



Australian Government  
Registrar of Aboriginal Corporations

# Office of the Registrar of Aboriginal Corporations

Yearbook 2002-2003

# Training and publications available from ORAC

---

## 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 board
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 board 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



The publications above are available on the web at [www.orac.gov.au](http://www.orac.gov.au)

## VIDEO

Meetings means business – a guide to conducting a successful board meeting

## TRAINING

- Information sessions with corporations, particularly board members and management
- Three-day workshops on corporate governance
- Certificate IV and Diploma in Business (Governance)
- Other training by arrangement

To enquire about training, contact ORAC's Training & Publications Team on (02) 6212 2254 or toll free 1800 622 431.

# Our performance at a glance

## Accessibility and responsiveness

We continued to provide a personal service to our clients, who include some of the most disadvantaged communities in Australia. Our toll-free telephone service averaged over 12,000 calls per year, and our website traffic increased. We continued to work in the field where required, especially to support remote communities. Our staff developed a guide to good practice for ORAC for implementation in 2004. The unique and increasingly used Public Register of Indigenous Corporations registered with ORAC (Public Register) was reviewed for the quality of its content, and steps were taken to make it available on the web in 2004.

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

The number of new incorporations remained steady, averaging 180 per year, as did numbers for dispute resolution assistance (123 in 2002–03). Requests for advice, information and referrals doubled. ORAC is devoting more resources to constitutional design, with the aim of building better corporations from the start. We initiated work on a new model constitution and a new publication – *Guides to Good Constitutions*.

## Monitoring, examination and regulation

ORAC conducted systematic monitoring of corporations. We expanded our program of rolling examinations to pick up problems and find solutions early. While most of the 34 corporations examined rectified any problems found, we initiated eight appointments of administrators. We reduced the number of liquidations in progress, from 65 at the beginning of the year to 44 at year's end. We reviewed our approach to monitoring risk and non-compliance under the *Aboriginal Councils and Associations Act 1976* (the ACA Act), as well as to outcomes from our regulation work, and developed policies and strategies to improve.

## Information and training

ORAC delivered 46 information and training sessions, up from 35 in 2001–02. We expanded our programs to include three-day workshops for groups with the greatest need, and a nationally recognised, competency-based Certificate IV course in Business (Governance) for Indigenous people.

## Portfolio Budget Statement targets

We met all our Portfolio Budget Statement targets in 2002–03. We exceeded all the required measures of quantity, particularly in training and information sessions and examinations of corporations. On measures of quality, we improved our clients' corporate governance through working with individual corporations. We initiated projects that will contribute to longer term improvements, such as a policy on good governance and our *Guides to Good Constitutions*; expanded pre-incorporation services focusing on better design of corporations; and worked with other agencies to deliver solutions to systemic problems. We met the Minister's requirements in good time.

## New legislation

We finalised the review of the ACA Act after significant consultations and research conducted over two years. At the time of writing, the Australian Government has announced that it will proceed with reforms to the Act. The reforms will support: responsible incorporation; effective operations by corporations; timely regulation by ORAC; and the building of corporate governance capacity in communities. The new act is expected to come into operation in 2005, subject to its passage through Parliament.



Office of the Registrar of  
Aboriginal Corporations

Yearbook 2002-2003

Edited by: Wordsworth Writing

Designed by: Levitate Graphic Design

Printed by: Canprint Communications Pty Ltd

© Commonwealth of Australia 2004

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from ORAC. Requests and enquiries concerning reproduction and rights should be addressed to The Registrar, ORAC, Level 4, Churches Centre, Woden ACT 2606

Some names may be mentioned, or images portrayed, of people who have died since the events recorded occurred. The Office of the Registrar of Aboriginal Corporations apologises for any hurt caused.

ISSN 1036-2142

# Contents

<b>LETTER TO THE MINISTER</b>	<b>6</b>
<b>REGISTRAR'S YEAR IN REVIEW</b>	<b>7</b>
<b>About the Office of the Registrar of Aboriginal Corporations</b>	<b>11</b>
Summary of our vision	13
Our key responsibility	13
Our key clients	13
Who we are	13
Our purpose	16
Our key relationships	19
<b>Performance</b>	<b>23</b>
Performance information for Output 5.5	24
Profile of corporations incorporated with ORAC	27
Pre-incorporation, incorporation and post-incorporation support services	27
Information, training and client publications	39
Monitoring, examinations and other regulation	45
Improving corporate governance	58
Contributing to law reform and reviews	60
<b>Our Organisation</b>	<b>67</b>
Corporate and business plans	69
External scrutiny	69
Structure	72
Staff	72
Resources	77
<b>Appendices</b>	<b>81</b>
<b>Appendix A:</b> Locations of registered corporations	82
<b>Appendix B:</b> Summary of the Registrar's regulatory powers	84
<b>Appendix C:</b> Compliance trend	88
<b>Appendix D:</b> Corporations where examinations were initiated	89
<b>Appendix E:</b> Corporations issued with notices to rectify matters	92
<b>Appendix F:</b> Corporations issued with notices to show cause why an administrator should not be appointed	92
<b>Appendix G:</b> Corporations where administrators were appointed	93
<b>Appendix H:</b> Liquidations in progress	94
<b>Appendix I:</b> Liquidations finalised	96
<b>Appendix J:</b> Deregistrations completed	97
<b>Appendix K:</b> Reform of the <i>Aboriginal Councils and Associations Act 1976 (ACA Act)</i> Proposed new <i>Corporations (Aboriginal and Torres Strait Islander) Act</i>	101
<b>LIST OF ABBREVIATIONS</b>	<b>106</b>
<b>INDEX</b>	<b>107</b>

# 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 for the year ended 30 June 2003.

Although the current legislation does not require it, I consider it appropriate and desirable to publish this Yearbook as an aid to those interested in our work.

The content of this publication is more detailed than that in our annual report, which forms part of the ATSIIS 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 to encourage feedback and dialogue.

We maintained our emphasis on performance and succeeded in achieving our targets in 2002-03. 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

15 April 2004

PO Box 2029, Woden ACT 2606 Tel: (02) 6121 4562 • Freecall 1800 622 431 •  
Fax: (02) 6281 2739 • E-mail: info@orc.gov.au • [www.orc.gov.au](http://www.orc.gov.au) • ABN 15013281264



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



The Hon Philip Ruddock MP,  
who was Minister for Immigration  
and Multicultural and Indigenous  
Affairs during the period covered  
by this yearbook, and was appointed  
Attorney-General on 7 October 2003



# Registrar's year in review

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 forms part of the Aboriginal and Torres Strait Islander Commission annual report 2002–03. Here, we illustrate key problems through analysis of data and case studies. We also report more fully on approaches currently in place, and works in progress, that aim to deliver improvements over the long term. We welcome feedback about any matters raised in this yearbook.

The 2002–03 financial year saw rapid change. As I write, the Aboriginal and Torres Strait Islander Commission Review has been completed, with the aim of delivering greater benefits in the living standards of Indigenous people. ORAC, part of the Indigenous Affairs portfolio and serving many Indigenous corporations, is a part of the solution to longstanding problems.

We kept our focus on performance and achieved our targets during the year, but we also refocused the way we administer the ACA Act. Our practices and aims are evolving to meet the challenges raised by the ATSIC Review and general concerns about the living circumstances of many Indigenous people. Among other things, our new focus involves:

- not encouraging groups to incorporate, in order to avoid unsustainable and unnecessary incorporation



- where incorporation is necessary, working with groups at an earlier stage to build well-designed and responsible corporations and practices
- monitoring corporations systematically, and sharing the resulting analysis as far as the law allows – with the corporations, members and stakeholders – to promote action by all
- examining corporations on a rolling basis, in order to identify problems and solutions early
- requiring corporations to take responsibility for rectifying problems
- intervening early to avoid the liquidation of essential community resources

# Registrar's year in review continued

- building capacity through a range of accredited and non-accredited training, and also providing timely advice, information and referral services
- holding corporations and people associated with them accountable, and pursuing criminal and civil proceedings against them where appropriate.

Meeting these challenges requires us to acknowledge that the Indigenous corporate sector has many strengths, but also some persistent and serious problems. In our refocused work, we are identifying, supporting and advertising better practice and successful corporations, and targeting:

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

To improve corporations' financial practices, ORAC is targeting:

- non-compliance under the ACA Act
- fraud control and debt recovery by the corporation
- incapacity to deal with taxation requirements, which is exacerbated by

some funding bodies that carry out only limited monitoring

- non-payment of goods and services tax
- late or missing business activity statements
- overlooked employer superannuation contributions
- overlooked or wrongly calculated fringe benefits tax
- salary-sacrifice arrangements that are not in accordance with guidelines
- non-remittance of pay-as-you-go tax payments
- poor internal controls for EFTPOS transactions.

All these increase the risk of corporate failure. Communities, corporation staff and corporation members suffer the consequences.

Improving corporate governance in Indigenous corporations hinges partly on clarifying what the purpose of governance is: for example, providing a system for meeting corporate objectives or representing a community; or providing a system by which traditional owners make decisions. ORAC's key focus is on the first form of governance ie, good corporate governance. There are many settled and relevant principles and success factors that apply to good corporate governance but are not well understood or practised

Indigenous corporate governance must often be performed in conjunction with community governance. Widespread expectations exist that Indigenous corporations will somehow meet all the governance needs at a site, and this can threaten to overload corporations

and their boards. In addition, legal issues can arise about decision making by boards. During 2002–03 ORAC initiated the development of a policy on good corporate governance, in order to address this major pressure on Indigenous corporations. The policy will enable the sharing of best practice with others, and will be completed in 2004.

Meeting the challenge requires agencies such as ORAC to do much more than merely state the problems: we must contribute to solutions. This report outlines the various approaches that we have taken to tackle these issues, one example of which is our work on defining good governance. 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 members, the Indigenous corporate sector and other stakeholders.

A significant focus for ORAC during the year has been to develop existing relationships with key partners and to build new ones with important stakeholders. Naturally, we have continued to work closely with all the major bodies that fund Indigenous corporations. We aim to achieve a united approach in capacity building, risk management and providing financial guidance to organisations, and we will work together to streamline monitoring and reporting (see ‘Interagency coordination’, page 60).

To better coordinate and align our efforts, we have collaborated with all the state and territory incorporating bodies and attend a forum of those organisations. We have developed a partnership, soon to be affirmed

in a memorandum of understanding, with the Australian Securities and Investments Commission. We participate in a forum hosted by the Australian Taxation Office to improve tax management by Indigenous corporations. We are active participants in the forum of Australian Government agencies that have primary responsibilities in Indigenous affairs, and as a result have agreed to host a forum on training in governance during 2004. (See ‘Our key relationships’, pages 19-21)

During 2002–03, ORAC concluded its review of the now dated legislation from the 1970s, the ACA Act. The Australian Government has agreed to reform the Act to ‘improve the effectiveness of Indigenous organisations for the benefit of the communities’ (see media release, page 61). A new act is expected to come into operation in 2005, subject to its passage through Parliament.

The work of ORAC is performed by our staff, who are long-serving, technically skilled, experienced and committed people. Everyone at ORAC is dedicated to offering a personal service to clients, and is very conscious of the special needs of many. We are inspired by the successes of many corporations regulated by the ACA Act, and very pleased to showcase their achievements in the case studies in this report.





## About the Office of the Registrar of Aboriginal Corporations

**FIGURE 1 OUR PLACE IN THE INDIGENOUS AFFAIRS PORTFOLIO  
2002-2003**



\* The 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 was transferred on 1 July 2003. ATSIS was established on an interim basis to implement a 'separation of powers' from ATSIC.

## Summary of 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*, 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 are focused on serving:

- Indigenous individuals, groups and corporations
- people accessing ORAC's public register
- the Minister and agencies supporting the Minister
- central agencies of the Australian, 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 Registrar of Aboriginal Corporations is an independent statutory office holder appointed by the Minister for Immigration and Multicultural and Indigenous Affairs under the ACA Act.

During the 2002–03 financial year, Mr Joe Mastrolembo acted as Registrar until 31 July 2002, when Ms Laura Beacroft was appointed to the position for a term of three years.

The Office of the Registrar of Aboriginal Corporations (ORAC) assists the Registrar in supporting and regulating 2,861 corporations for Indigenous people throughout Australia, and in providing an avenue for new incorporations where these are needed. ORAC delivers a tailored service that responds to the special needs of Indigenous groups and corporations, and strives for national and international best practice in corporate governance.

ORAC is the principal mechanism through which the Aboriginal and Torres Strait Islander Commission (ATSIC) delivered a key performance goal of the Indigenous Affairs portfolio during 2002–03, namely Output 5.5 – fostering Indigenous business as separate legal entities. (See also page 24.)



**FIGURE 2 ORAC'S KEY ROLES**





## OUR DIRECTION

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

- administer the *Aboriginal Councils and Associations Act 1976* efficiently and effectively
- provide support services for all matters arising out of the administration of the ACA Act
- improve boards' awareness and understanding of, and compliance with, their roles and responsibilities under the ACA Act, and in their corporations
- promote the requirement for corporations to be accountable to their members.

## GUIDING PRINCIPLES

The following principles guide ORAC's administration of the ACA Act and associated services:

- building sustainability – good practices in management and governance that maximise the use of resources and contribute to the continuing evolution of organisations and their effectiveness in achieving their members' purposes
- 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 through processes and strategies that build capacity
- supporting economic development – recognition that economic development is a foundation for eliminating poverty and effecting other social improvements

- being accountable – accountability to members, beneficiaries and communities underpins governance and management practices; organisations meet their legal and other requirements in line with the expectations of funding bodies and the community
- managing conflict and disputes – assistance to organisations to resolve conflicts and develop conflict resolution processes; 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 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 the needs of our 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 understanding of social networks.

## THE ROLE OF THE REGISTRAR

As an independent statutory office holder responsible for the administration of the *Aboriginal Councils and Associations Act 1976*, the Registrar has powers to intervene that are similar to those exercised by the Australian Securities and Investments Commission (ASIC). Some of the Registrar's powers, which are summarised in Appendix B, require ministerial agreement before they can be exercised.

As a statutory office holder, the Registrar is not under direction for decisions made under the ACA Act. The Registrar is subject to performance management and review as part of an Australian Workplace Agreement with the chief executive officer (CEO) of ATSIAC (from 1 July 2003, with the CEO 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 Corporate Leadership Group of ATSIAC–ATSIS. Various arrangements, including a formal agreement, are in place to enable ORAC and ATSIAC–ATSIS to manage any tensions that might arise from ORAC's placement in this structure.

### Our purpose

Our purpose is to effectively administer the ACA Act, which requires us to deliver incorporation, regulation and related services for Indigenous people in a manner consistent with principles of sound corporate governance. Figure 2 illustrates the roles we adopt in achieving that purpose.

## THE ABORIGINAL COUNCILS AND ASSOCIATIONS ACT 1976

In the 1960s and 1970s, various reviews advised the Australian Government of the need for legislation to make it easier for Indigenous communities and organisations to form corporations. The emergence of land rights further emphasised the need for an alternative to complex and onerous laws and processes for incorporating, which were unsuited to many Indigenous people, particularly those living in remote areas.

As a result, the *Aboriginal Councils and Associations Act 1976* was passed, allowing Aboriginal and Torres Strait Islander groups to form corporations for any social or economic purpose. Incorporation occurs when a group of individual members creates a body (under the ACA Act) that is itself recognised as a person in law, which then represents the members in accordance with its agreed constitution. Incorporation brings many entitlements, such as access to funds, and also brings many responsibilities for people associated with the corporation.

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

See page 27 for a profile of Indigenous corporations currently incorporated under the ACA Act. The Act was last amended in 1992, and the Australian Government has announced that it intends to reform it in the future. A report on proposed changes appears below (see 'Contributing to law reform and reviews', page 60).

## SERVICES

The *Aboriginal Councils and Associations Act 1976* complements other incorporation legislation in Australia, namely the *Corporations Act 2001* (Corporations Act), state and territory legislation, and special statutory schemes. The ACA Act is suited to Indigenous groups that are disadvantaged because of their remoteness or socioeconomic position. However, it is not suited to large, complex trading corporations, which are better incorporated under the Corporations Act. The ACA Act allows some scope for more flexible incorporation in line with cultural practices, while still ensuring appropriate monitoring and regulation.

ORAC offers a wide range of support additional to that offered under most other incorporating legislation, in response to the special needs, requirements and risks of today's Indigenous corporations. Key services are:

- assisting groups that are considering incorporation, and supporting them through the process if incorporation proves necessary
- assisting groups once they are incorporated, including assisting with managing disputes, conducting meetings and answering corporation queries
- assisting members of corporations with issues and/or complaints about corporations
- delivering training and providing information to clients in the form of videos or publications

- monitoring and reporting on compliance of corporations
- examining corporate governance
- intervening where necessary
- deregistering where necessary.

