

General functions and operations of the Registrar of Aboriginal Corporations

The *Aboriginal Councils and Associations Act 1976* (the ACA Act) establishes the Registrar of Aboriginal Corporations, an independent statutory office holder who is appointed by the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister). Ms Laura Beacroft, a solicitor, was appointed to the position from 1 August 2002 for a period of three years. The Registrar is supported by staff in the Office of the Registrar of Aboriginal Corporations (ORAC).

The Registrar is responsible for the administration of the ACA Act. Currently the ACA Act provides some scope for flexible incorporation in line with cultural practices while ensuring active monitoring and regulation of Indigenous corporations, which pose special risks and have special requirements in some cases. A wide range of integrated services are offered to corporations associated with the ACA Act including:

- pre-incorporation
- incorporation
- monitoring and examination
- regulation
- dispute assistance
- members' complaints services and enquiries
- searches of the Public Register
- training

(See also Figure 1, 'ORAC's Key Roles')

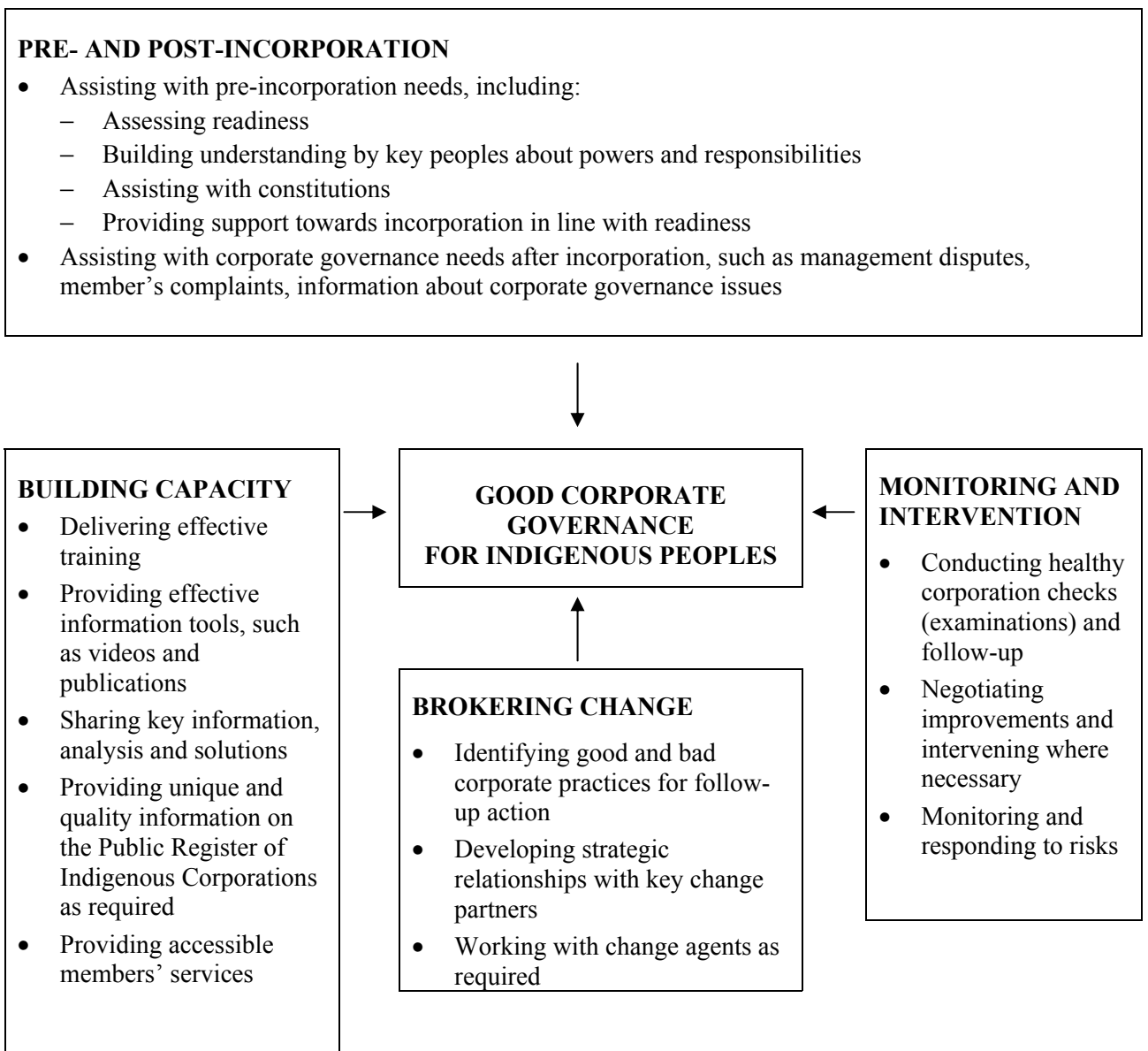
Incorporation under the ACA Act is largely voluntary; however, some corporations – e.g. the Prescribed Bodies Corporate established through the Native Title Act – are required to incorporate under the ACA Act. While a significant number of corporations governed by Indigenous people are incorporated under the ACA Act, a significant number are not and are under state/territory and other Commonwealth legislation.

