

our performance



PHOTO: Participants at an information session.

Accountability

External scrutiny

There were nine requests made under the *Freedom of Information Act 1982* in 2005–06, which have all been resolved.

There were three applications for review by ORAC and one application for review by the Administrative Appeals Tribunal, which have been resolved.

FOI applications and applications for review of decisions are growing in number and complexity each year, and administrators and liquidators are involved in such actions.

Litigation

There was one application in the Federal Court of Australia to review a decision to appoint an administrator under section 71 of the *Aboriginal Councils and Associations Act 1976*. This action was discontinued on 11 July 2006.

Corporate publications

Although the Act does not require it, ORAC publishes this Yearbook, in addition to contributing to the Department's annual report (<http://www.facsia.gov.au/annualreport/2006/index.html>).

ORAC has a variety of publications setting out what it does, its corporate plan and its service charter. It also has a suite of fact sheets, newsletters and other materials explaining the new *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

These publications, listed on the back page, are available at www.orac.gov.au.

Accessibility and responsiveness

Hotline

ORAC provides a personal service to clients. Much initial communication with ORAC is through the toll-free telephone service. In 2005–06 ORAC received 11 569 calls on its toll-free line, finalising 882 inquiries about corporate governance (nearly 30 per cent more than last year) and 103 complaints and disputes about corporations (13 per cent fewer than received on the hotline in 2004–05). Complaints and disputes are becoming more complex as Indigenous corporations are becoming more complex in their affairs. Many of these require sustained assistance over a long period of time (see Attachment 2, p. 54).



PHOTO: ORAC staff member Masepah Banu responding to calls on the hotline.

Website

ORAC encourages access to its website. Visitor sessions per month grew from 12 895 in July 2005 to 41 426 in June 2006—an increase of more than 200 per cent.

Month	Jan 06	Feb 06	Mar 06	Apr 06	May 06	Jun 06
Unique visitors	19 767	26 862	39 493	38 817	42 352	41 426

Electronic communication is increasing as the number of corporations with email and Internet access continues to grow. The unique Public Register of Indigenous Corporations maintained by ORAC is now partly accessible on the website, with document images becoming available in stages during 2005–06. This is encouraging higher usage of the site.

Complaints about ORAC staff and contractors

A complaints system ensures that ORAC responds to issues raised about its staff and consultants. During the year a complaint was made to the Ombudsman about ORAC’s handling of a complaint. The Ombudsman dismissed the complaint after considering initial information that ORAC provided.

Compliance training support for regulation and incorporation

ORAC consolidated its program of training in Queensland during 2005–06 and began adapting the three-day workshop and Certificate IV in Business (Governance) for use in more remote areas, where most of ORAC's corporations are located. Training is based on ORAC's commitment to improve the sustainability of corporations and is undertaken using a tailored training method and materials. The training complements rather than duplicates mainstream programs and is offered to targeted high need localities and groups around Australia. The Certificate IV in Business (Governance) is increasingly being run independently of ORAC through some TAFE and private registered training organisations, and ORAC shares its materials with other providers.

An essential part of ORAC's incorporation and compliance work is providing information and assistance to groups before they incorporate and after they have incorporated. ORAC also helps corporations to manage disputes, although it does not act as a mediator.

Non-accredited training

ORAC's 2005–06 target of 70 days of non-accredited training has been exceeded, providing a total of 88 days of training and information sessions:

- > 67 days of information sessions, made up of one-day and two-day sessions, attended by 992 participants, with ORAC mainly working one-on-one with corporations and groups on pre-incorporation, constitutional redesign, compliance and corporate governance issues. These sessions focus on assisting with specific governance matters of relevance and importance to the whole group while also improving awareness and understanding of corporate governance, accountability and compliance issues and concepts.
- > seven three-day introductory corporate governance workshops, including half a six-day remote workshop (that is, 21 days in total). ORAC's three-day workshops were attended by 127 participants. The workshops provide board members, senior staff and members with key corporate compliance and governance skills, and encourage further accredited study.