## PUBLIC REGISTER

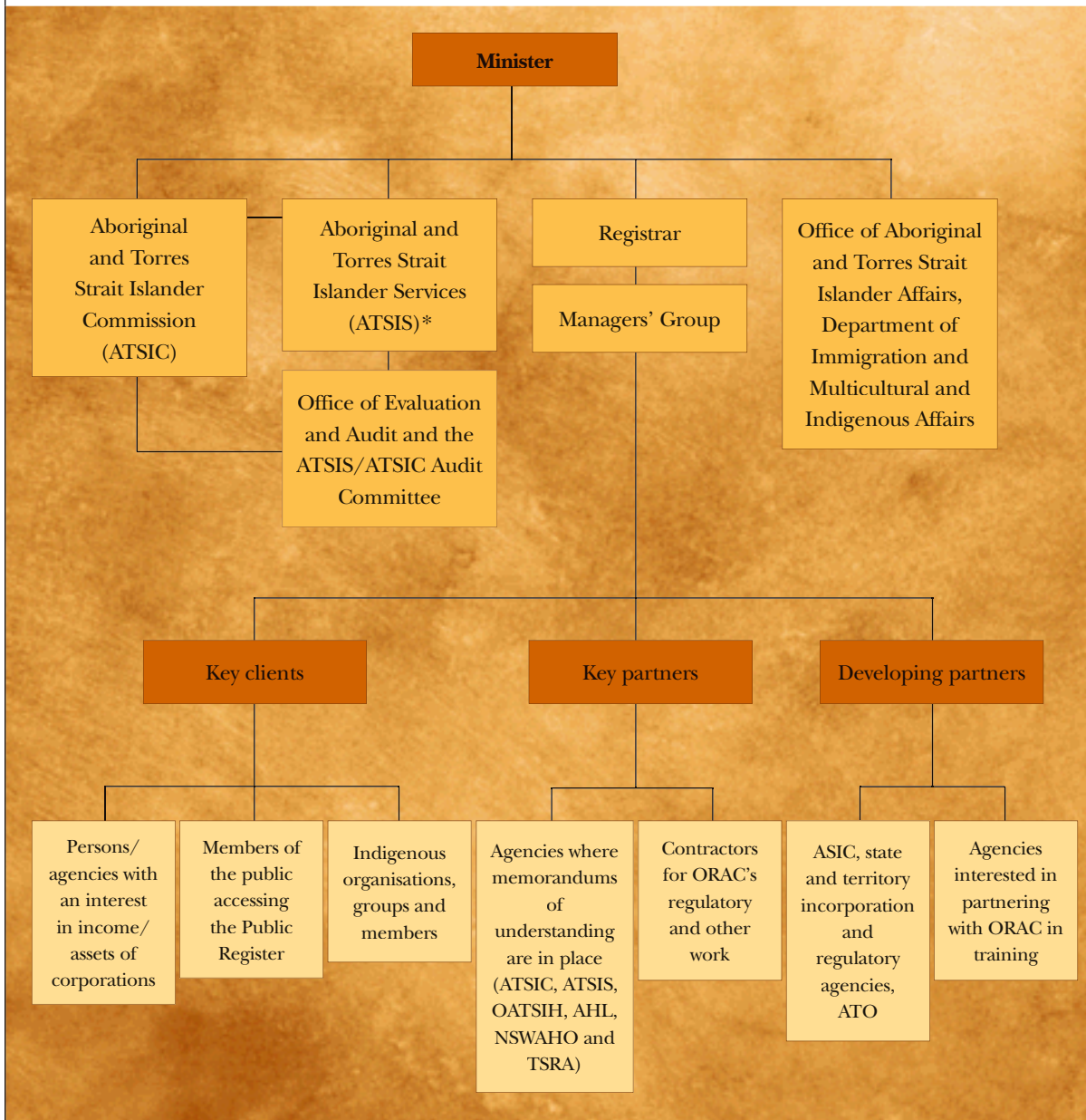
ORAC maintains the unique Public Register of Indigenous Corporations (Public Register), listing bodies which are incorporated under the ACA Act. The Register provides considerable information, assistance and regulatory support for a range of agencies with interests in Indigenous corporations and their members.

As the name suggests, the information contained in the register is available to the general public. At present, the information can be obtained only on request to ORAC, but work has begun to make the register available via our website. The information currently held in the register includes certificates of incorporation, applications for incorporation, rules (constitutions), lists of members, public officer details, annual financial statements including exemptions, and documentation relating to regulatory actions – for example, monitoring, administration, liquidation or deregistration.

## SERVICE CHARTER

ORAC's service charter, along with our three-year corporate plan, runs until the end of 2003–04. The charter binds our staff and consultants to treat our clients courteously and fairly, to preserve privacy and confidentiality, to give consistent and

**FIGURE 3 ORAC'S KEY RELATIONSHIPS**



Note: AHL = Aboriginal Hostels Ltd; ATO = Australian Taxation Office; NSWAHO = New South Wales Aboriginal Housing Office; OATSIH = Office of Aboriginal and Torres Strait Islander Health; TSRA = Torres Strait Regional Authority.

\* The 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 was transferred on 1 July 2003. ATSIS was established on an interim basis to implement a 'separation of powers' from ATSIC.

accurate advice, and to respect cultural diversity and Indigenous traditions.

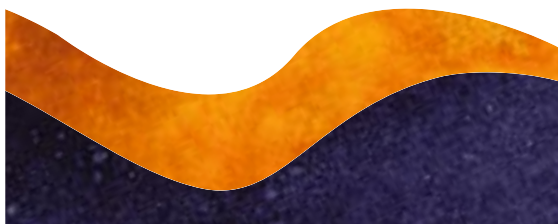
The service charter describes ORAC's complaints system, which is designed to ensure that issues raised by clients are responded to. During 2002–03, only one complaint (a verbal complaint) was received, and was dealt with.

### Our key relationships

Throughout 2002–03, ORAC made contact with a number of other agencies and stakeholders in order to achieve better outcomes for Indigenous corporations (see Figure 3). We entered into formal and informal arrangements to develop cooperation in areas of common interest, such as mutual support for strategic and operational management, particularly through timely information exchange where the law allows it. An overview of these key relationships is set out below.

#### KEY FUNDING BODIES

During the year, we liaised closely with ATSIC (and ATSI) and the Office of Aboriginal and Torres Strait Islander Health (OATSIH) to coordinate capacity-building initiatives, especially training on corporate governance. We also worked together on matters involving their funded corporations, to the extent that the law allows.



#### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

ORAC and ASIC progressed discussions about a formal memorandum of understanding, intended to clarify roles and contact arrangements and so support:

- streamlining data and information exchange
- working cooperatively where appropriate, such as on law reform and policies
- coordinating services and regulatory work, where appropriate
- enabling ORAC to join the National Names Index and related indexes.

#### NORTHERN TERRITORY ASSOCIATIONS REGISTRY

Many Indigenous associations are incorporated under the Northern Territory *Associations Act*.

ORAC works with this agency on several matters of mutual interest that impact on the Northern Territory, and has agreed to coordinate training programs where possible.

Further information is available at [www.caba.nt.gov.au](http://www.caba.nt.gov.au)



## **STATE AND TERRITORY INCORPORATING BODIES**

In 2003, ORAC was invited to participate in the Business Names and Incorporated Associations Conference for the first time. As a result, we now have working relationships and a network of personal contacts with the state and territory bodies that administer incorporated associations.

A number of positive outcomes have already emerged from these relationships, including:

- an improved understanding by the state and territory bodies and ORAC of the various incorporating schemes around Australia – one result is the development of a tool for clients, soon to be available on the ORAC website, showing the different incorporating options
- an agreement by some of these bodies to advise Indigenous groups considering incorporation to consider the disadvantages and advantages of incorporating with ORAC, especially if they will require support
- an agreement by some of these bodies with ORAC to have links to each other's websites, so that Indigenous organisations enquiring about incorporation will be better informed of all of the alternatives
- agreement to put in place mechanisms to allow ease of migration between the relevant legislative regimes, and to consider law reform where it is necessary
- agreement on naming conventions for Indigenous associations
- feedback about ORAC's review of its legislation, and legislative reforms.

## **INDIGENOUS TAX ADVISORY GROUP**

The Australian Taxation Office has convened the Indigenous Tax Advisory Group to identify taxation issues of concern to Indigenous people and corporations, with a view to resolving these problems. ORAC was invited to be a member of this forum, which met twice.

We have informed the group of a number of emerging issues for them to work on, including the following.

- Some Indigenous corporations lack knowledge, management know-how and diligence in tax matters.
- Taxation compliance is largely unmonitored by funding bodies, creating a significant risk because non-compliance can quickly lead to liquidation and loss of grant-funded services and assets.
- Goods and services tax is sometimes not dealt with properly (particularly if the corporation receives grant funds).
- Business activity statements are sometimes not kept up to date or not completed at all.
- Employer superannuation contributions may be overlooked.
- Fringe benefits tax may be either overlooked or not calculated correctly.
- Salary-sacrifice arrangements may not be operated in accordance with the guidelines.
- Pay-as-you-go tax instalments are sometimes not remitted.

All these problems lead to higher risk of non-compliance, liquidation and fraud.

These matters have also been drawn to the attention of most key funding bodies of Indigenous corporations, in order to alert them to these risks. ORAC will facilitate a workshop in 2004 to further discuss these and other risks affecting Indigenous corporations, and to work towards coordinated risk treatment plans by funding bodies.

#### **ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS PORTFOLIO CEO FORUM**

Convened by the Office of Aboriginal and Torres Strait Islander Affairs, part of the Department of Immigration and Multicultural and Indigenous Affairs, the Chief Executive Officer Forum involves key people from national agencies with a primary role in serving Indigenous people. It meets quarterly and focuses on information sharing and coordination. ORAC has agreed to host a workshop on training in corporate governance as a result of the forum's concerns about lack of coordination in this area. The workshop is to be held in mid-2004.

#### **SUSTAINABILITY WORKING PARTY**

ORAC convened a small think-tank to help us refocus our work, particularly on building the sustainability of Indigenous corporations. The working party developed the principles on page 15 of this Yearbook, which have been endorsed by ORAC. The following key projects also were initiated in response to this process:

- policy on good corporate governance (see page 58)
- new model constitution (page 45)
- *Guides to Good Constitutions* (page 32)
- report card on the corporate governance 'health' of Indigenous corporations (page 59)
- review of ORAC's panel of consultants doing regulation and related work, to bring skills into line with our new focus and new legislation (page 79)
- new policy on regulation work.







The Association of Northern, Kimberley and Arnhem Aboriginal Artists Aboriginal Corporation (ANKAAA) is a non-profit organisation incorporated with ORAC. It supports 32 arts groups throughout remote Australia, whose members include some of Australia's leading artists. Arts centres in the Northern Territory generate approximately \$10 million per year from direct sales of arts and crafts, and sales through commercial galleries throughout Australia contribute to an estimated \$100 million of revenue each year.

The artwork below shows a local artist unveiling his work at a gallery opening that coincided with the AGM for ANKAAA. ORAC is investigating a partnership with ANKAAA to deliver training in corporate governance to arts centres affiliated with ANKAAA.

---

Artist: Spider Snell of the Mangkaja Arts Resource Agency Aboriginal Corporation  
Photograph courtesy of Monsoon Studio, Darwin NT

## Performance



**TABLE 1 INDIGENOUS AFFAIRS PORTFOLIO OUTPUT STRUCTURE, 2002-03**

Outcome: the economic, social and cultural empowerment of Aboriginal and Torres Strait Islander peoples so 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	Quality assurance and capacity building 5.1 Advocacy 5.2 Ministerial services 5.3 Planning and partnership development 5.4 Evaluation and audit 5.5 Business as separate legal entities 5.6 Welfare reform: participation



### Performance information for Output 5.5

In 2002-03, ORAC was the main mechanism through which the Aboriginal and Torres Strait Islander Commission (ATSIC) delivered key performance goal Output 5.5 – fostering Indigenous business as separate legal entities. Tables 1 and 2 outline the portfolio structure and performance indicators identified in the Portfolio Budget Statements.

**TABLE 2 PERFORMANCE INDICATORS, 2002-03**

<b>Output 5.5: Business as separate legal entities</b>		
<b>Measure</b>	<b>Target</b>	<b>Performance</b>
<b>Quantity</b>		
New incorporations	150 new incorporations	183 new incorporations were achieved in a timely manner and with a negligible refusal rate.  ORAC is aware of its responsibility not to encourage unnecessary incorporation, which can place a burden on communities. In order to foster stronger communities ORAC has implemented strategies to encourage responsible incorporation.
Training and awareness sessions	45 sessions	46 sessions were held during the year.  While meeting its target, ORAC developed new training options, including a three-day workshop and an accredited Certificate IV program, and prepared them for testing.
Examinations under section 60 of the <i>Aboriginal Councils and Associations Act 1976</i> , which gives the Registrar power to examine key governance and financial records	30 examinations	34 examinations were conducted.  While meeting its target, ORAC focused on aligning the examination program with risk analysis available from the new workflow and information management system on Indigenous corporations – ERIC.
<b>Quality</b>		
Improved corporate governance practices by corporations incorporated under the ACA Act		ORAC's services and policy work are geared towards improving corporate governance of corporations under the ACA Act in a measured way.
Compliance with required timeframes in advising the Minister on matters relating to the administration of the ACA Act	100 per cent	This target was met.

**TABLE 3 LOCATION OF CORPORATIONS, BY REMOTENESS AND STATE/TERRITORY, 2002-03**

	Major cities	Inner regional	Outer regional	Remote	Very remote	Not known	Total
ACT	19	1	1	0	0	0	21
NSW	80	106	186	58	20	0	450
Vic	16	27	18	6	0	0	67
Qld	78	90	189	51	255	0	663
SA	16	25	2	2	14	0	59
WA	122	47	58	82	529	0	838
Tas	0	13	6	1	1	0	21
NT	0	0	75	142	415	0	632
State not known	1	0	0	0	0	109	110
Australia	332	309	535	342	1234	109	2,861



## Profile of corporations incorporated with ORAC

At the end of the 2002–03 financial year, 2,861 corporations were registered under the ACA Act. After rapid growth in Indigenous corporations under the Act in the early 1990s, the number of new incorporations annually has remained steady for some years (see Figure 4 on page 29). 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 of 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, as Table 3 and map on inside back cover show, 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 and are now held privately by the corporations.

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 are large in that they have substantial income and assets. Also, a significant number have little income but substantial

assets. These findings have implications for many aspects of ORAC’s work, especially legislative reform and risk management

## Pre-incorporation, incorporation and post-incorporation support services

A unique characteristic of ORAC is that we provide significant support to Indigenous groups before, during and after their incorporation.

### PRE-INCORPORATION SERVICES

ORAC does not encourage unnecessary incorporation, which can place a burden on communities. During the year, we implemented strategies to foster stronger communities by ensuring ‘necessary and responsible’ incorporation. This involved working with groups enquiring about incorporation to first establish whether incorporation was a better option for them than alternatives, such as finding a sound existing corporation to ‘host’ the group.

Issues covered in our pre-incorporation workshops include:

- what it means to be incorporated and reasons for incorporating
- benefits, costs and ongoing requirements of incorporation
- what the group’s incorporation options are, and whether incorporation is necessary, desirable and viable.

Where incorporation is necessary, ORAC works with the group to help members understand what incorporation means in law and practice.

We provide considerable support during the incorporation process to maximise soundness of design and compliance of the corporation with requirements. Our services include:

- providing incorporation kits containing information about the requirements of incorporation; incorporation forms and guides on how to complete them; and model constitutions that promote the requirements of the ACA Act
- informing groups on matters relevant to their specific incorporation needs
- helping groups with the design of proposed constitutions to fit their local needs and circumstances (many groups submitted proposed constitutions for pre-approval by ORAC before incorporation, thus ensuring that their constitutions were acceptable and that they complied with requirements).

During 2003–04, we will further improve our pre-incorporation services by introducing an expanded advisory service for developing constitutions; implementing case coordination; producing improved tools such as *Guides to Good Constitutions*; and initiating more streamlined processes.

## INCORPORATION SERVICES

As well as incorporating Indigenous groups, ORAC delivers related services, including approvals of changes to constitutions and names, and assistance with constitutional redesign. Table 4 outlines incorporation services provided by ORAC in 2002–03 and the previous two financial years.

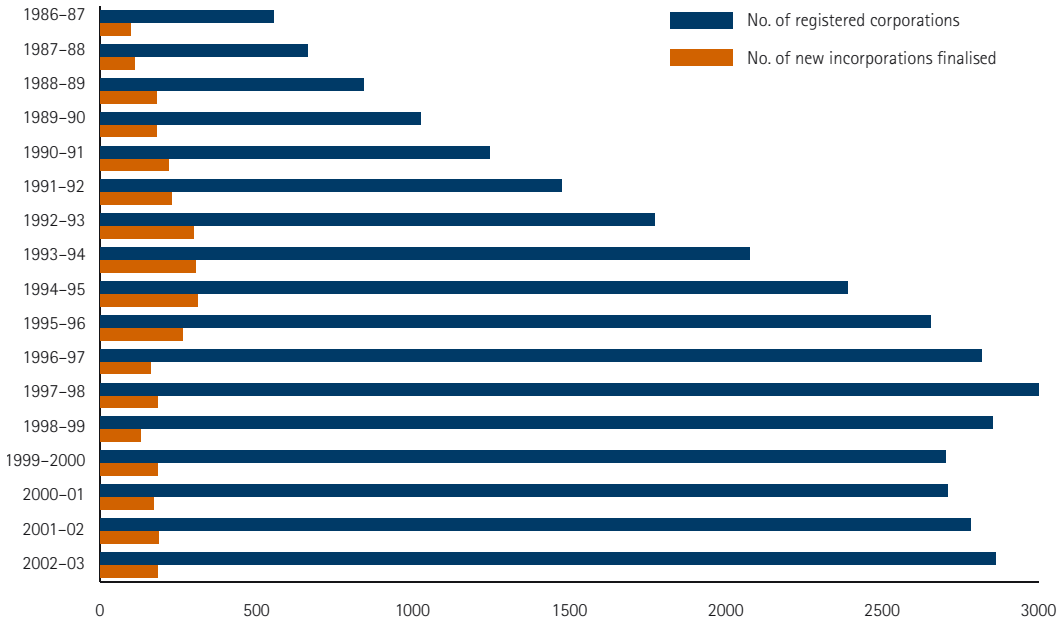
### New incorporations

Incorporation demand, which has mainly been driven by the requirements of funding agencies, remained steady in 2002–03 (see Figure 4). During the year, we received 211 applications for incorporation (a slight increase, compared to 206 applications for 2001–02) and approved 183 new incorporations (similar to 187 the previous year).

The incorporation approval rate remained high during 2002–03, at 89 per cent, and the number of lapsed applications (that is, applications that could not proceed to incorporation) remained low at 11 per cent. This reflects the effectiveness of ORAC's strategies for liaison, follow-up and assistance to groups to meet incorporation requirements, including completion of core documents.

Throughout the year, we continued to reduce the time taken for incorporation (the average time is about four weeks, down from six weeks in the previous financial year). We made progress on a process improvement project that will allow further gains in 2005, including streamlining processes and providing for some electronic lodgment.

**FIGURE 4 REGISTERED AND NEW CORPORATIONS, BY YEAR, 1986-87 TO 2002-03**



Note: The number of registered corporations takes into account corporations that have been deregistered.

**Case study 1:**  
**Pre-incorporation assistance**

A group of elders proposed setting up a new corporation, and asked for help from ORAC.

They wanted to incorporate a group to manage the social and cultural affairs of the community. In particular, they wanted to re-establish the importance of the elders in the management of the community, and the requirement for elders to be consulted on major decisions affecting the whole community.

During 2002-03, we met with the elders and conducted an information session with the group, covering what it means to be incorporated and the benefits, costs and ongoing requirements of incorporation. Discussions then centred on how the corporation would be established and the development of a constitution. A considerable time was spent with the elders in drafting, discussing and workshopping the constitution to ensure that it would meet the needs of the corporation and its members.

The group subsequently submitted all the necessary documentation, and the organisation was incorporated.