ORAC performs its functions and provides its services nationally to all levels of government, all manner of agencies and persons with an interest in Indigenous corporations. ORAC works closely with other regulating bodies to maximise coordination and alignment.

The ACA Act establishes a third arm to the Commonwealth's role in overseeing corporations, the other two arms being the Australian Securities and Investments Commission under the *Corporations Act 2001* (the Corporations Act) and the Australian Competition and Consumer Commission under the *Trade Practices Act 1974*.

The ACA Act was the subject of a major review in 2002 and will be amended in the near future to complement the role of other regulators and strengthen Indigenous corporate governance. Further information about the reform of the ACA Act can be found at www.orac.gov.au.

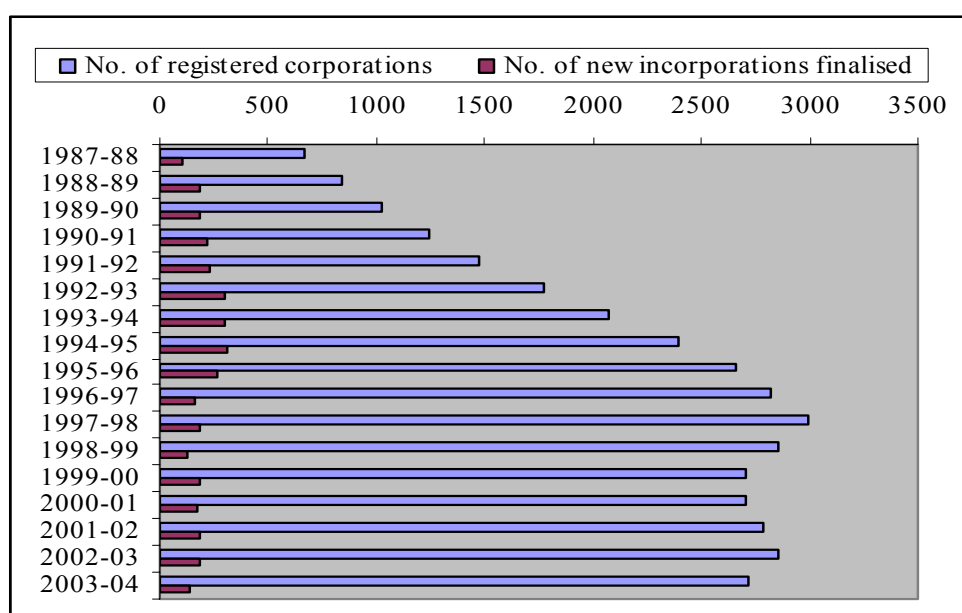
Figure 1 ORAC's Key Roles



Profile of corporations incorporated with ORAC

At the end of 2003–04, 2,713 corporations were registered under the ACA Act, representing a targeted reduction of 5% in the number of corporations in line with a new emphasis on ‘responsible and necessary incorporation’. After rapid growth in Indigenous corporations under the ACA Act in the early 1990s, the number of new incorporations annually remained steady for some years and is expected to decline in number over the next couple of years with the new emphasis mentioned above (see Figure2.) It is estimated that at least as many Indigenous corporations are incorporated under other legislation.