ORAC conducted a review of its training in September 2005, looking at external evaluations and internal data, as well as an independent impact assessment of the Certificate IV in Business (Governance). The summary of the review is on ORAC's website at www.orac.gov.au. Its key findings were:

- > The training has met its original objectives and has performed very well against relevant indicators.
- > The scale of social capital built in communities as a result of the training is far greater than anticipated and will assist communities to engage with government.
- > The training addresses an important need, and the consequence of not addressing this need will be high levels of corporate failure and poor corporate practices which will ultimately undermine efforts to improve Indigenous life outcomes.
- > Training has contributed to improved Indigenous governance and management by targeting Indigenous board members and key staff involved with critical sectors (for example, family violence and women's organisations), highest risk essential service organisations and in high need regions.

ORAC has produced a range of plain English publications and audiovisual materials aimed at making information more accessible to corporations in remote areas. Publications include visual tools and materials targeted toward Indigenous language speakers.

ORAC has also developed materials explaining the new Corporations (Aboriginal and Torres Strait Islander) Act, including a national Indigenous radio campaign, an information booklet, fact sheets and website animation (see list on back cover).

Accredited training

The Certificate IV in Business (Governance) is offered to directors, key staff and members of corporations who have completed the introductory corporate governance workshop. These people are funded by ORAC to undertake the training, although it is increasingly being run through some TAFE and private registered training organisations independent of ORAC.

ORAC fell short of its target of accredited training (of 150 days) with:

- > 5¼ accredited Certificate IV in Business (Governance) courses delivered over 21 blocks (98 days). The ORAC shift in focus to training in remote communities reduced the outputs because this kind of training takes longer due to cultural and language issues. Also there were changes in participants' entitlements to cover their costs, so ORAC's delivery costs were increased. However, ORAC's excellent retention rate has been maintained.
- > 145 students have completed the course since it was made available three years ago—135 have completed all assessments to the standard required to be awarded the Certificate IV, giving a retention rate of nearly 93 per cent.

Assistance for corporations

An essential part of ORAC's incorporation work is providing information and assistance to groups before they incorporate, and once they have incorporated. ORAC also helps corporations to manage disputes, although it does not act as a mediator.

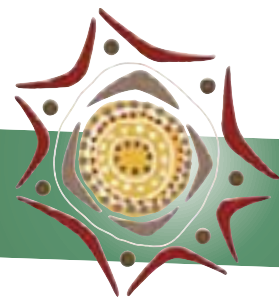
Incorporation facts and stats

- > New incorporations again fell for the third year in a row—by over 15 per cent from 120 in 2004–05 to 102 in 2005–06. This reflects ORAC's and others' determination to encourage responsible and successful incorporation (see Attachment 2, p. 54). This involves deregistering corporations not needed any more and making sure new corporations are necessary. Incorporating is not always the best or most appropriate solution for groups wanting to deliver services or hold assets in Indigenous communities. ORAC encourages established and successful corporations to auspice a group where this is practical.
- > Inquiries involving requests for information, support and referrals that were resolved during the year grew for the third year in a row, by over 29 per cent (882 in 2005–06 from 682 in 2004–05) continuing the trend of recent years. For complex inquiries, ORAC can issue an 'advisory opinion'.

- > The number of requests for assistance with complaints and disputes (from corporations, members and boards on ORAC's toll-free line, by email and by letter) was 103 in 2005–06 (119 in 2004–05). Given their increasing complexity and the serious consequences they can have for corporations if unresolved, ORAC is devoting more resources to assist with these matters. ORAC's key roles in dispute management assistance are:
 - embedding good dispute resolution processes into the corporation's rules (constitution)
 - bringing disputing parties together to discuss issues and, if necessary, conducting general meetings
 - issuing advisory opinions on issues of fact or law to assist in the resolution of these matters.
- > Changes to constitutions completed during the year has remained high for the past two years (127 in 2005–06 and 131 in 2004–05). Significant resources are devoted to these matters, since the environments within which corporations operate are increasingly complex, requiring well designed responsive corporations. ORAC is devoting more resources to the development and review of constitutions as part of its new focus on preventing problems. A new model constitution was completed during the first half of 2006–07, to enable keen corporations to begin to transition to the new Act which begins on 1 July 2007.
- > The number of extensions in time for holding annual general meetings granted by ORAC increased by over 43 per cent during the year (197 in 2005–06, 137 in 2004–05). This reflects ORAC's flexible approach in responding to corporations' special circumstances and needs regarding the time they require to hold annual general meetings, which can involve members travelling over large distances and sometimes requiring support from interpreters.