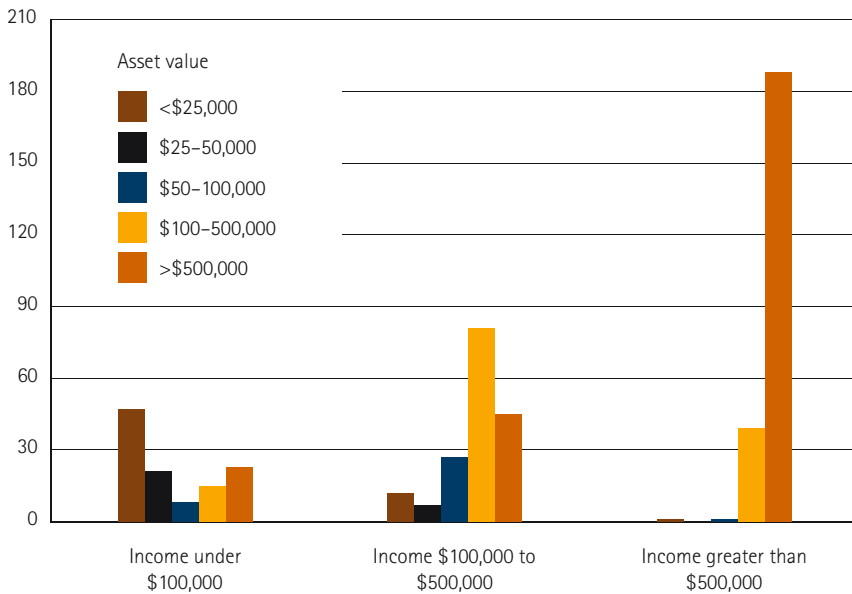
**TABLE 4 INCORPORATION AND POST-INCORPORATION SERVICES, 2000-01 TO 2002-03**

	2002-03	2001-02	2000-01
<i>Incorporations</i>			
Applications received	211	206	168
Total applications actioned during the year	205	207	242
Applications approved	183	187	171
Applications refused	–	–	–
Application lapsed	22	20	71
<i>Constitution change requests</i>			
Requests received	138	134	92
Total requests actioned during the year	127	143	148
Requests approved	94	98	85
Requests refused	22	21	1
Requests lapsed	11	24	62
<i>Name change requests</i>			
Requests received	20	24	16
Total requests actioned during the year	16	32	31
Requests approved	8	22	13
Requests refused	2	1	–
Requests lapsed	6	9	18
<i>Public register searches</i>			
Search requests received	551	858	656
Search requests finalised <sup>a</sup>	557	844	654
<i>Members' complaints and dispute assistance</i>			
Matters received	123	120	127
Matters finalised	107	119	134
<i>Advice on corporation issues</i>			
Enquiries received	668	251	166
Enquiries finalised	622	245	154

<sup>a</sup> Some searches finalised during the financial year were requested in the previous year



**FIGURE 5 NUMBER OF CORPORATIONS, BY INCOME AND ASSETS, AT 30 JUNE 2002**



Note: Due to the reporting timeframes for corporations under the ACA Act, this figure shows data to 30 June 2002. Information on income and assets is not known for all corporations; Figure 5 shows income and assets where known.

## Constitution changes

One of our key aims is to help groups design constitutions that promote good governance and reflect healthy local practices.

During the year, ORAC received 138 requests (up from 134 in 2001–02) for constitution changes. We approved 94 requests (98 in 2001–02). The approval rate of 74 per cent was higher than in 2001–02 (68 per cent), while the refusal rate of 17 per cent was consistent with the previous year. Lapsed applications also dropped, from 17 per cent in 2001–02 to 9 per cent in the reporting period.

Noteworthy developments in Indigenous corporation constitutions included rules to:

- elect board members for a term of more than one year, and/or to elect only a proportion of board members at each annual general meeting, in order to provide stability to elected boards and discourage ‘takeovers’ at general meetings
- allow board structures and membership to be based on different classes – including Indigenous language groups, clan groups or traditional owners’ groups – so that corporate governance can better reflect Indigenous decision-making practices
- reduce the quorum needed for general meetings, and introduce rules that provide for an ‘emergency’ process for the conduct of meetings where there has been repeated failure to achieve a quorum

- broaden the ‘cessation of membership’ provisions in constitutions to remove from membership people who are no longer interested in participating in the corporation’s affairs, or who are no longer eligible to be members
- allow for board meetings and general meetings to be conducted by telephone or video conference where members are widely dispersed
- allow for voting by secret ballot, where corporations have previously experienced problems with voting by show of hands
- allow for a series of regional general meetings and elections of regional board members where the corporation’s activities extend to many regions and/or to many different communities.

The *Guides to Good Constitutions* being developed by ORAC will showcase examples of successful Indigenous corporate constitutions and practices, to help others design sound corporations and put in place good corporate governance practices from the beginning.



### *Case study 2: Resolving problems with a constitution*

One of the corporations that ORAC has advised was set up to identify, promote and develop the economic interests of Torres Strait Islanders and their descendants in the region.

Over the years, the corporation's membership had grown dramatically, to include over 400 Torres Strait Islander community members. The rules of the corporation stated that 25 per cent of the membership must be present to provide a quorum for general meetings.

This resulted in difficulties for the corporation. Over the past couple of years, the corporation had made several attempts to hold general meetings but had failed to reach a quorum. The governance of the corporation was practically at a standstill. It was not able to hold annual general meetings or conduct the business of those meetings, including the election of a new board, the presentation of annual returns to members, and the appointment of an auditor.

This situation contributed to disputes between board members and the membership. Concerned members contacted ORAC about these and other difficulties.

ORAC travelled to the region and met the board to discuss the issues the corporation was confronting, help develop a strategy to conduct a valid annual general meeting, and agree to a timeframe for action.

During this visit, our representatives also

attended a community meeting that had been called by the board to inform members about recent developments within the corporation, as well as the strategy for the annual general meeting.

Following this visit, we continued to liaise with the corporation in an effort to ensure that a proper register of members was in place, and to implement the agreed meeting strategy.

The corporation decided to schedule its overdue annual general meeting. It also campaigned to generate awareness about the meeting and promote attendance by members. ORAC helped the corporation prepare notices for the meeting, develop rule changes to address the quorum problem, and set up a procedure for electing a new board at the meeting.

Our representatives attended the meeting, which successfully achieved a quorum and dealt with all required business; this included how elections would be conducted and plans to amend the corporation's rules to rectify the quorum problem.

## Name changes

ORAC tries to be flexible in approving name change requests, which may be of cultural or community significance to corporation members. However, we refuse requests when the name is unavailable or unauthorised. Names not normally authorised include any that are offensive, or reserved for particular purposes (such as 'Olympic').

During 2002–03, ORAC received 20 name change requests, of which 16 (80 per cent) were actioned: eight were approved, two were refused and six lapsed.

The refusal rate during the year (13 per cent) was higher than in 2001–02 (5 per cent), as was the lapsing rate (37 per cent compared to 28 per cent). These relatively high rates can mainly be attributed to unnecessarily onerous requirements for name changes in the ACA Act, which will be partly overcome through the revised legislation.

## POST-INTEGRATION SERVICES

Table 4 outlines post-incorporation services provided by ORAC in 2002–03 and the previous two financial years.

During 2002–03, we aimed to resolve problems earlier and encourage stakeholders to make full use of the unique resource offered by the Public Register of Indigenous Corporations. Consequently, post-incorporation support services increased significantly.

Our key post-incorporation services include:

- responding to requests for information about a corporation's status and for documents from the public register
- providing information about ORAC, how ORAC interprets certain aspects of the ACA Act, and requirements under the Act
- supplying copies of the ACA Act, standard forms and documents, guides and other information tools
- responding to general enquiries about a corporation's compliance status and its governance practices
- assisting with the interpretation of constitutions
- helping board members better understand and meet their responsibilities
- advising members on their rights under the ACA Act and their corporation's constitution
- advising boards on how specific issues and problems within their corporations could best be resolved, including assistance with specific governance issues relating to membership, meetings, board members' duties, annual reporting requirements, and compliance with the ACA Act and corporations' constitutions
- providing an avenue for members to raise relevant issues and lodge complaints about corporations
- supporting groups to minimise, manage and resolve conflict themselves.

### Public register searches

---

ORAC completed 557 searches of the public register during 2002–03; corporation members, government agencies and other third parties continued to use this unique resource.

Key documents sought included copies of current constitutions, details of public officers, and copies of membership lists. Other requests were for information about corporations' reporting performance, and whether corporations were in liquidation, deregistered or the subject of ORAC regulatory action.

During the year we encouraged use of our website for public register searches. Information currently available on the website includes a listing of all corporations incorporated under the ACA Act, and public officer details.

During 2003–04, we will work to expand public register information held on the website and improve electronic access to this information.

### Assistance with corporation queries

---

During the year the number of requests for significant assistance doubled from previous years, as a result of our strategy to encourage and resolve issues early. ORAC's primary role is to provide objective and considered opinions about matters that require clarification and/or where this will assist dispute management. This role will be further developed during 2003–04.

### Assistance with meetings

---

Because of the importance of meetings in corporate governance, their quality can 'make or break' a corporation. As part of our commitment to preventing problems and working to solve them quickly, we expanded our support for good meetings. We responded to requests to assist with board meetings, annual general meetings and special general meetings, through phone support, involvement in preparations for meetings and attendance at and intervention in meetings where necessary.

We usually couple our assistance at meetings with a wider support package for the corporation, in which we work closely with the board, members and managers in 'corporate doctor sessions' designed to tackle underlying issues that might be preventing quality meetings.

### Toll-free telephone service

---



Much initial communication with ORAC is through our toll-free telephone service. The service is available during business hours, and ORAC is committed to ensuring that a real person answers each call. Demand for this phone service remains high. We received 12,476 calls in 2002–03, a monthly average of 1,040 calls. The number for this service is

**1800 622 431**

### *Case study 3: Providing assistance early in a corporation's life*

A corporation was incorporated with the primary objective of playing a major role in the management and delivery of Community Development Employment Project (CDEP) activities in the region.

ORAC received a request from the corporation and the local ATSIC office to attend the first general meeting and board meeting of the corporation.

Our representative travelled to the region and met first with foundation members and officials of the corporation to help them plan their inaugural general meeting. Discussions focused on the requirements of the rules and their application in the conduct of the meeting.

The next day, the representative assisted at the general meeting, which successfully elected the first board of the corporation and conducted all the necessary business.

Our representative then attended the inaugural board meeting of the corporation as an observer, and to guide the new board on the proper procedures to follow in its meetings. At this meeting, the board elected its executive and appointed a public officer. An information session was also held, highlighting the roles and responsibilities of board members and the importance of conducting the affairs of the corporation in accordance with the corporation's constitution, the ACA Act and key principles of good corporate governance.

### *Case study 4: ORAC helps a corporation with planning elections and general meetings*

This corporation aims to operate for the general benefit of Aboriginal people living in the region. The corporation receives over \$1.5 million per year in grant funding.

ORAC received ongoing complaints about the election of directors at the annual general meeting. The key complaint was that the corporation had not implemented the rotational electoral system, specified in its rules, whereby the board holds office under a system that staggers the retirement of outgoing members to give continuous overlap over a three-year period. The rotational system was approved by the Registrar in January 2002.

ORAC contacted the corporation to check the facts. Citing mitigating circumstances, the corporation acknowledged that it had not followed the rules, but was keen to take whatever action was required to resolve the problem.

We liaised with the corporation in an effort to find a solution. The corporation decided to advise members of the oversight in the election process and to call a special general meeting to implement the rotational system.

ORAC helped the corporation plan and call the special general meeting, and attended as an observer. The special general meeting achieved its objectives and the problem was resolved.

## Complaints service and support for dispute resolution

---

ORAC provides an avenue for anyone to raise issues and lodge complaints about the governance of corporations. As far as is practical, we encourage and assist corporations to resolve their difficulties internally. We follow up serious complaints and take action where appropriate.

Demand for assistance with complaints and support for dispute resolution remained steady in 2002–03, with 123 requests. However, the increasing complexity of complaints and disputes, coupled with the serious consequences for corporations if they are unresolved, has led us to devote extra resources to this service.

Key trends in the bases for complaints are:

- improper notice and the illegal conduct of annual general meetings and special general meetings
- failure of boards to call special general meetings when requested to do so by members
- invalid and improper election processes at general meetings
- disputes between board members, members of the board not acting in the best interests of members, failure of board members to declare conflicts of interest, and individual board members making decisions in isolation without the knowledge of other board members
- difficulties with the separation of powers between the board and management, and a lack of duty statements or delegations for management and staff
- failure to maintain proper membership records, and irregularities in the expulsion of people from membership
- discrimination or improper practices in the internal operations of corporations, including unfair practices in the employment and dismissal of staff, service delivery (for example, allocation of housing), and use of corporation assets.

Action taken by ORAC during the year to help resolve complaints and disputes included:

- delivering reliable, relevant and objective information, specific to the circumstances, to assist the corporation's internal handling of the matter
- providing an opinion on whether a corporation has complied with its own constitution and the ACA Act.
- giving practical suggestions and solutions to deal with governance problems, breaches and disputes
- referring corporations or complainants to other agencies or authorities that could better assist with complaints or disputes, particularly when the issues fall outside ORAC's jurisdiction.

Where matters could not be resolved through these processes, where obvious breaches were not rectified by corporations in a reasonable time, or where conflict continued to have a serious and detrimental affect on the operations of the corporation, we considered using ORAC's regulatory powers.

*Case study 5: Providing advice on how to run an annual general meeting*

The corporation has as its aims to provide housing and welfare to Aboriginal people in the region. The corporation holds government-funded community housing stock valued at approximately \$2.4 million, and receives ongoing operational grant funding.

During the year, ORAC received advice that the corporation had experienced difficulties with the conduct of its annual general meeting, and that doubts existed about the validity of the meeting and election of the corporation's board. The outgoing board did not accept the outcome of the meeting and remained in control of the affairs of the corporation.

We met with local ATSI staff and a representative of the board of the corporation to better understand the situation.

We considered all available material, and formed the view that the annual general meeting had not been conducted properly and that the board election might have been invalid. There were difficulties with the corporation's register of members, and there were long-standing problems with the rules of the corporation. We also concluded that the board needed help to resolve these issues.

ORAC wrote to the corporation, suggesting how problems could be resolved (including the reconstruction of the register of members, the calling of a special general meeting to validate the disputed business, and consideration of rule changes). We offered to help, and in the following months worked closely with the corporation.

In due course, our representatives attended the special general meeting called by the corporation. The meeting dealt amicably, constructively and successfully with all required business.

ORAC then met with the new board elected at the meeting and conducted an information session, to enable the directors to better understand the requirements of the corporation's constitution.



## Information, training and client publications

ORAC's corporate plan calls for us to:

- support the attainment of qualifications by individual members of the boards of Indigenous corporations
- deliver education and training about the operations of the ACA Act, the rules of corporations, and good practice in corporate governance.

One of ORAC's unique features is our broad training program aimed at helping members, particularly board members, to better govern and manage their corporations (see the inside back cover of this Yearbook for a summary of products and services available).

Our principal training objectives are to:

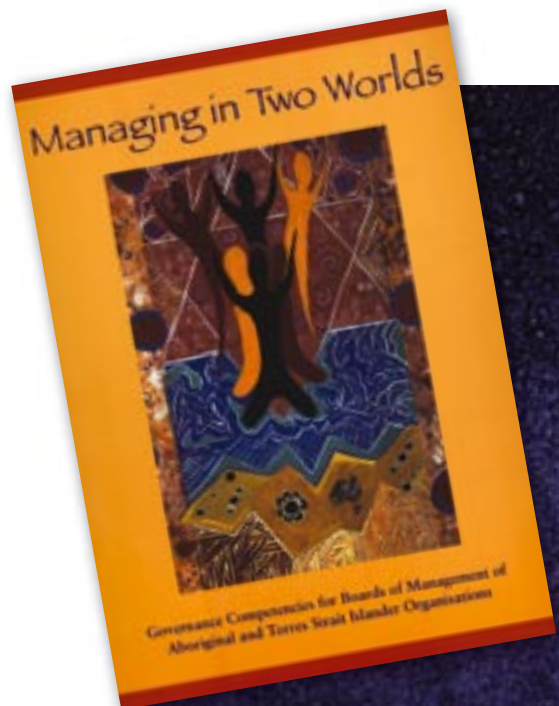
- demonstrably improve the skills of potential and existing Indigenous directors through their individual accreditation against key competencies
- improve Indigenous governance and management by targeting directors involved with developing sectors (for example, family violence, women's organisations, highest risk essential service organisations)
- facilitate the progress of this project by mainstream providers, with ORAC providing limited, highly targeted and tailored special training in conjunction with other, related initiatives.

The outcomes we expect from the training are:

- improved directorship and management for targeted individuals and organisations
- recognised accreditation of Indigenous board members against competencies, to assist individuals, organisations and funding bodies
- widely accessible training packages tailored for Indigenous board members and available through mainstream and Indigenous-specific providers.

In 2002–03, we delivered 46 information sessions, an increase from 35 in the previous year.

During the year, the information and training program was expanded to include three-day workshops and a Certificate IV in Business (Governance) course.



## INFORMATION SESSIONS

Our informal, non-accredited information sessions are designed primarily for board members but may be open to members and staff of corporations. We ran planned sessions during the year across Australia (see Table 5), but many were also conducted on an *ad hoc* basis, as demonstrated in the case studies in this report.

ORAC's information sessions focus on the big issues faced by most board members, such as:

- annual reporting under the ACA Act
- the role and responsibilities of boards
- the duties of board members
- the role and management of meetings
- members' rights
- the maintenance of proper accounts and records
- procedures to change a corporation's constitution, objects or name
- the appointment and responsibilities of the public officers of corporations
- managing conflicts of interest
- managing disputes
- the role and responsibilities of ORAC
- the role and requirements of the ACA Act and the corporation's constitution.

Table 5 lists the information sessions we delivered around Australia in 2002–03.

## THREE-DAY WORKSHOPS

A step up from the information sessions are the highly interactive three-day workshops on corporate governance offered by ORAC. These workshops are targeted at highest need sites and groups. Entry is by application, and participants sign learning agreements. Upon completing the workshop, participants are encouraged to 'bridge' into accredited training, including the Certificate IV in Business (Governance).

Pilot sessions of the workshops were conducted in early 2003–04 in Cairns, Townsville, Thursday Island and Brisbane, with many participants coming from rural and remote areas. Promising results of the pilots include:

- higher than expected interest
- sustained good attendance for the three days
- excellent feedback from participants
- many expressions of interest to undertake the Certificate IV training course
- strong enrolment in the first delivery of Certificate IV training – the Cairns and Townsville bridging workshops resulted in 42 per cent and 33 per cent of participants, respectively, beginning the Certificate IV course
- a high proportion of female participants – 54 per cent of those in the bridging workshops and 76 per cent of those who have begun the Certificate IV course.

In 2003–04, we will maintain training in Queensland and expand it to the Northern Territory and Western Australia, while offering training in some capital cities of other states.