Figure 2 Registered and new corporations, by year, 1987–88 to 2003–04



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

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 1 and Map 1 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. Over the last year the highest growth in corporation numbers was in New South Wales (increased by 27) and the highest decrease was in Queensland, where numbers of corporations fell by 54 due to the deregistration program undertaken by ORAC. A breakdown of locations of ACA Act corporations by ATSIC regions is shown in Table 2.

Table 1 Location of corporations, by remoteness and state/territory, 2003–04

	Major cities	Inner regional	Outer regional	Remote	Very remote	Not known	Total
ACT	19	1	1	0	0	0	21
NSW	92	108	199	58	20	0	477
Vic	16	29	21	8	0	0	74
Qld	73	85	167	47	237	0	609
SA	18	25	2	3	13	0	61
WA	111	33	58	86	509	0	797
Tas	0	14	6	1	0	0	21
NT	275	96	248	0	0	0	619
State not known	0	0	0	0	0	34	34
Australia	604	391	702	203	779	34	2713

Table 2 Location of registered corporations by ATSI region

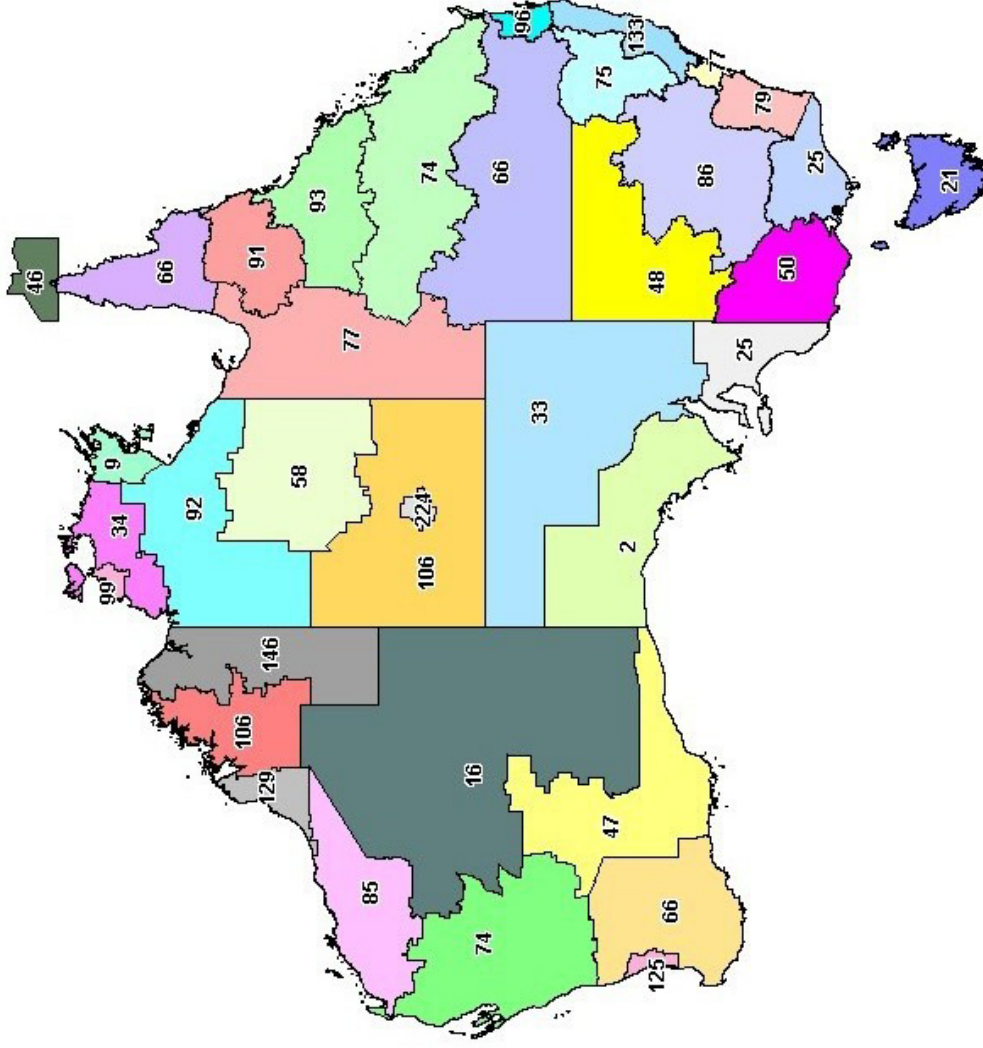
ATSI Region	Corporation Numbers 2002-2003	Corporation Numbers 2003-2004	Variation Number	Variation %
Alice Springs (I)	220	224	4	1.82
Binala Billa (Wagga Wagga)	77	86	9	11.69
Binjirru (Wangaratta)	21	25	4	16.00
Cairns and District	96	91	-5	-5.21
Central Queensland (Rockhampton)	85	74	-11	-12.94
Central Remote Regional Council (Apatula)	111	106	-5	-4.50
Garrak-Jarru (Katherine)	98	93	-5	-5.10
Goolburri (Roma)	79	66	-13	-16.46
Gulf and West Queensland (Mt Isa)	76	77	1	1.32
Jabiru	35	34	-1	-2.86
Kamilaroi (Tamworth)	72	75	3	4.17
Kullari (Broome)	130	129	-1	-0.77
Malarabah (Derby)	108	106	-2	-1.85
Many Rivers (Coffs Harbour)	122	133	11	9.02
Miwatj (Nhulunbuy)	13	9	-4	-30.77
Murdi Paaki (Bourke)	47	48	1	2.13
Ngarda-Ngarli-Yarndu (South Hedland)	92	85	-7	-7.61
Noongar (Perth)	140	126	-14	-10.00
Noongar Country (Narrogin)	76	65	-11	-14.47
Nulla Wimila Kutja (Port Augusta)	34	33	-1	-2.94
Patpa Warra Yunti (Adelaide)	23	25	2	8.70
Peninsula (Cooktown)	72	66	-6	-8.33

