors and officers of the corporation will be amended to make them consistent with the *Corporations Act 2001* (the Corporations Act) as far as practicable.

4.2 Remedies and penalties for breaches will also be consistent with the Corporations Act as far as practicable.

4.3 In addition, corporations will be required to provide a current list of directors on an annual basis. This will be an important enhancement to the Public Register and is consistent with information available through ASIC's public register.

4.4 Corporations will be able to have secretaries which will have the same powers and responsibilities as secretaries under the Corporations Act.

4.5 In the absence of a secretary, a corporation will be required to provide the name and address of a contact person to the Registrar. If the position becomes vacant and a new contact person is not notified the Registrar may deem any director to be the contact person. This will address existing compliance problems arising from corporations failing to provide details of a 'public officer'. Any person will be able to serve documents on an Indigenous corporation by serving the contact officer or any two directors.

## 5 *Supporting members*

5.1 Supporting members will be one of

the Registrar's key roles. It will include the provision of training and advice to Indigenous corporations. Anticipated benefits include improving compliance, improving corporate governance and early dispute resolution.

- 5.2 The Registrar will have an enhanced role in advocating for members, including a power to act for members in certain circumstances such as when the members request it.

## 6 *Reporting*

- 6.1 There will be different reporting requirements tailored in content to the size and purpose of the corporation.
- 6.2 Minimum, medium and maximum reporting requirements will apply depending on the size of the corporation. However, all corporations will be required to maintain proper accounts and records and to provide certain information on an annual basis.
- 6.3 There will be a discretion for the Registrar to apply different reporting requirements from those that automatically apply. This will enable some flexibility for corporations that do not neatly fit into any of the reporting categories and to allow targeting where a corporation or group of corporations present an unusual risk.

## 7 *Overcoming technical problems with the current Act*

- 7.1 Amendments will enable voluntary transfer of incorporation to other state

and Commonwealth incorporation statutes and will preserve all rights and liabilities of the transferring corporation.

- 7.2 The Act will not provide the Registrar with an express power to force transfer of incorporation to other statutes.
- 7.3 Meetings by telephone or videoconference will be possible.
- 7.4 The Registrar will be able to correct errors on the Public Register.
- 7.5 Reissue of certificates of incorporation will be possible.
- 7.6 Certainty in third-party transactions will be assisted through provisions to validate procedural errors automatically, or by courts in certain circumstances, consistent with the Corporations Act.

## 8 *Corporate membership and amalgamation*

- 8.1 New legislation will permit Indigenous corporations to have members which are other corporations.
- 8.2 Corporations will be able to amalgamate.

## 9 *Regulation by Registrar*

- 9.1 The Registrar's regulation powers will be retained but modernised.
- 9.2 The current examination power does not require grounds, therefore enabling 'healthy organisation checks' as a preventative measure. This power will be retained to allow diagnostic work to be conducted. This will encourage early intervention and problem solving.

The scope of the power will include examination of issues other than financial management, to support dispute resolution and improved service delivery.

- 9.3 The current power of the Registrar to appoint administrators will be retained to ensure that a safety net for service delivery and land-holding bodies can be maintained.
- 9.4 The current administration power requires specific grounds before it can be exercised. These grounds will be modernised and be clear and transparent.
- 9.5 Currently, appointment of an administrator automatically displaces the board of directors. The administration power will be modified to give the Registrar the discretion to retain the board in certain circumstances.

#### *10 General meetings of corporations*

- 10.1 The Registrar's current power to call special general meetings in circumstances where the corporation cannot or will not call such meetings will be expanded to include annual general meetings. Significant disputation builds up in circumstances where there is community and member concern about meetings not being held, so this power will be available to minimise disputes.
- 10.2 In addition, the power will be available where corporations do not have the ability to call or run the meeting.

#### *11 Working across agencies to support better service delivery*

11.1 The Registrar is not an agent for funding bodies and seeks to encourage funding bodies to be aware of and employ remedies available to them in supporting good corporate governance.

11.2 However, the Registrar will have an enhanced role in whole-of-agency work, including a power to call a conference of key parties. The Registrar may report to the Minister on outcomes and recommendations following the conference. This conferencing power will encourage corporations and other stakeholders to become more engaged in problem solving.

#### *12 Capacity development*

12.1 There will be a focus on capacity development through improved powers and strategies to generate better and more sustainable corporate governance, boards of directors and membership. Key strategies the new Act will support are:

- active support for members and corporations at all stages, especially in corporate design and training of members, officers and directors
- improved and expanded tools to support corporations, such as a range of guides to constitutions which maximise cultural fit, internal conflict resolution and internal accountability to members
- effective training and problem solving with members and corporations



- a more effective role in member and corporation disputes
- rewards for good corporate governance such as accreditation, mentoring, streamlining of compliance and reporting processes
- facilitation of whole-of-government and whole-of-agency action on key systemic issues
- intervention only when necessary
- early diagnosis of risks through case management of corporations, a rolling program of healthy organisation checks, and annual certification of status on the Public Register for every corporation.

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# publications and training

The following publications are available on the ORAC website, [www.orac.gov.au](http://www.orac.gov.au).

## Information guides

1. Setting up an Aboriginal or Torres Strait Islander corporation
2. The rules of the corporation
3. Changing the rules
4. Register of members and membership records
5. The rights and obligations of members
6. The role of the governing committee
7. The role of the chairperson
8. The role of the treasurer
9. The role of the secretary
10. The role of the public officer
11. Running a governing committee meeting
12. Conflicts of interest
13. Running an annual general meeting
14. Running a special general meeting
15. How to keep proper minutes and why
16. Preparing and using budgets for management
17. Looking after the corporation's finances
18. It's the end of the year: what do we do?
19. Exemption from preparing and lodging audited financial statements
20. Does your corporation need assistance?
21. When, why, and how does the registrar intervene?

## Guides to forms

- Guide to completing name and address of public officer: Form 4
- Guide to completing the application for incorporation: Form 6
- Guide to amending objects or constitutions: Form 8
- Guide to changing the name of a corporation: Forms 9 and 10
- Guide for filing annual returns with ORAC
- Model rules

## Training

ORAC offers three types of targeted training:

- information sessions with corporations, particularly board members and managers
- three-day workshops on corporate governance
- the Certificate IV and Diploma of Business (Governance).

In addition, ORAC has produced a training video, 'Meetings means business—a guide to conducting a successful board meeting'.

To enquire about training, contact ORAC's training and publications team on (02) 6212 2254 or toll free 1800 622 431.