## **CERTIFICATE IV AND DIPLOMA TRAINING**

Certificate IV in Business (Governance) is a nationally recognised training package developed specifically for Indigenous people who wish to attain recognised skills in corporate governance and management. It is a competency-based training program that requires participants to demonstrate their competence in a range of skills relevant to corporate governance.

The Certificate IV package includes 32 competencies, of which 13 must be completed for a Certificate IV. Following that, another 13 must be completed at a higher level for a Diploma of Business (Governance).

The Certificate IV must be delivered by a registered training organisation. During the year, in line with Commonwealth procurement guidelines and policies, we selected four organisations for our panel of registered training organisations:

- Tropical North Queensland Institute of TAFE
- Maningrida Jobs Education and Training Centre
- Edith Cowan University
- Kimberley TAFE.

ORAC has engaged Tropical North Queensland Institute of TAFE to deliver a number of Certificate IV courses during 2003–04, initially in Townsville, Cairns and the Torres Strait.

The certificate course being delivered by Tropical North Queensland Institute of TAFE is in block format, covering the following 13 competencies in four one-week blocks over a period of three to four months:

- meet the roles and responsibilities of a board member
- use the constitution
- manage a board meeting
- plan for organisational needs
- use the business plan
- oversee business planning
- develop organisational policies
- monitor financial management and budgets
- oversee the organisation's annual budget
- manage assets
- maintain and protect culture
- communicate with the community
- implement a businesslike approach.

Maningrida Jobs Education and Training Centre is being engaged to provide the Certificate IV course in the Maningrida region and is expected to begin delivery of the training in March 2004.

Options for offering the Diploma in Business (Governance) are being investigated at the time of writing.

## **NEW TRAINING PROGRAMS**

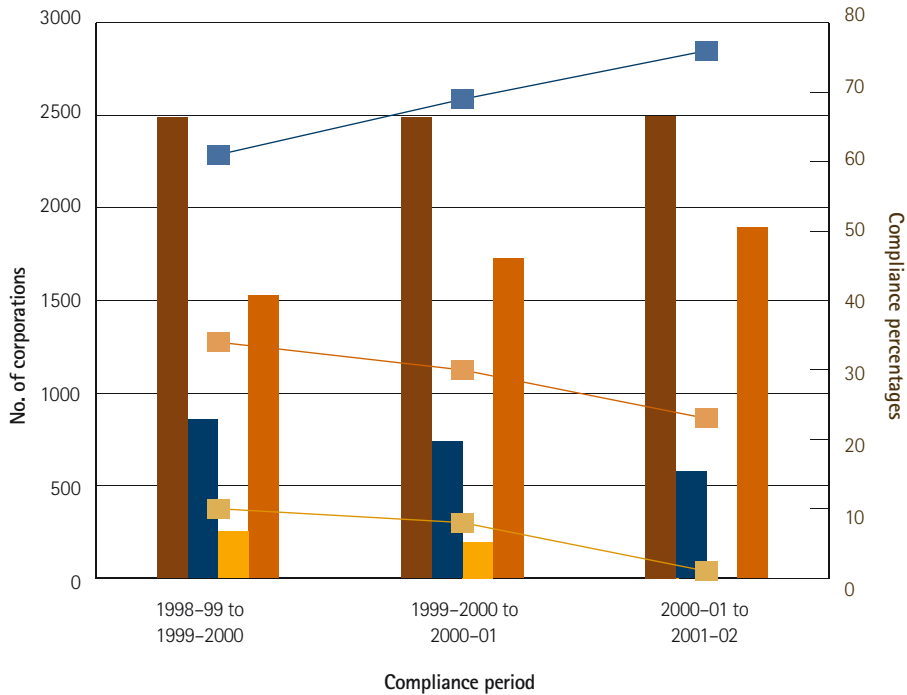
At the time of writing, ORAC was considering the feasibility of offering access for suitable participants to undertake the diploma offered by the Australian Institute of Company Directors in 2003–04.

**TABLE 5 INFORMATION SESSIONS CONDUCTED DURING 2002-03**

Corporation	Location
New South Wales	
Armidale Employment CDEP Aboriginal Corporation	Armidale
Carnma CDEP Aboriginal Corporation	Wentworth
Cobowra CDEP Aboriginal Corporation	Moruya
Jack Towney Hostel Aboriginal Corporation	Gilgandra
Mudjarng Aboriginal Corporation	Tumut
Orana Aboriginal Corporation	Wellington
Parkes Multi-Purpose Aboriginal Corporation	Parkes
Riverina Foundation for Aboriginal Affairs (Aboriginal Corporation)	Narrandera
RIO CDEP Aboriginal Corporation	Tabulam
Walhollow Elders Aboriginal Corporation	Quirindi
Wiradjuri Aboriginal Corporation Community and Child Care Centre	Wagga Wagga
Yabur Yulgan CDEP Aboriginal Corporation	Ballina
Workshops open to all corporations in the region, including corporations registered under state legislation	Gilgandra and Dubbo
Queensland	
Aboriginal and Torres Strait Islander Women’s Legal and Advocacy Service Aboriginal Corporation	Brisbane
Inala Elders Aboriginal Corporation	Inala, Brisbane

Corporation	Location
Keriba Mina Torres Strait Islanders Corporation for Development	Townsville
Malanbarra Midja Housing and Welfare Aboriginal Corporation	Tully
Palm Island Alcoholic and Drug Rehabilitation Aboriginal Corporation	Townsville
Workshops open to all corporations in the region, including corporations registered under state legislation	Bamaga, Brisbane (2), Bundaberg, Delta Downs, Horn Island, Logan City, Mt Isa (2), Rockhampton and Townsville
South Australia	
Bungala Aboriginal Corporation	Port Augusta
Goreta Aboriginal Corporation	Goreta
Workshops open to all corporations in the region, including corporations registered under state legislation	Ceduna, Port Lincoln, Port Pirie, Point Pearce and Yalata
Western Australia	
Bega Garnbirringu Health Services Aboriginal Corporation	Kalgoorlie
Leonora Aboriginal Corporation	Leonora
Louisa Downs Pastoral Aboriginal Corporation	North Kimberley
Ngangganawili Aboriginal Community Controlled Health and Medical Services Aboriginal Corporation	Wiluna
Workshops open to all corporations in the region, including corporations registered under state legislation	Broome and Roebourne
Northern Territory	
Workshops open to all corporations in the region, including corporations registered under Northern Territory legislation	Barunga, Beswick and Katherine

**FIGURE 6 COMPLIANCE OF CORPORATIONS, BY NUMBER OF CORPORATIONS, 1998–2002**



- Total No. of corporations
- No. fully compliant
- No. partially compliant
- No. not fully or partially compliant
- % not fully or partially compliant
- % fully compliant
- % partially compliant

Note: Figure 6 shows the number of corporations that were incorporated at 31 March of the first financial year of the compliance period. '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. The figure shows all returns received by ORAC at 30 June 2003. Corporations were not required to provide annual returns for 2002–03 until 31 December 2003.

Note: Appendix C shows data for Figure 6

## CLIENT PUBLICATIONS

Our information sessions and training courses are supported by a range of publications and videos available to clients (see inside back cover).

ORAC is continuously developing these tools. In 2004, we will focus on developing a new model constitution and our new publication *Guides to Good Constitutions*, and on expanding our web service.

## Monitoring, examinations and other regulation

Under the *Aboriginal Councils and Associations Act 1976*, all corporations must submit certain documents (called returns) to ORAC, unless exempted. The required documents include an audited financial statement, a current list of members, and a statement of compliance. The statement of compliance, signed by members of the board, confirms that the board and the corporation have complied with the Act, the regulations and the corporation's rules during the financial year. The documents are then placed on the Public Register of Indigenous Corporations.

The Registrar's regulatory powers are summarised in Appendix B (see page 84).

## MONITORING

Approximately 24 per cent of corporations have provided key reports for the last two reporting financial years, namely 2000–01 and 2001–02 (due to the timeframe for reporting by corporations under the ACA Act, the analysis of reporting is to 30 June 2002). Trends for compliance are shown in Figure 6 and Appendix C.

Note that the rate of compliance with the Act for corporations funded by ATSIIC or by the Office of Aboriginal and Torres Strait Islander Health (OATSIH) is higher than the average.

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 (if they have limited income, usually an audited financial statement is not required and an exemption is granted).

However, most corporations (76 per cent) remain non-compliant with reporting requirements. During the year, ORAC analysed non-compliance and developed a plan for appropriate follow-up. Many of the non-compliant corporations are not funded at all, hold land only and have no capacity even to apply for an exemption. Reforms to the legislation will allow more streamlined exemptions for some reporting (for example, exemptions for audited financial statements where warranted).

ORAC's developing arrangements with funding bodies are allowing us to identify those corporations that are technically non-compliant but that have submitted the required reports to funding bodies and are operating well. One aim of the reforms to the ACA Act is to avoid duplicate reporting, to the funding body and to ORAC, by corporations.

Corporations that should be compliant, but are not, are being targeted for formal follow-up and examination. Non-compliant corporations that are no longer operating are being targeted for deregistration.

## EXAMINATIONS

In 2002–03, ORAC initiated 34 examinations of corporations, which is consistent with previous years. Corporations were selected for examination on the basis of their evident problems or as part of our program of rolling examinations. Our rolling program targets corporations according to attributes linked to risks, including size, purpose, time since last examination, compliance status and history of member or other complaints. Of the corporations in the 34 examinations begun:

- one is operating well and requires no further action
- three remain under consideration for further action
- nineteen were required to address less serious matters, and were issued with a notice to rectify these matters under section 60A of the *Aboriginal Councils and Associations Act 1976*
- eight raised serious matters and have been required to advise why an administrator should not be appointed under section 71 of the ACA Act – in five of these eight cases administrators were subsequently appointed, and in three cases notices to rectify certain matters under section 60A were issued after some negotiation
- two required a liquidator to be appointed (both were corporations from which funding had been withdrawn by the relevant agency and which had significant remaining liabilities)
- one required the Registrar to convene a special general meeting under section 58 of the ACA Act.

Appendix D contains a list of corporations where examinations were initiated during 2002–03 and a record of the follow-up action taken by the Registrar at the time of writing (not necessarily during 2002–03). Appendixes E and F show the corporations that were issued with a notice to rectify matters under section 60A of the ACA Act or a notice to show cause why an administrator should not be appointed under section 71 during the financial year. Some of the actions listed relate to follow-up by the Registrar to examinations conducted during 2001–02. Refer to Appendix B for a summary of regulatory powers under the ACA Act.

## OTHER REGULATION

As the case studies above demonstrate, ORAC places a strong emphasis on corporations rectifying problems: administrators are appointed only as a last resort. Administrations are usually received positively after arrangements are settled, because they offer an alternative to liquidation and aim to achieve turnaround for struggling corporations.

Only eight administrations were initiated in 2002–03 (see Appendix G, page 93), which is similar to the previous year and half the highest annual total of 17, reached in 1998–99.

ORAC began 2002–03 with 65 liquidations in progress, and reduced this number to 44 (see Appendix H, page 94). We continue working to reduce the time that liquidations take. Appendix I details liquidations finalised during 2002–03, and Appendix J sets out the 115 deregistrations completed during the year. (See pages 96-100.)



***Case study 6: A remote corporation makes a positive response to an examination***

A remote corporation was incorporated in the 1970s. The corporation manages a CDEP project, provides municipal services, and operates a community store.

The corporation was found to be in breach of section 59 of the *Aboriginal Councils and Associations Act 1976* because it had not filed annual returns with ORAC for some years. We tried unsuccessfully to have the corporation lodge outstanding returns. We then conducted an examination to assess how effectively the corporation was fulfilling its responsibilities in corporate governance.

The examiner acknowledged that the corporation has difficulty attracting and retaining quality administrative staff, due to its remoteness.

However, the examiner reported that the corporation operated more successfully than some other remote area corporations. It provides a varied range of services to the community, and owns the community store, which is managed under contract by a third party. The corporation has a one-third interest in a pastoral operation, but no profits have yet flowed to the community from that investment.

The breaches of the ACA Act and the rules highlighted by the examination related mainly to meetings. The minutes for the annual general meetings could not be located, so it was not clear whether these had been held each year or whether the required business had been attended to. Although the examiner was told that board meetings occurred frequently, only sketchy minutes or agendas were available. As is often the case in remote locations, some corporation meetings were confused with 'community' meetings.

The examination revealed that, in general, proper accounting records had been maintained, and the corporation was solvent and not currently in breach of funding guidelines. The only CDEP breach noted was that participants did not sign their timesheets, but this was being addressed. The audited financial statements prepared for the previous three years contained only technical disclaimers by the auditor.

We served a notice on the corporation under section 60A of the ACA Act, calling on the board to rectify the breaches.

As a result, a register of members has been established, public officer details notified, and audited financial statements obtained for the missing years. The corporation is now compliant with the requirements of the ACA Act.

*Case study 7: ORAC supports a corporation by providing advice about meetings, getting accounts in order and thus preventing more serious problems*

This corporation operates as a resource centre providing accounting, administration and contracting services to Aboriginal organisations in a remote region. The corporation also has a number of investments.

The corporation's financial statements were audited. The auditor was unable to verify various balance sheet items, so ORAC decided to conduct an examination.

The examiner reported that the corporation was satisfactorily servicing the accounting and financial needs of its various clients, from whom it received fees for services. However, the examination revealed a number of breaches of the rules and the ACA Act, including:

- the register of members did not appear to have been kept up to date
- annual general meetings had not been held on time and lacked quorums
- audited financial statements had not been presented at annual general meetings
- auditors had not been appointed by meetings
- rule changes had been decided on and implemented by the members without the approval of the Registrar
- a non-member had been elected to the board

- the provision in the approved rules for a two-year term for the board had been ignored, with members being elected annually
- a treasurer and secretary had not been elected by the board
- the asset register had not been kept up to date.

In addition, there were no current employment contracts in place for staff, and staff salaries and packages were not discussed or approved by the board.

The examiner reported that some audit qualifications were minor or merely technical. However, there was no contract or other legal document to cover the gift of 50 per cent of a unit trust, which owned a roadhouse, to another Aboriginal organisation. Moreover, various guarantees and indemnities provided by the corporation for other activities were not adequately disclosed in the financial statements. These findings raised concerns about the corporation's ability to manage its various investments.

In June 2003, ORAC served a compliance notice on the corporation under section 60A of the ACA Act. In a covering letter, we also raised other concerns, including the possible need for rule changes to reduce the quorum needed at general meetings (currently a quorum was half of the total membership), and the possibility of preparing consolidated financial statements that included the corporation's various commercial partnerships and ventures. The corporation is now addressing these matters.

*Case study 8: A section 60A notice proves useful in addressing a corporation's problems*

This corporation, incorporated in 1991, operates a CDEP scheme.

In a letter issued with the audited financial statements the corporation advised ORAC that records for 2000–01 had been poorly maintained, and that some records had been destroyed in a fire. Business activity statements had not been completed, so the Australian Taxation Office was also investigating the corporation. The corporation estimated that it could cost up to \$70,000 to properly reconstruct the taxation and accounting records.

We decided to conduct an examination of the corporation under section 60 of the ACA Act.

The examiner reported very favourably on the current administrative and financial management of the corporation, noting a distinct improvement over the past two years. The corporation had asked the Australian Federal Police to investigate certain matters relating to this period, but because of the incomplete and missing records no action is likely to be taken. Negotiations were also continuing with the Australian Taxation Office to establish any outstanding goods and services tax (GST) liability for the period.

The examiner commented on another minor GST problem in 2002, when the corporation did not account for GST on ATSI funding of the purchase of a property and failed to bring the purchase to account in the 2001–02 financial statements.

Minor problems were noted with the register of members, with people having been removed from the register when they moved away from the area: six of the nine original applicants for incorporation were not on the current membership register. Not all applications for membership were approved at board meetings, and there had been delays by the board in considering other applications.

Annual general meetings had been held after the 30 September deadline, and non-members had attended meetings.

The board had been elected on the basis of three members from each of three localities. Although this was not in the rules, no members raised objections.

A motion at the annual general meeting to amend the rules relating to qualifications for membership and the removal of members was carried, even though the proposed changes were not notified to members before the meeting, there was no indication that they were approved by the required three-fourths majority, and the changes were not submitted to the Registrar for final approval.

Other points noted by the examiner included the following:

- cheques were signed by one board member plus the bookkeeper or coordinator, when the signatures of two board members were required
- CDEP wages were paid by electronic funds transfer, with only a password being required from the bookkeeper – although steps were being taken to require a second password from the coordinator; however, the constitution stated that two board members must be involved
- accounts were not approved by the board before payment (although regular financial reports, including details of payments made, were provided at board meetings)
- CDEP timesheets were not signed by participants.

A system was in place for CDEP participants to have deductions made from their wages, as a form of savings. External debts incurred by participants were paid for them and either offset against an existing credit balance or met by future deductions. While the examiner had reservations about using CDEP-related funds this way, the local ATSIC office appeared to be satisfied with the arrangement.

A section 60A notice was served on the corporation requiring the board to rectify the breaches. The corporation is progressively addressing the matters raised in the notice.

### *Case study 9: An examination and follow-up achieves results*

This corporation has objects focusing on providing housing to Aboriginal people living in the region.

An ATSIC regional office advised that the Board of the corporation was having operational difficulties. Meetings were not being held and no instructions were being given to the real estate agent who managed the corporation's stock of housing.

At our instigation, the corporation held an annual general meeting and elected a new board. Afterwards, we asked the new board to lodge annual returns for the previous three financial years.

The board advised us that it had not been able to obtain the books and records from the previous board, and that most of the new board members were inexperienced and needed advice about what action they should take to get the corporation back on track.

We decided to conduct an examination to assess the current status of the corporation and the ability of the board to manage its affairs.

The examination revealed many minor and major breaches of the ACA Act and the rules of corporation. The major breaches were:

- the corporation had not maintained a register of members

- the lack of a membership register had allowed non-members to attend an annual general meeting and be voted onto the board
- audited financial statements had not been prepared for two successive years.

At the time of the examination, the corporation owned 18 houses, a block of four units, and four vacant blocks of land. These properties were being capably managed by a local real estate agency. However, during the two previous years a total of \$70,000 had been paid over to the former board by the estate agent, and this remained unaccounted for. This matter has been assessed for follow-up civil/criminal action. While it was possible that some had been spent on housing-related matters, no land rates or insurance premiums had been paid during this period. The new Board inherited a substantial debt for council rates. The corporation had also lost one of its houses through fire damage; the house was not insured at the time of the fire.