ATSIC Region	Corporation Numbers 2002-2003	Corporation Numbers 2003-2004	Variation Number	Variation %
Queanbeyan (ii)	76	79	3	3.95
South East Queensland (Brisbane)	102	96	-6	-5.88
Sydney	77	77	0	0.00
Tasmanian Regional Aboriginal Council (Hobart)	21	21	0	0.00
Torres Strait Regional Authority	45	46	1	2.22
Townsville	108	93	-15	-13.89
Tumbukka (Ballarat)	46	50	4	8.70
Wangka Wilurrara (Ceduna)	2	2	0	0.00
Western Desert (Warburton)	15	16	1	6.67
Wongatha (Kalgoorlie)	45	47	2	4.44
Wunan (Kununurra)	153	146	-7	-4.58
Yamatji (Geraldton)	79	74	-5	-6.33
Yapakurlangu (Tennant Creek)	57	57	0	0.00
Yilli Rreung (Darwin)	98	99	1	1.02
Region Unknown	110	34	-76	-69.09
Total	2861	2713	-148	-5.17

Notes:

- (i) Alice Springs has the highest number of corporations of the ATSIC Regions. This may be due in part to some corporations located in SA and WA choosing to use Alice Springs as their postal address.
- (ii) Queanbeyan number includes ACT corporations