Australian Government
Registrar of Aboriginal Corporations



Top ten practical tips for good corporate governance

1

keep register of members up-to-date

Make sure the register has the following information for every person who is or has been a member:

- the person's name and address (if necessary names of deceased people can be suppressed)
- the date that person became a member
- the date that person stopped being a member (if applicable).

If the *Register of members* is up-to-date it will help to resolve any disputes about who is a member. When you send the Registrar a copy of your members list, members' contact details can be kept private if you wish.

2

know your role and duties

Make sure the board members fully understand their role and duties.

The board should oversee the goals and direction of the corporation.

Day to day management is the responsibility of the manager.

Board's duties include: acting with loyalty, good faith, care and diligence, not trading while insolvent and managing conflict of interest.

3

know your rules

Know your rules. Encourage your members to learn about them. Fix them if they don't work for your corporation.

4

know your money position

Make sure you know about the money position of your corporation. If you are worried, ask your auditor to check every three months that your staff are managing the money properly (a good auditor will do this for the board).

5

pay your taxes

Make sure that tax matters are handled correctly, especially the Goods and Services Tax (GST), Pay As You Go (PAYG) and Fringe Benefits Tax (FBT). Make sure the superannuation guarantee contributions are paid for all your staff. (Australian Taxation Office website www.ato.gov.au; Business tax enquiries 13 28 66; Superannuation enquiries 13 10 20)

6

attend meetings with funding agency

Make sure someone from the board is at every meeting when the funding agency comes to visit. Build a good relationship.

7

insure your corporation's property

Make sure the corporation's property—such as cars, buildings, equipment—is insured. Check that insurance policies are renewed on (or before) the due date.

8

be careful how you use the corporation's assets

Be careful to only use the corporation's assets and income the way the funding agency sets out. Better still, make a policy about this for everyone to see and use.

9

keep minutes of all meetings

Make sure you keep minutes of every meeting of the corporation. Minutes should say what type of meeting you had (AGM, special general meeting or board meeting), what day it was held, who came and what decisions were made.

10

hold an annual general meeting

Make sure you have an AGM every year (usually before 30 November).

website: www.orac.gov.au toll free: 1800 622 431 email: info@orac.gov.au

ORAC June 2007 v04

Regulation of corporations

In 2005–06 ORAC initiated 49 examinations of corporations, almost meeting the target of 50 (see Attachment 3, p. 55). Corporations for examination were selected in response to evidenced problems or as part of a program of rolling examinations responding to risk analysis involving criteria such as size, purpose, time since last examination, compliance status and history of member or other complaints.

At June 2006:

- > ten (or 20 per cent) of the 49 corporations examined in 2005–06 are operating well and require no further action (Attachment 3, p. 55)
- > ten (or 20 per cent) of corporations examined in 2005–06 remain under consideration for further action (Attachment 3, p. 55)
- > 19 (or 39 per cent) of the examinations initiated in 2005–06, plus a further 15 carried over from 2004–05, required the corporation to rectify less serious matters, involving the issue of a section 60A compliance notice under the ACA Act and follow-up (Attachment 4, p. 57)
- > six (or 12 per cent) of this year's examinations, plus a further five carried over from 2004–05 (making a total of 11), raised serious matters and have been required to advise why an administrator should not be appointed, involving the issue of a section 71 notice under the ACA Act (Attachment 5, p. 58). Of these 11, ten administrators were appointed and one section 60A notice was subsequently issued (Attachment 6, p. 59)
- > four corporations (or 8 per cent) of the 49 corporations examined in 2005–06 required a liquidator to be appointed, making a total of 34 liquidations in progress
- > nine administrations continued from previous years, a total of 14 were appointed in 2005–06 and one was cancelled in 2005–06, making 22 administrations in progress at 30 June 2006 (see Attachments 6 and 7, pp. 59–60).