The new board had taken steps to address the problem, with management of key assets being put in the hands of a local real estate agent. All houses were adequately insured at the time of the examination and an agreement had been made with the local shire council to repay rates at \$3,000 per month. It was noted, however, that because the annual rates bill was around \$40,000 the corporation would struggle to clear the debt.

In discussions with the examiners, the council indicated that it might waive interest charges on the outstanding rates.

The board also explored other initiatives, including the sale of a rental property to a long-term tenant, the sale of a vacant block of land, a possible increase in weekly rentals, and state government funding. While there was still much work to do to improve the financial position of the corporation, the examiners considered that the current board was on the right track.

As follow-up, ORAC served a section 60A notice on the corporation, asking the board to rectify the various breaches.

This examination highlights the need for boards to act responsibly at all times, in order to avoid putting significant assets at risk. It also shows that members can monitor their boards and take action if necessary to elect a new board and to request an examination by ORAC.

***Case study 10: Appointing an administrator results in the protection of a corporation's assets and the strengthening of its business***

A corporation holds the lease for a pastoral station. The operation was funded through grants from ATSIC and its predecessors.

The audited financial statements for 1999–2000 were heavily qualified because of a lack of supporting documentation for payments, the absence of a stocktake, and problems with wages reconciliation, superannuation and employee entitlements. The auditor was concerned about the possible diversion of proceeds from cattle sales to an undisclosed bank account; an irregular termination payment to a former staff member; and payments against questionable invoices.

ORAC decided to conduct an examination of the corporation.

The examination found that the corporation's board had not kept proper financial accounts and records, and that it lacked adequate management and financial skills to control the operations of a pastoral property. The board was in the process of terminating a management agreement with another party, and was giving serious consideration to leasing the station to a board member. The proposed deal, which was very favourable to the lessee, did not provide adequate financial returns or control for the corporation; no alternative deals were being considered.

The examination also identified many other instances where the board had not complied with the rules of the corporation; for example, the corporation had failed to hold annual general meetings on time, and there were doubts that minutes accurately reflected what had actually taken place.

The examiners concluded that the corporation was in financial trouble, and that its assets were under threat.

ORAC served a section 71 notice, inviting the corporation to show cause why an administrator should not be appointed. The corporation did not offer a response, and after approval by the Minister an administrator was appointed.

The Indigenous Land Corporation assisted the administrator by providing funds to engage two pastoral consultants, plus capital to upgrade stock and infrastructure. The administrator restructured operations, establishing a separate company to manage the cattle production. The board of directors of the new company includes a mix of Indigenous and non-Indigenous people who have expertise in pastoral and financial management. There is a formal management agreement between the Indigenous corporation and the company.

The administrator has also arranged funding from State and Federal sources, to cover the costs over the next two years for experts to be recruited to the board of the company.

The administrator has set up policies and procedures for better corporate governance, and has worked with members from the six communities on the property to develop their governance skills. As part of this process, ORAC has conducted on-site information sessions with the members.

The corporation is now in a much stronger position. Separating the pastoral lease from the business operations in particular will ensure that the assets (the land) will be less exposed if the business runs into difficulty.

A special general meeting was held to elect a new Board. Shortly afterwards, control of the corporation was handed back to the members. Early indications are that the new structure is working well.

*Case study 11: A corporation where there has been mismanagement, and perhaps misappropriation*

An Indigenous group incorporated to administer a charitable benefit trust that was to receive compensation from a mining venture. While other compensation agreements in the region include assurances of employment and training in addition to monetary payments, compensation under this agreement was cash. The mining agreement specified that the monies were to be paid into a charitable trust and that the trustee would be incorporated. The financial package included an initial loan of \$3 million, to be paid in two instalments before production began. The corporation's board was to act as the board of trustees for the benefit trust.

The first instalment of \$1.5 million was mistakenly paid directly into the bank account of the new corporation and not the trust account. Also, the terms of the trust governing how the funds could be spent were broadened at the last minute from 'charitable purposes only' to 'charitable purposes and other things'.

Eighteen months after incorporation, another corporation in the region, whose members also belonged to the newly incorporated body, contacted ORAC. They raised concerns that the executive officer of the new corporation was misappropriating its funds. The corporation was also not compliant under the ACA Act.

We contacted the organisation, requiring it to hold an annual general meeting and supply financial statements for the past two years. The deadline for a response passed, and the Registrar ordered an examination of the corporation.

The examination found several major problems, including:

- the executive officer was incompetent
- the board was ineffective and lacked an understanding of its role and responsibilities
- accounting and financial controls were not in place
- there was evidence of substantial misuse of royalty payments from the mining company
- the corporation was dominated by one family group.

An administrator was appointed under section 71 of the ACA Act, and reported that:

- the corporation's management was ineffective
- there had been substantial misappropriation of corporation funds
- monies were not paid into the charitable trust account as stipulated in the mining agreement, but directly into corporation accounts
- cheques were signed by people who were not board members

- cheques totalling some \$600,000 were paid directly to individual corporation members, in contravention of the terms of the trust.

The administrator deemed the corporation insolvent and recommended that it be liquidated.

The liquidator was appointed. One of the liquidator's key tasks is to investigate whether criminal charges or civil proceedings should proceed against persons associated with the failed corporation.

ORAC is recommending that no officers of the liquidated corporation should be able to be directors in any new corporation set up to administer the trust.



### *Lessons about corporations involved in mining compensation payments*

ORAC has found that there are many issues common to corporations that receive mining compensation funds, so we have developed a best-practice approach to inform our work in this area. In the long term, one of our *Guides to Good Constitutions* series will be devoted to such corporations. (See Policy on Good Corporate Governance, page 58.) Our experience has highlighted the following factors:

- Indigenous corporations receiving mining compensation funds are usually created as a result of a ‘benefit trust’ between a mining company and an Indigenous group, where the corporation is the trustee. Such corporations must meet requirements of corporate and trust law, and there are many requirements unique to the native title sector. These corporations have high levels of accountability, and operate in a complex environment. They are often located in the most remote areas of Australia and are vulnerable to misuse of funds. It is essential that their boards have the required skills to meet these challenges.
- Compensation paid under the trust in cash creates a high risk of misuse of funds, and careful and constant management of this risk is necessary. Successful compensation packages include significant payments in kind that build the long-term wealth

and wellbeing of the Indigenous beneficiaries as a group, through strategies such as employment and training programs. (See [www.atns.net.au](http://www.atns.net.au) for information about mining agreements and associated compensation packages in Australia.)

- As a minimum, an independent trustee should be on the board. Preferably, half of the directors should be independent and appropriately skilled in trust and corporate matters, and also all beneficiary groups should be represented equally on the board.
- Where such a corporation fails, directors and officers of the failed corporation should not be allowed to hold office in the corporation formed under any new benefit trust. The appropriate agencies, including ORAC in some cases, need to follow up directors who have seriously breached their duties.
- Corporations receiving mining compensation funds need active case management by all associated parties, including the mining company that is a party to the trust, in order to prevent misuse of the funds and protect the beneficiaries’ interests. ORAC is introducing case coordination for high-risk corporations such as these.

*Case study 12: A corporation's problems eventually lead to its deregistration*

The corporation represented native title groups. The reason for incorporation of the group was to manage a charitable trust receiving compensation from a mining venture on traditional lands.

ORAC received a letter from a corporation member outlining concerns about misuse of funds and the failure of the public officer to follow the rules of the corporation. Specifically, the member complained that:

- a general meeting had not been held since incorporation
- a request for a special general meeting was ignored by the board and public officer
- the public officer was corresponding with third parties without members' consent
- the public officer was attempting to change the legal representation of the corporation without the consent of members
- the public officer kept personal control of corporation funds.

The member also raised concerns about the relationship between the public officer and the chairman of the Board, who belonged to the same family group.

In addition, the corporation was not compliant with reporting requirements under the ACA Act.

ORAC contacted the board and requested copies of various documents, including minutes of general meetings, financial statements and a list of members, and name and contact details of the public officer.

ORAC conducted an examination, which found certain accusations against the public officer to be unfounded. However, there were problems with the corporation, including the following:

- the corporation had not prepared financial statements
- the board had not held a meeting every three months, as required in the constitution
- annual general meetings had not been held regularly
- accounts were not passed by the Board
- a register of members was not maintained
- non-members attended and voted at the one general meeting held, and were elected to the Board.

As a result of the examination, an administrator was appointed.

The administrator found that the lack of formalised reporting had created distrust amongst members along family lines, which also made it difficult for the administrator to undertake their investigations.

A meeting of corporation members resolved to:

- move for the liquidation of the corporation
- establish a more representative trust for the native title group
- establish a working group of four individuals (two from each family).

A new trust was established, with the trustee consisting of a professional trustee, and a 'managing trustee' comprising four people representative of the family groups.

The corporation was subsequently deregistered.



## Improving corporate governance

All ORAC's work strives for improved corporate governance in Indigenous corporations.

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<sup>1</sup>.

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

A key initiative in 2002–03 was the development of a policy on good corporate governance to inform ORAC's work, and to share with others best corporate governance practices. The policy, which is due for completion in 2004, 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.

A focus of the policy is that successful governance hinges partly on clarifying what the governance is: either a system for meeting corporate objectives, representing a community, or a decision-making system used by traditional owners. Our policy will recognise that Indigenous corporate governance must often be performed in conjunction with other types of governance. However, widespread expectations that Indigenous corporations will somehow meet all the governance needs at a site can overload

the corporations and their boards, and can raise legal issues about their decision making.

The size of the corporation makes a big difference to how corporate governance is practiced. In small corporations or associations with very little funding and few liquid assets, informal arrangements can work well. Medium to large corporations (that is, where income is 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 (see page 27) means that the process of formalising corporate governance 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 over-burdened with unnecessary red tape. The revised legislation will allow us to 'stream' corporations for reporting under the ACA Act.

For medium and large corporations, more formal arrangements need to be in place if the board is doing its job well. The focus of boards should be on clarifying with members the objectives of the corporation and then determining and driving the resulting goals. The challenge of 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 implementation of the goals through management, including 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 for medium to large corporations need to avoid micromanaging (a common mistake); instead, they should steer.

---

1 Adapted from the Company Directors Course, Australian Institute of Company Directors 2004

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; and
- not trading while insolvent, that is, when the corporation is unable to pay its debts when they fall due.

The new legislation will reinforce these duties of board members.

The policy's other 'pillars', which are increasingly being recognised as important to Indigenous corporations, 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 by corporations
- agreement about to whom accountability is owed, 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.

#### Assessment of corporate health

Examinations conducted by ORAC assess the health of the corporate governance of corporations, and are undertaken on a rolling basis (see page 46). The good governance policy mentioned above, when completed, will be used to broaden the scope of examinations to assess governance practices and risks more comprehensively.

We propose that, eventually, report cards on the health of corporations – as measured by examinations against the good governance policy – will be made available on the public register to better support members of corporations and funding agencies.

## INTERAGENCY COORDINATION

We have suggested to a number of other agencies that we convene a meeting to discuss major issues of mutual concern. The key concerns are summarised in the Registrar's year in review (see page 7).

We have proposed that the meeting examine possible methods, which will work for all concerned, to achieve the following key outcomes:

- building a common and integrated approach to capacity building and risk management and related concerns in Indigenous corporations
- ensuring that funding bodies have the power under the terms and conditions of grant funding to pursue funds if necessary and require repayment where appropriate – behaving like a creditor, rewarding good performance and dealing with poor performance
- attending to the current problems with tax, especially GST – many corporations are becoming insolvent because of the non-payment of tax
- ensuring that assets bought by a corporation with government funds are protected by an enforceable instrument even after a grant is terminated
- streamlining monitoring and reporting
- investigating how the standard funding agreement might be used to deliver some of the outcomes above.

The meeting will be held in 2004.

## Contributing to law reform and reviews

### MODERNISING THE ABORIGINAL COUNCILS AND ASSOCIATIONS ACT 1976

A review of the *Aboriginal Councils and Associations Act 1976* was completed in 2003. Among many matters, a key issue was whether there should be a special incorporation regime for Indigenous groups. The overwhelming view was that the legislation should remain, but that it needed to be amended and updated.

Proposals for reform of the ACA Act have been developed through two years of extensive consultation, research and collaboration with clients and stakeholders, and are in line with government policy, which includes a commitment to modernise the ACA Act. They respond to issues raised in the ATSI Review (see below), and will streamline services and functions. An up-to-date summary of the proposed reforms can be found at [www.orac.gov.au](http://www.orac.gov.au), and in Appendix K, page 101.

On 15 January 2004, the Minister announced that the government will reform the ACA Act.

*Media Release by Senator the Hon Amanda Vanstone*

The Government intends to introduce legislation to reform the *Aboriginal Councils and Associations Act 1976* to improve the effectiveness of Indigenous organisations for the benefit of their communities.

The legislation will reform the incorporation and supervisory powers of the Registrar of Aboriginal Corporations to ensure better governance and transparency.

The proposed reforms have been developed after extensive consultations with people involved in running Indigenous corporations.

The need for reform is clear. The *Aboriginal Councils and Associations Act 1976* was enacted more than 25 years ago as a method of incorporating mostly not-for-profit Indigenous organisations. However, it has failed to keep pace with subsequent developments in company law and accountability requirements given the size and numbers of Indigenous corporations today.

The reforms will deliver:

- rationalisation of the number of corporations through a focus on pre-incorporation scrutiny and support for alternatives to incorporation

- conferencing opportunities to encourage agencies to resolve coordination issues
- accredited training for directors of corporations and members
- expanded dispute assistance in the form of an improved members' complaints service, information and opinion service and supported referrals for mediation
- improvements to existing information about Indigenous corporations and their 'health' to support better regulation, and also assist members and funding bodies
- a rolling program of 'healthy corporation' checks tailored to Indigenous corporations, coupled with more streamlined responses to critical problems, in order to fully protect critical assets and funds held by corporations.

The reforms to the *Aboriginal Councils and Associations Act 1976* will be of particular relevance to communities in rural and remote areas of Australia where a large proportion of the almost 3,000 corporations are located.

The changes are subject to the passage of legislation.

## THE ATSIIC REVIEW

ORAC made a preliminary submission to the government-initiated review of ATSIIC and, following the release of the review's public discussion paper in June 2003, made a further submission.

The final report of the review panel, *In the hands of the regions – a new ATSIIC*, was released in November 2003.<sup>1</sup> 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. ATSIIC 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 ATSIIC 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. An ORAC officer attends all training to provide this 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 all 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 other agencies to also do more training.

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 we will ensure that the issue of conflict of interest is covered in the terms of reference for that review.

---

<sup>1</sup> The report is published at <[www.atsicreview.gov.au](http://www.atsicreview.gov.au)>



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 *Aboriginal Councils and Associations Act 1976* should be phased out, and corporations currently covered by it moved elsewhere, was considered in the recent independent review of that Act (see page 60). 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 ACA Act, the Australian Securities and Investments Commission (ASIC) expressed reluctance for Indigenous corporations to be transferred to the Corporations Act if those corporations required any special assistance.

Indigenous corporations under the *Aboriginal Councils and Associations Act 1976* 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 ATSI 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 (see page 45), 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 government and funding bodies’ policies and programs 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 subgroup 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.

#### [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 the recommendation 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 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.

At the time of writing, two Commonwealth committees are considering the potential for adoption in Australia of a business turnaround mechanism in line with that contained in Chapter 11. These are the Joint Parliamentary Committee on Corporations and Financial Services Committee's (CFS Committee's) inquiry on *Improving Australia's Corporate Insolvency Laws*, and the Corporations and Markets Advisory Committee's (CAMAC's) report on *Rehabilitating Large and Complex Corporations in Financial Difficulty*.

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

It would be premature for ORAC to give a concluded position until those 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 ACA Act to adopt the mechanism until the question of whether the Corporations Act should adopt it is 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 ACA 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 CAMAC 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 ACA Act, and similar mechanisms will be provided for under the new legislation.

## THE QUEENSLAND COMMUNITY GOVERNANCE GREEN PAPER

The Registrar was invited to comment on the Queensland Community Governance Green Paper.

The paper raised a number of key governance issues relevant to the principles of effective governance in Indigenous communities and councils, in particular Deed of Grant in Trust (DOGIT) communities in Queensland. Many groups incorporated under the ACA Act operate in DOGIT areas.

The governance under review in the Green Paper is *community* governance, which should not be confused with *corporate* governance: the laws and practices are different in many respects. However, ORAC noted that there are and always will be important interactions between councils operating in Queensland and corporations incorporated under the ACA Act.

In our response, we emphasised that private corporations such as those under the ACA Act would be a feature of the Indigenous corporate landscape and would need to be considered in any reform work. Off-loading council responsibilities onto other corporations that also lack capacity to manage them is not a solution. We stressed that any improvement in governance would call for commitment and cooperation between board members, community members, creditors, auditors, funding agencies, regulators and governments.

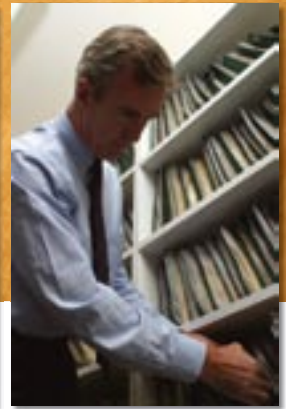
## **REVIEW OF NEW SOUTH WALES INCORPORATION LEGISLATION**

A review of the New South Wales *Associations Incorporation Act 1984* focused on whether that Act could be improved to better respond to the needs of organisations incorporated under the legislation. ORAC presented comments on how to respond to the needs of corporations that are not-for-profit, largely volunteer-managed and either publicly funded or not funded at all.