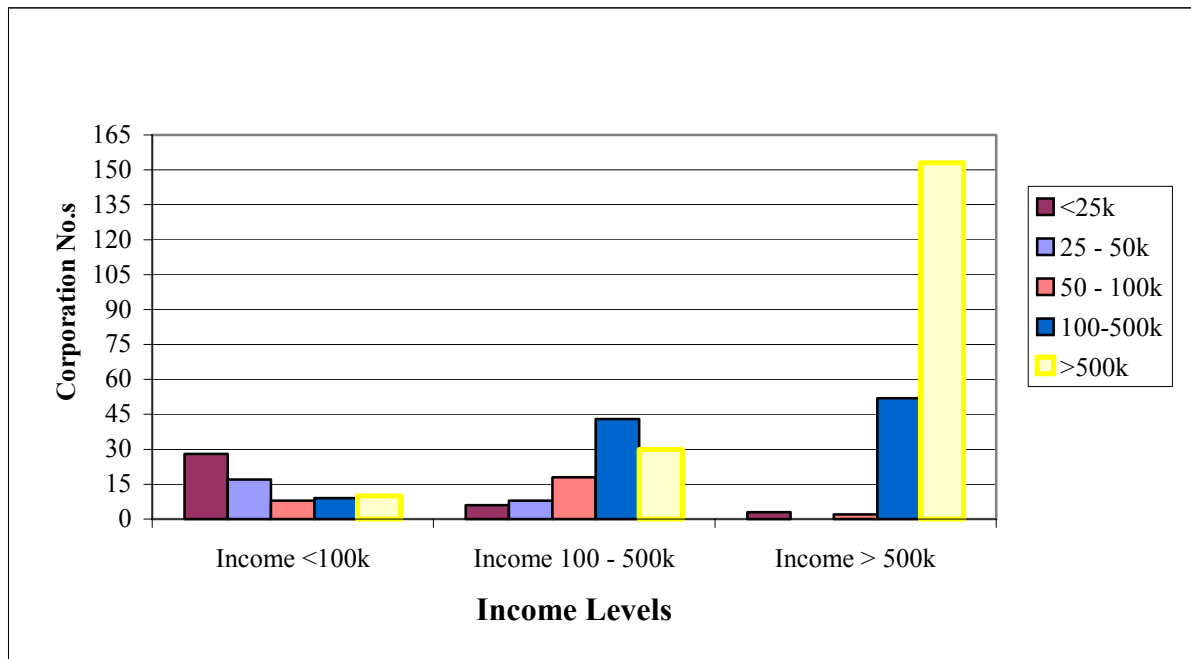
Map 1: Location of corporations by ATSIIC region, state/territory



Note Data for Map is in Tables 1 and 2

Figure 3 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 and substantial assets. These findings have implications for many aspects of ORAC’s work, especially legislative reform and risk management.

Figure 3 Number of corporations, by income and assets, at 30 June 2003



Note 1: Due to the reporting timeframes for corporations under the ACA Act, this figure shows data to 30 June 2003.

Note 2: Information on income and assets is not known for all corporations; this figure shows income and assets where known

The major known funding bodies of corporations under the ACA Act in 2003–04 were ATSIIS (funding 395 corporations for approximately \$355m, which represents approximately 37 % of ATSIIS grant funds and 43% of total ATSIIS grant funded corporations in 2003–4) and the Office of Aboriginal and Torres Strait Islander Health (OATSIH), Department of Health and Ageing (funding 103 corporations for approximately \$90.7m in 2003–04). Other sources of public funds include a wide range of Australian Government agencies and State/Territory agencies, especially in Western Australia and Queensland.

Powers of the Registrar

The ACA Act vests powers in the Registrar to intervene in a corporation’s affairs, similar to those exercised by the Australian Securities and Investments Commission (ASIC). Some of the Registrar’s powers require ministerial approval before they can be exercised. The Registrar as a Statutory Officer is not under direction for decisions made under the ACA Act. The Registrar

aims to exercise powers and functions in accordance with the ACA Act, in a manner that responds to requirements and risks of Indigenous corporations and which builds independence and capacity of Indigenous individuals, groups and corporations.