The trend for high numbers of examinations shows ORAC is one of the most active regulators, proportional to its corporation numbers. Examinations initiated, administrations appointed and deregistrations completed are shown in Table 5.

Table 5: Number of examinations initiated, administrations appointed and deregistrations completed 2002–03 to 2005–06

		2002-03	2003-04	2004-05	2005-06
Regulatory actions	Examinations initiated	35	54	61	49
	New administrations appointed	8	7	7	14
	Deregistrations completed	116	282	269	180
	Reinstatements				12

Compliance of corporations

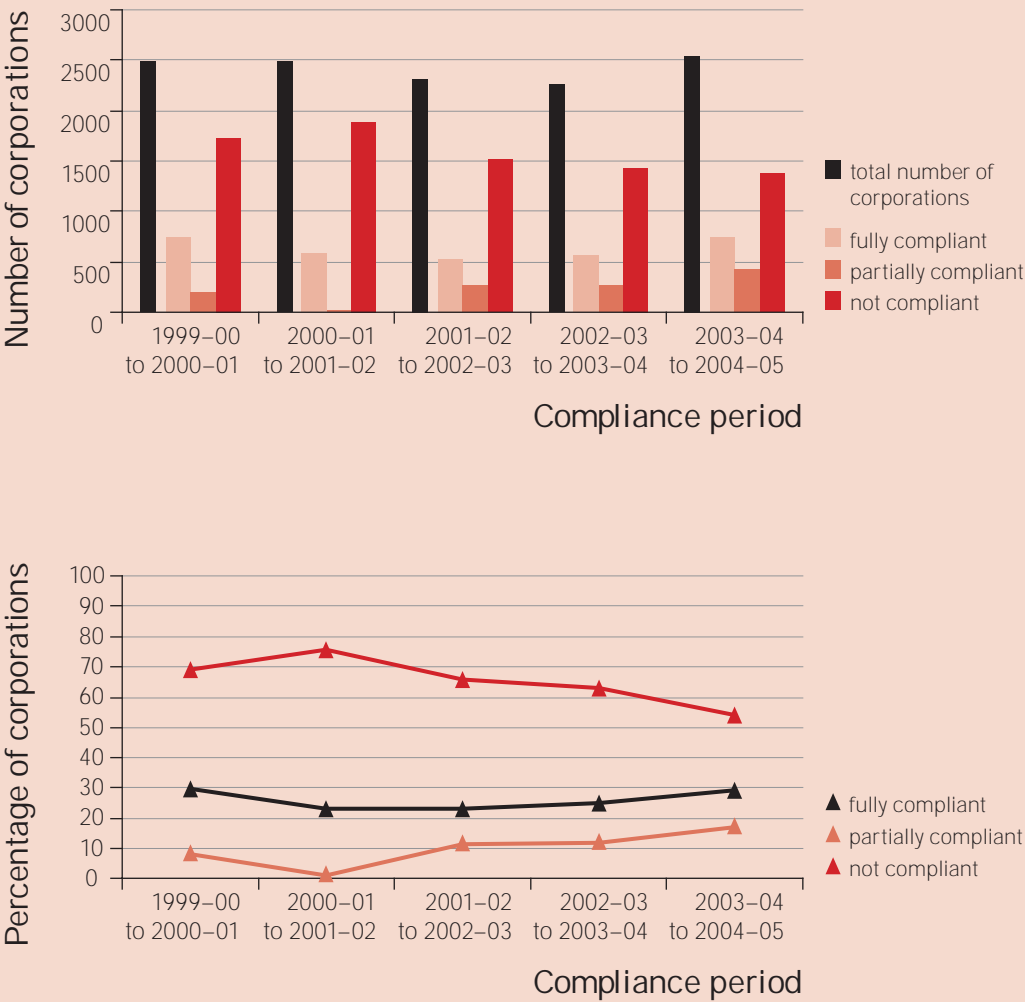
Under the ACA Act all corporations are required to submit certain documents to ORAC which are placed on the Public Register, including a list of members and financial reports, unless the corporation is exempted by the Registrar.