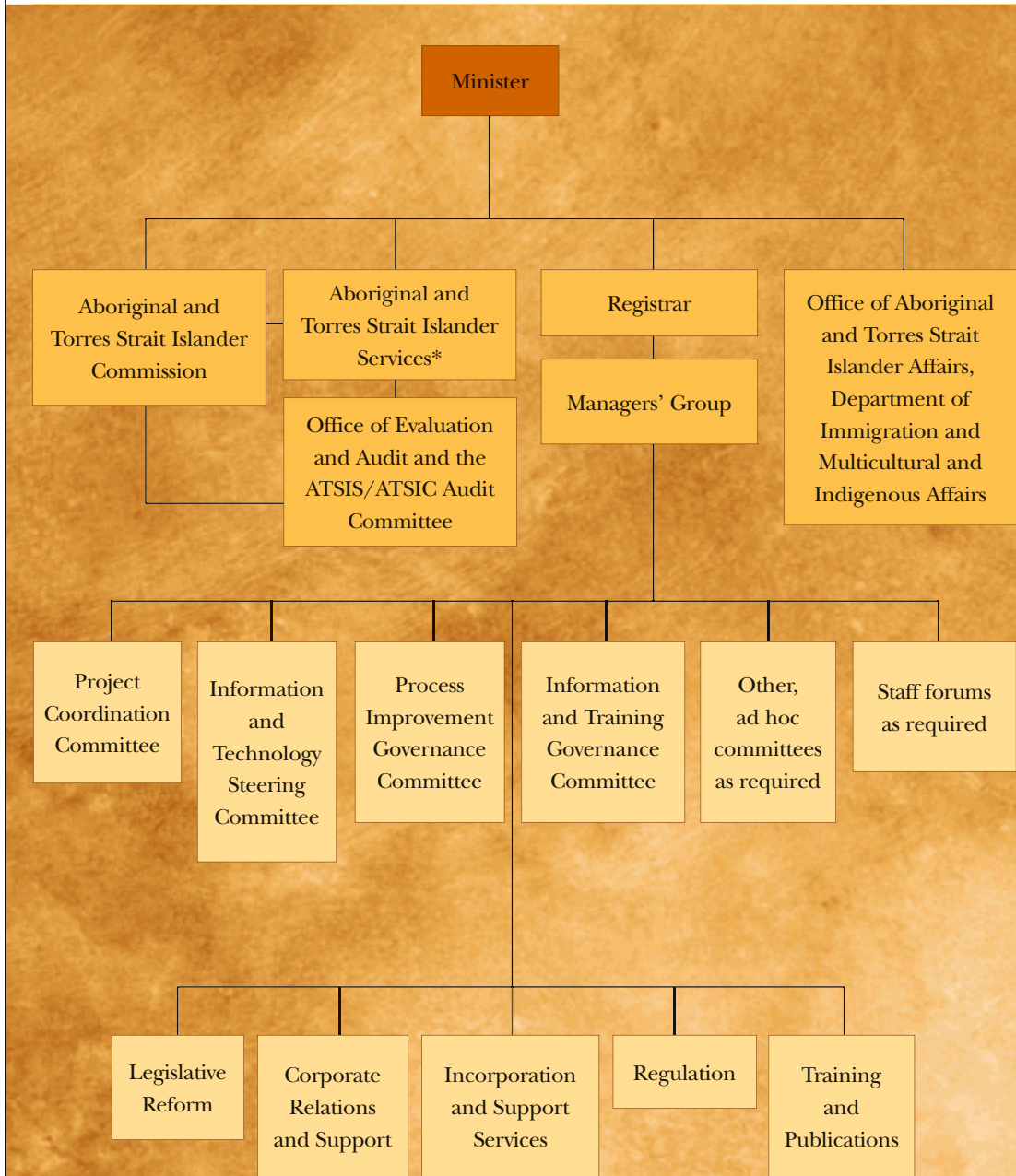
In summary, despite the lack of resources of not-for-profit corporations, their standards of corporate governance are in principle the same as for profit corporations.

There is a public interest in ensuring that this essential sector of the Australian corporate environment thrives. Not-for-profit corporations require additional support, especially at critical stages of their development, such as at their establishment or when they are growing.

# Our Organisation



**FIGURE 7 ORAC CORPORATE GOVERNANCE, DECEMBER 2003**



\* The Government decided to create an independent Executive Agency, Aboriginal and Torres Strait Islander Services (ATSIS), into which the majority of public servants employed by ATSI was transferred on 1 July 2003. ATSIS was established on an interim basis to implement a 'separation of powers' from ATSI.

## Corporate and business plans

ORAC has a three-year corporate plan and a service charter in place until the end of 2003–04. They establish ORAC's performance priority as providing quality services in line with our statutory functions under the *Aboriginal Councils and Associations Act 1976*.

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 seek by the end of 2004.



## External scrutiny

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

No applications for review were received during the year. There were two applications under the FOI Act.

The Office of Evaluation and Audit (ATSIC and ATSI) audited the training program during 2002–03, and the operations of ORAC in the previous year. These audits raised issues about record keeping, management and tracking. The operations audit also identified the need to follow up non-compliant corporations more effectively.

A post-implementation review of ORAC's Electronic Record of Indigenous Corporations (ERIC) was completed in June 2003. The review raised concerns about the internal control framework for ERIC and whether the system was meeting the aims outlined in the business objectives. These matters are being considered by the Information and Technology Steering Committee and will be attended to as part of the continuous improvement of ERIC.

All audit recommendations have been implemented or are in the process of being implemented, including those for improved records management systems (see Data systems, page 78) and a program targeting non-compliant corporations (see page 45).

**FIGURE 8 ORAC STRUCTURE, 2002-03**





**FIGURE 9 ORAC STRUCTURE, 2003-04**



## Structure

During 2002–03, ORAC comprised three sections: the Corporate Relations Section, the Client Services Section, and the Regulation Section. The functions of each are outlined in Figure 8. At 30 June 2003, ORAC’s full-time equivalent staffing level was 23 persons.

ORAC has begun restructuring in preparation for the reform of the *Aboriginal Councils and Associations Act 1976* and our new emphasis on building capacity while maintaining appropriate monitoring and regulation. The first steps in this restructure involved adding two new sections and

rearranging some other functions. The new structure is set out in Figure 9. At the time of writing, ORAC’s full-time equivalent staffing level has risen to 27.5 persons.

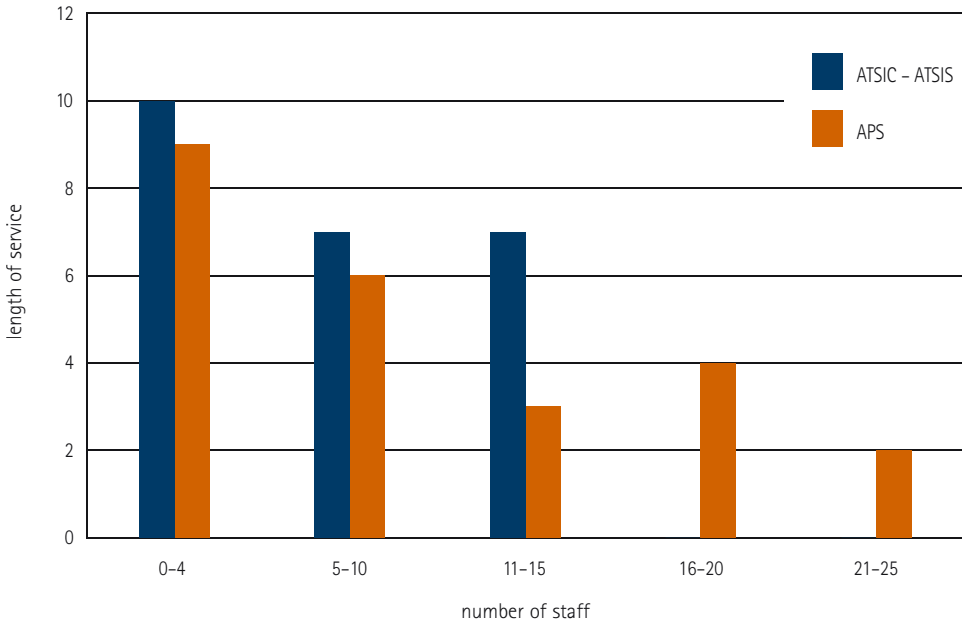
## Staff

The staff of ORAC are committed and hard-working, often making themselves available outside office hours to assist clients, who also do much of their work out of hours.

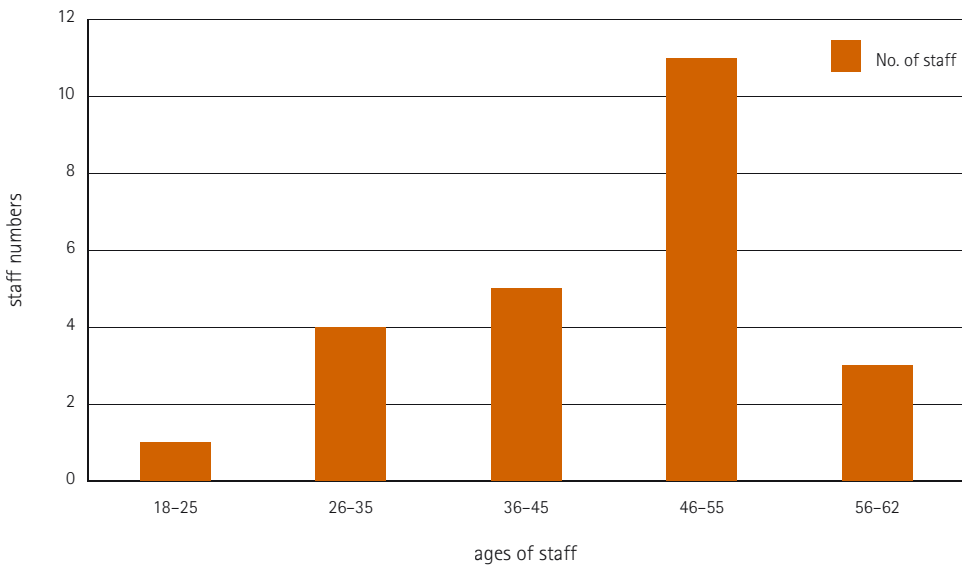
A high proportion of ORAC staff are highly trained professionals with legal and accounting qualifications, while others hold tertiary qualifications in other fields relevant to our work. Figures 10 and 11 show that



**FIGURE 10 ORAC STAFF: LENGTH OF SERVICE AT 30 JUNE 2003**



**FIGURE 11 ORAC STAFF: AGES AT 30 JUNE 2003**



ORAC has a mature staff with many years experience in the Australian Public Service. We have very little turnover of staff, and therefore retain within the office technical and corporate expertise that has been built up over the years.

Staff are supported by a strong team culture. A case coordination approach has been adopted, which results in our working in many different groupings apart from our core teams.

During 2002–03, delegations were reviewed to ensure that decisions are made at the appropriate level and as quickly as possible.

#### **TRAINING AND DEVELOPMENT**

As ORAC moves towards the implementation of new legislation and an increased focus on improving client assistance, our staff are undertaking continuous improvement to ensure best-practice standards of service.

##### Workshops on quality service for ORAC

During the year, we conducted workshops to improve the quality of our services by developing a set of good practice standards for ORAC, reviewing the ORAC service charter, and undertaking extra training in client service delivery.

A project to deliver improved standards and a new service charter for ORAC commenced in 2003 and will be detailed in next year's report. The project aims to develop standards of good practice and a revised service charter to reflect these standards.

Another project initiated in 2002–03 is designed to measurably improve ORAC's services, processes, systems and procedures. Deloitte Touche Tohmatsu was selected by open tender to assist with this project. It involves mapping and measuring the status quo, identifying and implementing improvements and aligning them to the new legislation. It will also put in place increased capacity for ORAC to continue improvements.

The project is expected to conclude in 2005.

##### Staff development

All staff are covered by a performance agreement which includes a commitment to the 'shared behaviour framework', agreed goals linked to ORAC's business plan, and a learning and development program. The performance management system creates a workplace where people have self-awareness, behave appropriately, are results-oriented, and engage in ongoing learning.

The 'shared behaviour framework' is based on Australian Public Service requirements and covers seven areas:

- cultural awareness and respect
- commitment and passion
- honesty and transparency
- building relationships
- enabling and strengthening others
- performance focus
- delivering outcomes.

ORAC is always eager to develop and enhance the skills of our workers.

Examples of learning opportunities provided during the year by ORAC:

- During the year two members began courses in law and accounting.
- Staff undertook the Step-Up program and the Pathways to Effective Management program, which equip people to play a more strategic management role and to better understand themselves and their personal preferences.
- Staff training during the year included a whole-of-office session on identifying and managing conflict of interest within ORAC, financial management, presentation skills for women, advanced writing skills, cultural awareness programs, conducting investigations, and information technology systems.
- At the time of writing, staff had participated in various ways in ORAC's corporate governance training for clients. As well as experiencing the training and being involved in its refinement and improvement, staff can now better inform clients about our training products and approaches.

**TABLE 6 STAFF PROFILE AT 30 JUNE 2003**

	APS 3	APS 4	APS 5	APS 6	Exec 1	Exec 2	SES	Total
Aboriginal and Torres Strait Islander staff	1	1	0	0	0	0	0	2
Non-Indigenous staff	1	4	5	2	6	3	1	22
Male	1	2	0	2	4	3	0	12
Female	1	3	5	0	2	0	1	12
Ongoing	2	5	5	2	6	3	0	23
Non-ongoing	0	0	0	0	0	0	1	1
Full-time	2	3	3	2	6	3	1	20
Part-time	0	2	2	0	0	0	0	4
Non English-speaking background	1	2	1	0	1	1	0	6
People with disabilities	0	0	0	1	1	0	0	2
<b>Totals <sup>a</sup></b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>6</b>	<b>3</b>	<b>1</b>	<b>24</b>

<sup>a</sup> Totals do not take into account the part-time status of some officers. Therefore, the full-time equivalent staff level is 23.  
Note: APS = Australian Public Service level; Exec = Executive Level; SES = Senior Executive Service.

- At the time of writing, many staff have undertaken training in corporate governance and the Corporations Act. This training was delivered by the Australian Institute of Company Directors and consists of a non-accredited New Directors Program followed by an accredited Company Directors Course Diploma. After training, those doing the diploma course will be able to evaluate governance frameworks; develop and apply corporate governance principles; identify better practice governance principles and processes; and have a better understanding of the legal responsibilities of board members.

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

The Registrar and staff of ORAC are staff of Aboriginal and Torres Strait Islander Services (ATSIS) (formerly the Aboriginal and Torres Strait Islander Commission (ATSIC)). Funding for ORAC is part of the ATSIS appropriation. The Registrar participates in various forums within ATSIC-ATSIS related to the funding and administrative support to ORAC.

Apart from the Registrar, ORAC staff are covered by the ATSIC Certified Agreement 2003–04, which was certified by the Australian Industrial Relations Commission on 6 June 2003. Details of the certified agreement can be found in ATSIC’s annual report for 2002–03. At the time of writing, ATSIC-ATSIS is negotiating a new certified agreement for 2004-05.

The Registrar has a performance agreement with the chief executive officer of ATSIC–ATSIS as part of an Australian Workplace Agreement.

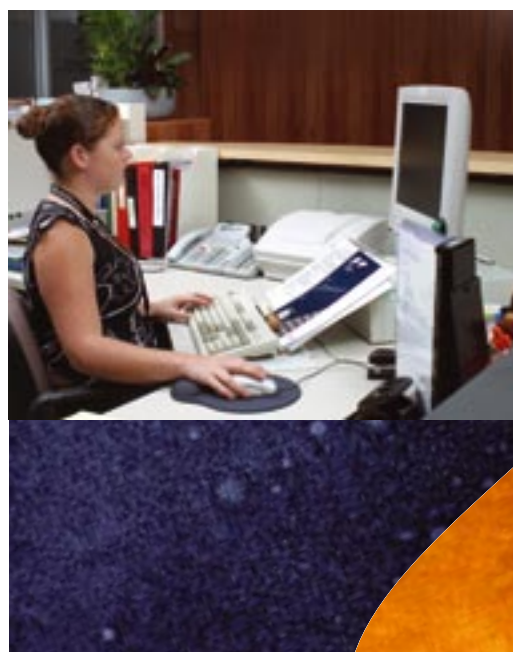
#### **OCCUPATIONAL HEALTH AND SAFETY**

Occupational health and safety initiatives and benefits are included in ATSIC’s certified agreement, and are detailed in ATSIC’s annual report for 2002–03.

ORAC takes its responsibilities in this area seriously, and arranges regular workstation assessments for staff. All recommendations made as a result of these assessments are implemented.

#### **STAFF STATISTICS**

A full-time equivalent level of 23 ORAC staff assisted the Registrar during the financial year (see Table 6).



## Resources

### FINANCES

During 2002–03, ORAC’s budget was approximately \$3.98 million. Most expenditure was on:

- Regulatory action – \$940,000. This was mainly for statutory examinations under section 60 of the *Aboriginal Councils and Associations Act 1976* and the costs of administering corporations under section 71 of the Act.
- Information and training program – \$252,000. Most of these funds were spent on developing the three-day workshops and Certificate IV courses on corporate governance.
- Salaries and related costs – \$1,481,000.
- Legal costs – \$226,000. This expenditure was associated with the ongoing need for legal advice on regulatory matters, reform and interpretation of the ACA Act, and corporations’ constitutions.
- Special projects – \$343,000. 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 \$24,668.91 (excluding goods and services tax). These funds came from fees paid by corporations, fees for searches, and from reimbursements related to regulation work and court proceedings. In accordance with requirements, those funds were placed into consolidated revenue and did not form part of ORAC’s budget.

### Assets/property management

ORAC’s asset and property management is handled by AT SIS.

### Purchaser–provider arrangements

ORAC’s financial, payroll and human resource management functions are provided by AT SIS, which reports on purchaser–provider arrangements in its annual report.

### Ecologically sustainable office practices

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

- using recycling bins
- turning off power when not needed
- printing only when necessary, using recycled or renewable plantation 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.

## DATA SYSTEMS

### Electronic Register of Indigenous Corporations

We implemented a new integrated computer system on 21 October 2002.

The Electronic Register of Indigenous Corporations (ERIC) has improved our workflow and information management. ERIC also delivers smoother servicing for clients and better information and analysis about corporations, including that used in this Yearbook. Importantly, ERIC enables us to identify high-risk corporations sooner, and thereby supports strategies for early prevention.

The system is constantly being enhanced and additional data added to complement that already available. For example, details of funding sources are being added to the corporation data to ensure that the funding bodies, particularly government agencies, are made aware of any significant adverse changes in the operations of a corporation and of any proposed action by ORAC.

ERIC has also allowed us to make better use of modern communications technology.

From time to time we need to contact many or all corporations; by using data in ERIC, we can now use fax or email for the contact.

We want to increase this proportion, because these technologies are faster and more accurate, and produce more timely replies.

We expect to develop ERIC for faster, paperless processes, including an expanded facility for electronic lodgment by clients, improved public register access, and more detailed and improved information and analysis of corporations.

### Website

The use of our website <www.orac.gov.au> is constantly increasing. In 2002–03, visits grew by 40 per cent, from 21,864 the previous year to 30,526.

We are continually exploring opportunities to improve the site's ability to assist and advise clients. In 2004, the site will be significantly enhanced, with an emphasis on improving the navigation tools and links so that users can quickly access the information they require, especially from the Public Register.

In the longer term, we will provide some facilities for electronic lodgment by clients.

### Legal advice database

During the year we developed an internal register of the approximately 700 legal advices that we have accumulated over the years. This project involved a review of these legal opinions and their indexing. Many contain information that proved useful in the review of the ACA Act, and in ORAC's Process Improvement Project.