External scrutiny

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

Relationship to ATSIC-ATSI

Although not under direction for statutory decisions, the Registrar is subject to performance management and review in administrative matters. The Registrar had a performance agreement as part of an Australian Workplace Agreement with the Chief Executive Officer of ATSI. The Registrar was supported by 28 staff at 30 June 2004, in the Office of the Registrar of Aboriginal Corporations. The Registrar and staff of ORAC were ATSI staff and from 1 July 2004 following the Government's decision to make significant administrative changes, are employees of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

Funding for ORAC (approximately \$5.443m for 2003–04) was within the ATSI appropriation and not quarantined (and will be within DIMIA's appropriation from 1 July 2004). The Registrar was a member of the ATSI Corporate Leadership Group for the purposes of participating in decisions on administrative matters. Various arrangements were in place, including a formal agreement, to enable ORAC and ATSI to manage possible tensions and conflicts in its placement within ATSI. Similar arrangements are being put in place to support the Registrar and ORAC's placement within DIMIA.

Other agency contributions

ORAC's primary clients are individuals, groups and corporations linked to the ACA Act and also users of the Public Register maintained by ORAC on Indigenous corporations under the ACA Act. ORAC builds close working relations with agencies with interests in funds and/or assets held by corporations e.g. ATSI-ATSI and OATSIH, and will be developing relationships with the agencies which have taken up responsibilities from 1 July 2004 which were previously performed by ATSI. ORAC also works with state and territory government agencies to improve outcomes for Indigenous people across Australia.

In recent years ORAC has developed a relationship with ASIC and the state/territory incorporation and regulation agencies to foster better coordination nationally of incorporation and regulation services and responses. ORAC and ASIC agreed in principle to a Memorandum of Understanding (MOU) during the year, which will be finalised in 2004–05 when reforms to the ACA Act are finalised. ORAC's ongoing

focus is on identifying and targeting key systemic issues for Indigenous corporations and building closer relationships with the following agencies for this purpose:

- Australian Taxation Office
- agencies linked to the COAG whole-of-government trial sites
- individuals and agencies doing excellent corporate governance training and state/territory government agencies, particularly in Queensland, Northern Territory and Western Australia, regarding initiatives for Indigenous people in those jurisdictions.

Information and training

ORAC's Enhanced Training Package includes non-accredited one-day information sessions provided upon request. ORAC also delivers a pilot rolling program of three-day workshops in corporate governance that provide participants with a 'bridge' into certificate and diploma courses, delivered by contracted Registered Training Organisations (RTOs).

In 2003–04 ORAC expanded its training program and worked towards putting in place arrangements for a national roll-out of training. ORAC also consolidated arrangements that support highest quality training to Indigenous peoples, especially those in regional and remote areas. ORAC delivered 56 non-accredited information and training days, an increase from 46 in the previous year. The Certificate IV in Business (Governance) was implemented in five locations during the year. The Tropical North Queensland Institute of TAFE, a RTO contracted by ORAC, conducted this course in Cairns, Townsville, Brisbane and Thursday Island. The course usually consists of 4 one-week blocks with sessions from Monday to Friday totalling 125 hours including assessment. At the date of writing, 35 participants have graduated, mostly women, who came from different parts of Queensland.

The fifth Certificate IV course, in Maningrida, Northern Territory, is focussing on developing sound practices for delivery of the certificate course for more remote Indigenous peoples. ORAC contracted the Maningrida Jobs, Education & Training Aboriginal Corporation to deliver various modules of the Certificate IV in Business (Governance). This pilot is due for completion in September 2004.

Terms of reference for an evaluation of the information and training program will be developed and the evaluation carried out in 2004–05. ORAC will also investigate options for the delivery of diploma level courses in corporate governance during the year.

ORAC organised and co-hosted a Corporate Governance Forum with Reconciliation Australia in June 2004. The aim of the one-day forum was to identify and share best practice in the delivery of corporate governance training, identify challenges and strategic issues, and establish a network for future collaboration and partnering. Approximately 40 corporate governance training practitioners and those involved in related policy and strategy attended. A Forum Report will be distributed to delegates and other interested parties, and will be available on ORAC's website in the near future.