Approximately 46 per cent of corporations (including about 95 per cent of large corporations) have provided the three key reports (audit report, balance sheet and income and expenditure) required under the ACA Act for 2004–05 or have been exempted due to their size. While this does not meet the target of 55 per cent, it is the highest compliance result ORAC has ever had. Compliance with reporting is set out in Figure 7 and Table 6.

Many more corporations are now obtaining exemptions from some reporting requirements, in recognition of their lack of capacity to report—that is, if they can demonstrate to ORAC that they are not funded then they are not normally required to provide an audited financial statement and ORAC will usually grant an exemption.

Although most corporations (54 per cent) remain non-compliant with reporting requirements under the ACA Act, compliance improved in 2005–06 by 6 per cent. This improvement is a result of ORAC analysing non-compliance and implementing a plan for appropriate follow-up.

Figure 7: Compliance of corporations,
by compliance period, 1999-00 to 2004-05



Note: Fully or partially compliant means that either five or three key annual return documents respectively have been provided by the corporation for the relevant two consecutive year period. The above figure shows all returns received by ORAC as at 30 June 2006. Corporations are not required to provide annual returns for 2005-06 until 31 December 2006.

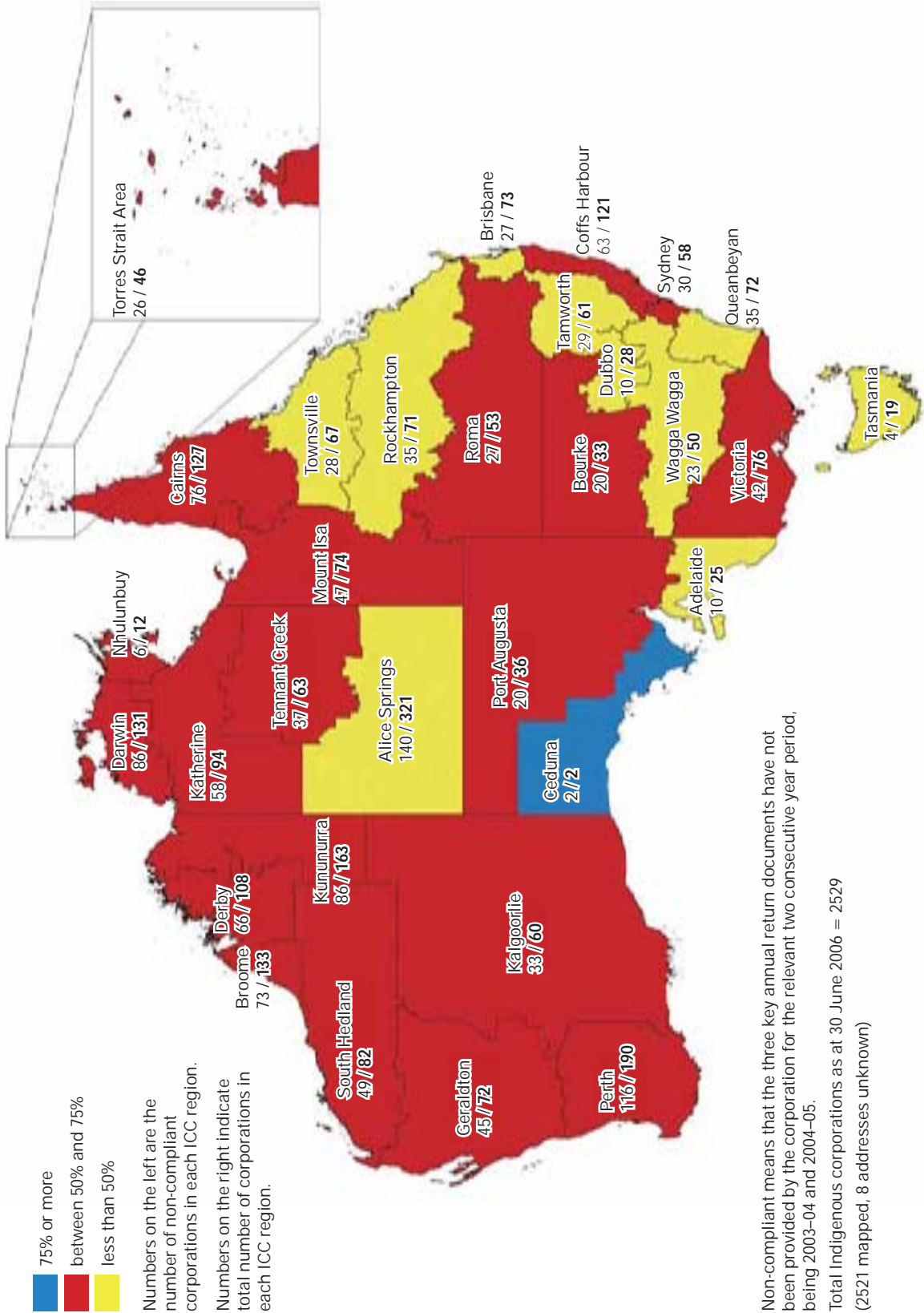
Table 6: Compliance of corporations,
by compliance period, 1999–00 to 2004–05