The register contains all opinions provided to us by the Australian Government Solicitor, other law firms engaged by ORAC, and counsel. It will allow easy access to past advice and easy sharing of new advice within ORAC.

### Security

Access to the ERIC database is restricted, and is not available to non-ORAC staff. However, the audit of ERIC raised some issues about security. These have been brought to the attention of the Information and Technology Steering Committee and are being dealt with (see 'External scrutiny', page 69).



ERIC data is backed up nightly. ATISIS security arrangements for disaster recovery, including storage of back-up tapes off site, also apply to the ERIC database.

While we are working towards a paperless office, we maintain some paper files. Since ORAC's relocation to new premises at Woden in the Australian Capital Territory, these files are housed in a secure, purpose-built, fire-protected file room.

#### **P R O C U R E M E N T**

ORAC uses a panel of providers when engaging consultants to undertake the bulk of our outsourced work, which is mainly regulation work. The panel was formed as a result of a competitive tendering process undertaken some years ago.

Where firms with the relevant qualifications for regulation work approach ORAC, we place them on the panel. We normally allocate work by inviting competitive tenders from those panel members located near the area in which the work is needed. Competitive tendering may be waived when this is warranted, such as where there is a risk of loss of funds or assets.

During the year, we decided to progressively review our procurement approach. As a result, in 2004 we will call for tenders for a new panel for the provision of our regulation and related work. We have already undertaken a competitive tendering process to engage registered training bodies to conduct our Certificate IV Business (Governance) courses. Other training services we need will be tendered in 2004–05. Arrangements for purchasing legal services are still under review.

During 2002–03 we engaged a total of 27 providers to perform 50 assignments for us. Engagements included training, reviewing the ACA Act, performing regulation work, and providing research and advice about best practices in corporate and sustainable governance. The total expenditure on these assignments was \$1.399 million.

#### **A D V E R T I S I N G   A N D   M A R K E T R E S E A R C H**

ORAC uses the media to communicate with clients about key matters; to alert clients to regulatory action being taken and special general meetings convened by the Registrar; to remind them of reporting and other requirements; to tell them about proposed changes to the ACA Act; and to announce important events, such as upcoming training.

These communications are delivered through the print media, especially Indigenous newspapers, magazines and periodicals, and local newspapers in rural and remote areas.

We also use the National Indigenous Radio Service (NIRS), which is a company owned and operated by Indigenous radio stations across Australia. It provides a national satellite feed to approximately 122 Indigenous radio stations, as well as to another 120 mainstream, non-Indigenous, community stations. The NIRS footprint extends across most of rural and remote Australia, which is where most of ORAC's clients are situated, and offers us a very efficient communication channel. In 2002–03, we paid NIRS \$25,200.





## Appendices

Appendix A	Locations of registered corporations
Appendix B	Summary of the Registrar's regulatory powers
Appendix C	Compliance trend
Appendix D	Corporations where examinations were initiated
Appendix E	Corporations issued with notices to rectify matters
Appendix F	Corporations issued with notices to show cause why an administrator should not be appointed
Appendix G	Corporations where administrators were appointed
Appendix H	Liquidations in progress
Appendix I	Liquidations finalised
Appendix J	Deregistrations completed
Appendix K	Reform of the <i>Aboriginal Councils and Associations Act 1976</i> (ACA Act) Proposed new <i>Corporations (Aboriginal and Torres Strait Islander) Act</i>

## Appendix A: Locations of registered corporations

This appendix shows the distribution of corporations registered under the *Aboriginal Councils and Associations Act 1976* by Aboriginal and Torres Strait Islander Commission region.

ATSIC region	Corporation numbers	Percentage of total
Queanbeyan <sup>a</sup>	76	2.7
Murdi Paaki (Bourke)	47	1.6
Many Rivers (Coffs Harbour)	122	4.3
Sydney	72	2.7
Kamilaroi (Tamworth)	77	2.5
Binaal Billa (Wagga Wagga)	77	2.7
Binjirru (Wangaratta)	21	0.7
Tumbukka (Ballarat)	46	1.6
South East Queensland (Brisbane)	102	3.6
Cairns and District	96	3.4
Gulf and West Queensland (Mt Isa)	76	2.7
Peninsula (Cooktown)	72	2.5
Central Queensland (Rockhampton)	85	3.0
Goolburri (Roma)	79	2.8
Townsville	108	3.8
Torres Strait Regional Authority	45	1.6
Patpa Warra Yunti (Adelaide)	23	0.8
Wangka Wilurrara (Ceduna)	2	0.1
Nulla Wimila Kutja (Port Augusta)	34	1.2
Noongar (Perth)	140	4.9
Noongar Country (Narrogin)	76	2.7

ATSIC region	Corporation numbers	Percentage of total
Kullari (Broome)	130	4.5
Malarabah (Derby)	108	3.8
Wunan (Kununurra)	153	5.3
Ngarda-Ngarli-Yarndu (South Hedland)	92	3.2
Yamatji (Geraldton)	79	2.8
Wongatha (Kalgoorlie)	45	1.6
Western Desert (Warburton)	15	0.5
Tasmanian Regional Aboriginal Council (Hobart)	21	0.7
Alice Springs <sup>b</sup>	220	7.7
Central Remote Regional Council (Apatula)	111	3.9
Yilli Rreung (Darwin)	98	3.4
Jabiru	35	1.2
Garrak-Jarru (Katherine)	98	3.4
Miwatj (Nhulunbuy)	13	0.5
Yapakurlangu (Tennant Creek)	57	2.0
Region unknown	110	3.8
<b>Total</b>	<b>2,861</b>	<b>100</b>

a Queanbeyan number includes Australian Capital Territory corporations.

b Alice Springs has the highest number of corporations of the ATSIC regions. This is due in part to some corporations located in South Australia and Western Australia choosing to use Alice Springs as their postal address.

## Appendix B: Summary of the Registrar's regulatory powers

This appendix describes the Registrar's primary 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

The Registrar may authorise a person under section 60 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 ACA Act, 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 ACA Act, the regulations or the corporation's rules, 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 ACA Act, the regulations or the corporation's rules, 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 their 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 cease from breaching, the ACA Act, regulations or rules.

### 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 interests 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 ACA Act is inappropriate
- that it is just and equitable to wind up the corporation.

If satisfied, the court appoints 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 rules. If there are no specific rules, 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 ACA Act. The Registrar can investigate a corporation where the Registrar suspects on reasonable grounds that the corporation has failed to comply with the ACA Act, the regulations or its rules, 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 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 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 positively received 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 ACA Act, the regulations or the rules, 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, such 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 C: Compliance trend

This appendix outlines the trends in corporations' compliance with ORAC reporting requirements between 1998–99 and 2001–02.

Compliance period	1998–99 to 1999–2000	1999–2000 to 2000–01	2000–01 to 2001–02
No. of corporations <sup>a</sup>	2,488	2,490	2,497
Fully compliant <sup>b</sup>	855	739	576
Partially compliant	251	195	26
Not fully or partially compliant	1,528	1,727	1,895
Percentage fully compliant	34	30	23
Percentage partially compliant	10	8	1
Percentage not fully or partially compliant	61	69	76

a The number of corporations that were incorporated as at 31 March of the first financial year of the compliance period.

b 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. The table shows all returns received by ORAC as at 30 June 2003. Corporations were not required to provide annual returns for 2002–03 until 31 December 2003.

## Appendix D: Corporations where examinations were initiated

This appendix lists corporations for which examinations under section 60 of the ACA Act were initiated during 2002–03, and summarises follow-up action by the Registrar to the time of writing. (Appendix B describes the regulation powers under the ACA Act.)

Corporation	Action
Boree Aboriginal Corporation	Corporation asked to show cause why an administrator should not be appointed; section 71 notice issued on 9 September 2003.
Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation	Administrator appointed 12 December 2002; liquidator appointed 29 May 2003.
Brisbane North Aboriginal and Torres Strait Islanders Corporation for Aged Care	Liquidator appointed 11 July 2003.
Central Highlands Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 7 July 2003.
Central Queensland Land Council Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 7 August 2003.
Coastal Housing Multi Services Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 2 June 2003.
Djugerari Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 10 June 2003.
Dubbo Korrie Housing Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 10 September 2003.
Gunangarah Aboriginal Corporation for Housing	Administrator appointed 24 September 2003.
Jundara Aboriginal Corporation	No further action.
Kalkadoon Aboriginal Corporation	The corporation was originally issued with a section 71 notice to show cause why an administrator should not be appointed. Following a satisfactory response from the corporation the matter was downgraded to a section 60A notice, which was issued on 7 August 2003.

<b>Corporation</b>	<b>Action</b>
Kamilaroi Aboriginal Housing Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 4 August 2003.
Karijini Aboriginal Corporation	Liquidator appointed 2 May 2003
Koorrabay Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 10 June 2003.
Marra Worra Worra Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 11 June 2003.
Martidja Banyjima Aboriginal Corporation	Administrator appointed 9 December 2002; liquidator appointed 29 May 2003.
Mitakoodi Aboriginal Corporation	The corporation was originally issued with a section 71 notice to show cause why an administrator should not be appointed. Following a satisfactory response from the corporation the matter was downgraded to a section 60A notice, which was issued on 12 September 2003.
Miwatj Health Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 11 June 2003.
Mudjarng Aboriginal Corporation	Special general meeting convened 30 July 2003.
Mulan Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 24 July 2003.
Munjuwa Health Housing & Community Aboriginal Corporation	Administrator appointed 24 March 2003.
Ngarliyarndu Bindirri (Corporate CDEP) Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 28 July 2003.
Ngurralla Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 8 September 2003.
Ningi Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 27 September 2002.

Corporation	Action
Parkes Multipurpose Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 8 October 2002.
Roebourne Workers Aboriginal Corporation	Remains under consideration for further action.
South-West Aboriginal Medical Service Aboriginal Corporation	The corporation was originally issued with a section 71 notice to show cause why an administrator should not be appointed. Following a satisfactory response from the corporation the matter was downgraded to a section 60A notice, which was issued on 7 August 2003.
Swan Valley Nyungah Aboriginal Corporation	Remains under consideration for further action.
Tjuwampa Outstation Resource Centre Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 3 June 2003.
Twofold Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 5 September 2003.
Urapuntja Council Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 3 June 2003.
Walginnam Employment and Training Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 12 May 2003.
Wallaga Lake CDEP Aboriginal Corporation	Rectification of less serious matters, issued with a section 60A notice on 5 September 2003.
Wandjibynds Aboriginal Corporation	Remains under consideration for further action.

## Appendix E: Corporations issued with notices to rectify matters

This appendix lists corporations that were issued with notices to rectify matters under section 60A of the ACA Act during 2002–03.

Coastal Housing Multi Services Aboriginal Corporation
Djugerari Aboriginal Corporation
Koorrabay Aboriginal Corporation
Marra Worra Worra Aboriginal Corporation
Miwatj Health Aboriginal Corporation
Ningi Aboriginal Corporation
Parkes Multi Purpose Aboriginal Corporation
Tjuwampa Outstation Resource Centre Aboriginal Corporation
Urapuntja Council Aboriginal Corporation
Walginnam Employment and Training Aboriginal Corporation

## Appendix F: Corporations issued with notices to show cause why an administrator should not be appointed

This appendix lists corporations that were required to show cause why an administrator should not be appointed under section 71 of the ACA Act during 2002–03.

Aboriginal & Torres Strait Islander Corporation for All Sports Health & Recreation Association
Brewarrina Aboriginal Cultural Museum Aboriginal Corporation
Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
Carnma CDEP Aboriginal Corporation
Martidja Banyjima Aboriginal Corporation.
Mitakoodi Aboriginal Corporation
Munjuwa Health Housing & Community Aboriginal Corporation

## Appendix G: Corporations where administrators were appointed

This appendix lists corporations for which administrators were appointed under Section 71 of the ACA Act during 2002–03.

Aboriginal and Torres Strait Islander Corporation For All Sports Health and Recreation Association
Brewarrina Aboriginal Cultural Museum Aboriginal Corporation
Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
Carnma CDEP Aboriginal Corporation
Goomburrup Aboriginal Corporation
Martidja Banyjima Aboriginal Corporation
Munjuwa Health Housing and Community Aboriginal Corporation
Toowoomba Aboriginal Corporation for Community Welfare

## Appendix H: Liquidations in progress

This appendix lists corporations where liquidation was in progress under the ACA Act as at 30 June 2003.

Aboriginal & Torres Strait Islander Corporation for All Sports, Health & Recreation Association
Aboriginal Building Corporation (Aboriginal Corporation)
Allambi Aboriginal Corporation
Balangarri Aboriginal Corporation
Bidunggu Aboriginal Corporation
Birri Gubba Aboriginal Corporation
Bogong Community Aboriginal and Torres Strait Islanders Corporation
Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
Brisbane North Aboriginal and Torres Strait Islanders Corporation for Aged Care
Camu Goun-Doi Aboriginal Corporation
Central Queensland Aboriginal Corporation for Training Resources
Dabu Jajikal Aboriginal Corporation
Dhunghulla Economic Development Aboriginal Corporation.
Doonooch Self-healing Aboriginal Corporation
Euston Aboriginal Corporation
Gubrun Aboriginal Corporation
Guddoo Marddah Aboriginal Corporation
Gundabooka Aboriginal Corporation
Gunyah Construction Aboriginal Corporation
Karijini Aboriginal Corporation
Kerrup Jmara Elders Aboriginal Corporation
Leeton and District Aboriginal Corporation
Manth-Thayan Aboriginal Corporation
Martidja Bunyjima Aboriginal Corporation
Mearu Djarula Aboriginal Corporation
Narrogin Aboriginal Corporation



Narwon Housing Aboriginal Corporation
National Aboriginal and Islanders Legal Services Secretariat Aboriginal Corporation
Ngadju Bugarla Mirning Wamu Wamu Aboriginal Corporation
Noongar Language And Culture Centre Aboriginal Corporation
North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care
New South Wales Women's Aboriginal Corporation
Nurapai Torres Strait Islanders Corporation
Orana Barellan Aboriginal Corporation
Queensland Aboriginal and Torres Strait Islanders Corporation for Legal Services Secretariat
Sports Aboriginal Corporation of Tasmania
Theodore Aboriginal Corporation
Tingha Aboriginal Corporation
Wandanooka Aboriginal Corporation
Warrego Aboriginal Corporation
Wattle Hill Housing and Advancement Aboriginal Corporation
Wiri/Yuwiburra 'Touri' Aboriginal Corporation
Wongaibon Women's Aboriginal Corporation
Yabu Bindalynga Aboriginal Corporation

## Appendix I: Liquidations finalised

The corporations listed in this appendix were liquidated under the ACA Act and the liquidations were finalised during 2002–03.

Aboriginal Youth Accommodation (Aboriginal Corporation)
Armidale Baalapiny Housing Aboriginal Corporation
Boggabilla Aboriginal Corporation
Central Area Training Accounting and Resource Aboriginal Corporation
Cootamundra and Districts Aboriginal Corporation
Dirranbandi Aboriginal Corporation
Giree Giree Aboriginal Corporation
Goolburri Men’s Aboriginal Corporation
Gungandi Aboriginal Corporation
Harlaxton Youth and Sporting Aboriginal Corporation
Kattang Housing Aboriginal Corporation
Koomaal Aboriginal Corporation
Kupartiya (Aboriginal Corporation)
Kuwuma Djudian Aboriginal Corporation
Likajarrayinda Aboriginal Corporation
Marillac House Aboriginal Corporation
Mirrabooka Housing Aboriginal Corporation
Mrangalla Housing Aboriginal Corporation
New Burnt Bridge Aboriginal Corporation
Petford Training Farm (Aboriginal Corporation)
Tasmanian Native Resources Aboriginal Corporation
Thallon Aboriginal Corporation
Thoorgine Educational and Culture Centre Aboriginal Corporation
Townsville and District Aboriginal and Torres Strait Islanders Corporation for Legal Services
West Pilbara Land Council Aboriginal Corporation
Yarrahappinni Aboriginal Corporation
Yathalla Group Aboriginal Corporation

## Appendix J: Deregistrations completed

The corporations listed in this appendix were deregistered under the ACA Act during 2002–03.

Aboriginal Corporation Legal Service South Coast
Aboriginal Corporation of United Women and Youth
Aborigines Inland Mission Aboriginal Corporation
Armidale Baalapiny Housing Aboriginal Corporation
Arwon Aboriginal Corporation
Babel Island Aboriginal Corporation
Banjeeri Aboriginal Corporation
Baradine Aboriginal Corporation
Baronearook Aboriginal Corporation
Belmore Aboriginal Corporation
Bidderjurrad Aboriginal Corporation
Black Panthers Sports Aboriginal Corporation
Bogong Warriors Aboriginal Corporation
Bogong Warriors Junior Rugby League Football Club Aboriginal Corporation
Boggabilla Aboriginal Corporation
Bonorang Aboriginal Corporation
Bourke/Weilmoringle Rugby League Football Aboriginal Corporation
Brewarrina Aboriginal Cultural Education Aboriginal Corporation
Bumay Aboriginal Corporation
Bunyah Aboriginal Housing Co-operative (Aboriginal Corporation)
Burra Aboriginal Corporation
Central Area Training Accounting and Resource Aboriginal Corporation
Coffs Harbour Aboriginal Corporation
Cootamundra and Districts Aboriginal Corporation
Crookhaven Aboriginal Corporation
Cubawee Aboriginal Corporation
Darrimba-Maarra Aboriginal Corporation
Darug United Sporting and Recreational Aboriginal Corporation

Dirranbandi Aboriginal Corporation
Dubay Bahbynj Aboriginal Corporation
Eastern Zone House Aboriginal Corporation
Ee-Kee-Na Armidale Tertiary Accommodation Aboriginal Corporation
Ferdys Haven Rehabilitation Aboriginal Corporation
Fig Tree Estate Aboriginal Corporation
Gamilaroi Constructions Aboriginal Corporation
Girree Girree Aboriginal Corporation
Goolburri Men's Aboriginal Corporation
Goorie-Pemul Aboriginal Corporation
Great Lakes/Manning Aboriginal Corporation Childrens Service
Gubba Gunya Aboriginal Corporation
Gumbayngirr Tribal Elders Aboriginal Corporation
Gumyaney Aboriginal Corporation
Gungandji Aboriginal Corporation
Gutha Bimbi Birri Gubba Nanhi Bura Aboriginal Corporation
Harlaxton Youth and Sporting Aboriginal Corporation
Iwupataka Water Aboriginal Corporation
Jarrambutta Aboriginal Corporation
Jerrinja Youth Movement Aboriginal Corporation
Jukambal Elders Aboriginal Corporation
Jungar Aboriginal Corporation
Kalwun Land and Environment Aboriginal Corporation
Karla Aboriginal Corporation
Kattang Housing Aboriginal Corporation
Koolyangarra Family Group Home Aboriginal Corporation
Koomaal Aboriginal Corporation
Koonawarra Housing Aboriginal Corporation
Kupartiya (Aboriginal Corporation)

Kuwuma Djudian Aboriginal Corporation
Likajarrayinda Aboriginal Corporation
Mandandanji Land and Heritage Aboriginal Corporation
Maya Kulu Aboriginal Corporation for Housing and Enterprise
Mehi Murris Aboriginal Corporation
Mirrabooka Housing Aboriginal Corporation
Mirriwinni Aboriginal Corporation
Moi-ia Aboriginal Corporation
Moree Aboriginal Corporation for Historical Research
Moree Mission Jets R.L.F.C. Aboriginal Corporation
Muloobinba Aboriginal Corporation
Mungar Mungar Women's Learning Group Aboriginal Corporation
Narrandera Family Support Group for Alcohol and Drug Dependents (Aboriginal Corporation)
Narranderra Wiradjuri Warriors Rugby League Football Club Aboriginal Corporation
Narre-Gar-Rang Aboriginal Corporation CDEP
Nanja Numbinj Transition Centre (Aboriginal and Torres Strait Islanders Corporation)
New Horizons Aboriginal Corporation Commercial and Industrial
Nguku Victoria Heritage and Culture Aboriginal Corporation
Ngullubal Men's Group Aboriginal Corporation
North East Lands Aboriginal Corporation
North West Queensland Womens Economic and Development Aboriginal Corporation
Nykandji Aboriginal Corporation
One Tribe Aboriginal Corporation
Paawan Aboriginal Corporation Training and Education Centre
Palawa Products Aboriginal Corporation
Petford Training Farm (Aboriginal Corporation)
Pooningbah Aboriginal Community Corporation
Riverina Sports Club Aboriginal Corporation
Sapphire Housing Aboriginal Corporation

Seabrook Business Enterprise Aboriginal Corporation
Shade and Shelter Aboriginal Corporation for Housing
South Coast Aqua Culture Aboriginal Corporation
Stanley Village Aboriginal Corporation
Sydney Region Crisis Housing Centre Aboriginal Corporation
Tasmanian Native Resources Aboriginal Corporation
Tkalkaboorda Community Aboriginal Corporation
Thoorgine Educational and Culture Centre Aboriginal Corporation
Thallon Aboriginal Corporation
Toowoomba Aboriginal Corporation for Community Welfare
Townsville and District Aboriginal and Torres Strait Islanders Corporation for Legal Services
United Githabul Tribal Nation Aboriginal Corporation
WAI:BAL Aboriginal Corporation
Walbunga Elders Aboriginal Corporation
Wandandian Housing Aboriginal Corporation
Wapiwa – Lemahto Torres Strait Islanders Corporation
Waratah Aboriginal Corporation
Warrior’s Sporting Aboriginal Corporation
Wayatih Aboriginal Corporation
West Pilbara Land Council Aboriginal Corporation
Wongala Youth Aboriginal Corporation
Wooladullah Putungah Oyster Farm Aboriginal Corporation
Yakankurnu Warnayaka Womens Centre Aboriginal Corporation
Yanap Aboriginal Corporation
Yarrabah Community Skills Centre Aboriginal Corporation
Yarrahappinni Aboriginal Corporation
Yathalla Group Aboriginal Corporation
Yuin Elders Council Aboriginal Corporation

## Appendix K: Reform of the *Aboriginal Councils and Associations Act 1976 (ACA Act)* – Proposed new *Corporations (Aboriginal and Torres Strait Islander) Act*

The ACA Act was independently reviewed over a period of almost two years. Extensive research and consultations were conducted as part of the review, and the review report was publicly released in December 2002.

Since the completion of this report, the ORAC has pursued further research and consultation to progress the reform process. A bill to reform the 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 access to incorporation for Indigenous groups which encourages appropriate cultural fit.
- 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 constitutions](#)

---

- 2.1 Constitutions will remain mandatory but the Registrar will no longer scrutinise and approve all new constitutions or changes, as is currently the case. The approval process is unnecessary for the 90 per cent of corporations that use the model constitution.

- 2.2 Constitutions will be required to contain core provisions but corporations will otherwise have freedom to design their own constitutions.
- 2.3 The Registrar will have the power to veto constitutions or provisions, exercised only when there is non-compliance with mandatory content or where the constitution is incoherent or inconsistent.
- 2.4 A series of relevant, sector-specific guides to constitutions will be developed, which corporations can then adopt if they choose to do so.

### 3 Membership

- 3.1 The current requirement for corporations to have 25 members will be reduced to five members, in line with other incorporation regimes.
- 3.2 Corporate membership will be permitted so that resource agencies and peak bodies can be accommodated.
- 3.3 Corporations will have the flexibility to allow non-members, including non-Indigenous persons, to be members of corporations and boards of directors through processes defined in the constitution. For example, non-Indigenous persons could be elected or appointed to the board, provided that it comprises a majority of persons who are Indigenous and who are members. The current Act prohibits non-Indigenous persons from being members of corporations, as well as from being members of the board.

Whether or not corporations choose to have non-Indigenous members or directors will be a matter for the membership to decide through the general meeting; their decision will be reflected in the constitution.

### 4. Members, directors and public officer

- 4.1 The current requirement for corporations to provide an annual list of members to ORAC will be retained.
- 4.2 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 ORAC public register and is consistent with information available from ASIC's public register.
- 4.3 The current requirement for all corporations to notify the name of their public officer to the Registrar has led to very high levels of non-compliance because many corporations have never provided these details. To overcome this technical problem, the requirement for a public officer will be replaced by the requirement for a contact officer. The person who makes the application for incorporation will be deemed to be the contact officer until further notice from the corporation. If this position becomes vacant and a new contact officer is not notified, the Registrar may deem any director to be the contact officer. Any person will be able to serve documents on an Indigenous corporation by serving on the contact



officer or any two directors. This is consistent with requirements and practice under the Corporations Act.

## 5. Reporting

5.1 There will be different reporting requirements, tailored in content to the size and purpose of the corporation.

5.2 Minimum, medium and maximum reporting requirements will apply. However, all corporations will be required to maintain proper accounts and records, and to provide certain information on an annual basis, including: a list of members, names and other details relevant to directors; names of executive office bearers; name and other details of the contact officer; and the corporate constitution.

5.3 The Registrar will have discretion to apply different reporting requirements from those that automatically apply. This will enable some flexibility for corporations that do not fit neatly into any of the reporting categories and to allow targeting where a corporation or group of corporations presents an unusual risk.

## 6. Overcoming technical problems with the current Act

6.1 Amendments will allow for voluntary transfer of incorporation to other state or Commonwealth incorporation statutes, and will preserve all rights and liabilities of the transferring corporation.

6.2 The Act will not provide the Registrar with an express power to force transfer of incorporation to other states.

6.3 Meetings by telephone or videoconference will be possible.

6.4 The Registrar will be able to correct errors on the public register.

6.5 Re-issue of certificates of incorporation will be possible.

6.6 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.

## 7. Corporate membership and amalgamation

7.1 New legislation will permit Indigenous corporations to have members which are other corporations.

7.2 Corporations will be able to amalgamate.

## 8. Duties of directors and officers

8.1 Duties of directors and officers of the corporation will be amended to make them consistent with the Corporations Act.

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

## 9. Supporting members

- 9.1 Supporting members will be one of the Registrar's key roles. It will include the provision of training, and also in some circumstances, advice, to Indigenous corporations. Anticipated benefits include improving compliance, improving corporate governance, and early dispute resolution.
- 9.2 The Registrar will have an enhanced role in advocating for members, including a power to act for members in certain circumstances – for example, when the members request it.

## 10. Regulation by the Registrar

- 10.1 The Registrar's regulation powers will be retained but modernised.
- 10.2 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, and 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.
- 10.3 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.
- 10.4 The current administration power requires specific grounds before it can be exercised. These grounds will be modernised and be clear and transparent.
- 10.5 Currently, appointment of an administrator automatically displaces the board of directors. The administration power will be modified to enable the board to be retained in certain circumstances.
- 10.6 Appointment of receivers will be provided for, and will be used in appropriate circumstances (that is, where it is cost effective and where the qualifications of a receiver are appropriate to the grounds for appointment).

## 11. General meetings of corporations

- 11.1 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 disputes build up in circumstances where there is community and member concern about meetings not being held, so this power will be available to minimise disputes.
- 11.2 In addition, the same power will be available where corporations do not have the ability to call or run the meeting.

11.3 The Registrar will have a new power to propose changes to the constitution at annual or special general meetings, and to remove technical defects that prevent valid meetings from proceeding (for example, in cases where the number required for a quorum is so high that repeated attempts to conduct a valid meeting have failed).

## 12. Working across agencies to support better service delivery

---

12.1 The Registrar is not the 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.

12.2 The Registrar will have an enhanced role in whole-of-agency work, including a power to call a conference of key parties and a requirement to report to the Minister on outcomes and recommendations following the conference.

12.3 ORAC acknowledges that there are cases where the Registrar is best placed to act, for example where funding is from multiple agencies, where assets are not protected by a purpose agreement, or where a corporation is not publicly funded. The conferencing power will encourage corporations and other stakeholders to become more engaged in problem solving.

## 13. Capacity development

---

13.1 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 that 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 board members
- improved and expanded tools to support corporations, such as a range of guides to constitutions that 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, and streamlining of compliance and reporting processes
- facilitating 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.

# List of abbreviations

<b>ACA Act</b>	<i>Aboriginal Councils and Associations Act 1976</i>
<b>AHL</b>	Aboriginal Hostels Limited
<b>AICD</b>	Australian Institute of Company Directors
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ATO</b>	Australian Taxation Office
<b>ATSIC</b>	Aboriginal and Torres Strait Islander Commission
<b>ATSIIS</b>	Aboriginal and Torres Strait Islander Services
<b>CDEP</b>	Community Development Employment Project
<b>CEO</b>	Chief Executive Officer
<b>Corporations Act</b>	<i>Corporations Act 2001</i>
<b>DOGIT</b>	Deed of Grant in Trust
<b>ERIC</b>	Electronic Register of Indigenous Corporations
<b>FOI Act</b>	<i>Freedom of Information Act 1982</i>
<b>GST</b>	Goods and Services Tax
<b>NIRS</b>	National Indigenous Radio Service
<b>NSWAHO</b>	New South Wales Aboriginal Housing Office
<b>OATSIH</b>	Office of Aboriginal and Torres Strait Islander Health
<b>ORAC</b>	Office of the Registrar of Aboriginal Corporations
<b>TAFE</b>	Technical and Further Education
<b>TSRA</b>	Torres Strait Regional Authority

# Index

## A

Aboriginal and Torres Strait Islander Affairs portfolio  
Chief Executive Officer Forum, 21  
output structure, 24

### Aboriginal and Torres Strait Islander

#### Commission (ATSIC)

and ORAC, 13  
and Output 5.5, 24  
review of, 7, 62

ORAC's response to, 62–65

#### *Aboriginal Councils and Associations Act 1976* (ACA Act), 15, 16, 45

amendment to in regard to business turnaround mechanism, 64  
review of, 2, 9, 60, 101–105

### accessibility and responsiveness, 1

### administrators

appointment of, 46  
case studies, 52–54  
corporations issued with notices to show cause why one should not be appointed, 92  
corporations where appointed, 93

### advertising and market research, 79

### assets/property management, 77

### assistance with corporation queries, 35

case study, 36

### assistance with meetings, 35

case studies, 36, 38

### Australian Institute of Company Directors

diploma offered by, 41

### Australian Securities and Investments

Commission (ASIC), 9, 19

## B

**business turnaround mechanism, 64–65**

## C

**Certificate IV in Business (Governance), 41**

**Certified Agreement and Australian Workplace Agreements, 76**

**Chief Executive Officer Forum, Aboriginal and Torres Strait Islander Affairs portfolio, 21**

**client publications, 45**

**clients *see* key clients**

**complaints service, 37**

**compliance of corporations, 44**

**compliance trend, 88**

**constitution changes, 32**

case study, 33

**contributing to law reform and reviews, 60–66**

**corporate and business plans**

ORAC, 69

**corporate governance**

improvement of, 8–9, 58–60

ORAC, 68

*see also* policy on good corporate governance

**corporate health**

assessment of, 59

**corporation queries**

assistance with *see* assistance with corporation queries

# Index continued

## corporations

- where administrator appointed, 93
- compliance of, 44
- compliance trend, 88
- deregistered, 97–100
- where examinations initiated, 89–91
- examinations of, 46
  - case studies, 47–54
- improvement of financial practices, 8
- issued with notices to rectify matters, 92
- issued with notices to show cause why an administrator should not be appointed, 92
- where liquidations finalised, 96
- where liquidations in progress, 94–95
- location of, 26
- new, 29
- number, income and assets of, 31
- profile of, 27
- registered, 29
  - locations of, 82–83

## D

**data systems, 78–79**

### deregistrations

- case study, 56–57
- completed, 97–100
- see also* liquidations

**Diploma in Business (Governance), 41**

### dispute resolution

- support for, 37

## E

**ecologically sustainable office practices, 77**

### education and training for clients, 39

- new training programs, 41
- see also* Certificate IV in Business (Governance); information sessions; three-day workshops

### Electronic Register of Indigenous Corporations (ERIC), 78

### examinations of corporations, 46

- case studies, 47–54

**external scrutiny, 69**

## F

**finances, 77**

### financial practices

- improvement of, 8

**funding bodies *see* key funding bodies**

## G

**guiding principles, 15**

## H

---

## I

---

- improving corporate governance, 58–60**
- In the hands of the regions — a new ATSIIC, 62*
- incorporating bodies in states and territories, 20**
- incorporation legislation (NSW)**
  - review of, 66
- incorporation services, 28, 30**
- incorporation under general corporations laws, 63–64**
- incorporations**
  - new, 28
- Indigenous Affairs portfolio output structure, 24**
- Indigenous Corporations**
  - Electronic Register of, 78
- Indigenous Tax Advisory Group, 20–21**
- information, training and client publications, 1, 39–45**
- information sessions, 40, 42–43**
  - see also* three-day workshops
- interagency coordination, 9**
  - assessment of, 60

---

## J

---

---

## K

---

- key clients, 13**
- key funding bodies, 9, 19**
- key relationships, 9, 18, 19–21**
- key responsibility, 13**
- key roles, 14**

---

## L

---

- legal advice database, 78**
- liquidations, 46**
  - finalised, 96
  - in progress, 94–95
  - see also* deregistrations
- locations of registered corporations, 82–83**

---

## M

---

- market research, 79**
- meetings**
  - assistance with *see* assistance with meetings
- mining compensation payments**
  - lessons about corporations involved in, 55
  - case study, 56–57
- mismanagement**
  - case study, 53–54
- monitoring, examinations and other regulation, 1, 8, 45–57**
- monitoring of corporations, 45–46**
  - see also* compliance trend

# Index continued

## N

**name changes, 34**

*Native Title Act 1993, 16*

**new corporations, 29**

**Northern Territory Associations registry, 19**

**notices to rectify matters**

corporations issued with, 92

**notices to show cause why an administrator should not be appointed**

corporations issued with, 92

## O

**occupational health and safety, 76**

**Office of the Registrar of Aboriginal Corporations (ORAC), 13–16**

corporate and business plans, 69

corporate governance, 68

direction, 15

external scrutiny, 69

guiding principles, 15

key clients, 13

key funding bodies, 9, 19

key relationships, 9, 18, 19–21

key responsibility, 13

key roles, 14

new focus of, 7–8

place in Indigenous Affairs portfolio, 12

purpose, 16–19

resources, 77–79

response of to review of ATSIC, 62–65

service charter, 17, 19

services, 17

staff, 9, 72–76

structure, 70–72

summary of vision, 13

vision, 13

**other regulation, 46**

**Output 5.5**

performance information for, 24

**output structure *see* Indigenous Affairs**

**Portfolio output structure**

## P

**performance indicators, 25**

**performance information for Output 5.5, 24**

**policy on good corporate governance, 9, 58–59**

**Portfolio Budget Statement targets, 2**

**post-incorporation services, 30, 34**

**pre-incorporation, incorporation and post-incorporation services, 1, 27–38**

**pre-incorporation assistance**

case study, 29

**pre-incorporation services, 27–28**

**procurement, 79**

**profile of corporations incorporated with ORAC, 27**

**public register, 17**

**public register searches, 35**

**publications for clients, 45**

**purchaser-provider arrangements, 77**

**purpose of ORAC, 16–19**



---

## Q

---

### quality service

workshops on for ORAC staff, 74

### Queensland Community Governance Green Paper, 65

---

## R

---

### Recommendation 52: incorporation under general corporations laws (review of ATSIIC)

ORAC's response to, 63–64

### Recommendation 53: business turnaround mechanism (review of ATSIIC)

ORAC's response to, 64–65

### Recommendations 50 and 51: training and capacity building (review of ATSIIC)

ORAC's response to, 62

### registered corporations, 29

locations of, 82–83

### Registrar

role of, 16

summary of regulatory powers of, 84–87

year in review of, 7–9

### regulation

other, 46

### regulatory powers of Registrar

summary of, 84–87

### resources, 77–79

### review of *Aboriginal Councils and Associations Act 1976 (ACA Act)*, 2, 9, 60, 101–105

### review of ATSIIC, 7, 62

ORAC's response to, 62–65

### review of New South Wales incorporation legislation, 66

---

## S

---

### security

of data systems, 78–79

### service charter, 17, 19

### services, 17

### staff, 9, 72–76

ages, 73

length of service, 73

profile, 75

statistics, 76

### staff development

ORAC staff, 74–76

### state and territory incorporating bodies, 20

### structure

ORAC, 70–72

### sustainability working party, 21

# Index continued

---

## T

---

telephone service *see* toll-free telephone service

three-day workshops, 40

toll-free telephone service, 35

training and capacity building, 62

training and development  
for ORAC staff, 74–76

training for clients *see* education and training for clients

---

## U

---

---

## V

---

vision  
summary of, 13

---

## W

---

website, 78

workshops *see* three-day workshops

---

## X

---

---

## Y

---

---

## Z

---





ORAC toll-free telephone number

---

**1800 622 431**



Director, Regulation

---

**PETER ARMSTRONG**

**(02) 6212 2299**



Director, Incorporation and Support Services

---

**JOE MASTROLEMBO**

**(02) 6212 2288**



Director, Training and Publications

---

**KERRIE NELSON**

**(02) 6212 2260**



Director, Corporate Relations and Support

---

**GARRY FISK**

**(02) 6212 2262**



Acting Director, Legislative Reform

---

**TONI MATULICK**

**(02) 6212 2261**