Compliance period		Total number of corporations	Fully compliant	Partially compliant	Not compliant	% Fully compliant	% Partially compliant	% Not compliant
	1999–00 to 2000–01	2490	739	195	1727	30	8	69
	2000–01 to 2001–02	2497	576	26	1895	23	1	76
	2001–02 to 2002–03	2308	528	264	1516	23	11	66
	2002–03 to 2003–04	2259	564	270	1425	25	12	63
	2003–04 to 2004–05	2543	741	429	1373	29	17	54

Because of its productive relationships with funding bodies ORAC has been able to establish which corporations are technically non-compliant but have in fact submitted reports required under the ACA Act to funding bodies and are operating well. Corporations that should be compliant under the ACA Act, for example large ones, were targeted for regulation such as follow-up for not reporting and examination. Non-compliant corporations that are no longer operating were deregistered. Over 95 per cent of large corporations are compliant.

Most of the remaining non-compliant corporations are probably not funded at all, hold land only and may have no capacity to apply for even an exemption. The new *Corporations (Aboriginal and Torres Strait Islander) Act 2006* will allow more meaningful compliance reporting. It enables more streamlined reporting including exemptions for small corporations from providing audited financial statements.

Map 3: Percentage and number of non-compliant corporations by ICC region as at 30 June 2006



Non-compliant means that the three key annual return documents have not been provided by the corporation for the relevant two consecutive year period, being 2003–04 and 2004–05.

Total Indigenous corporations as at 30 June 2006 = 2529 (2521 mapped, 8 addresses unknown)

Case coordination

A case coordination policy and approach was developed and introduced in late 2005 in recognition that ORAC could better assist corporations with joined-up services. In particular ORAC recognised that:

- > many corporations struggle to break out of the boom-bust cycle that characterises their efforts to address problems
- > improvements in corporate governance and compliance requirements of the legislation would be enabled by a case coordination approach.

In the case of individual corporations, case coordination is a process that enables ORAC to ensure its services and functions are part of a coherent response directed to clear and consistent goals and long-term benefit. Case coordination can also enhance ORAC's work at a regional level with groups of corporations.

Case coordination involves developing a single plan for ORAC's work with a corporation or a locality covering regulatory functions, training, other services and communication. It provides a way of dealing more effectively with systemic issues and multiple contacts and interventions. This plan provides a basis for better communication with people on the ground, including administrators appointed by ORAC, staff, members of boards and community members.

The approach was trialled in some of ORAC's key areas of work, and is now being adopted more widely, including the East Kimberley, the Mutitjulu area and Palm Island. The usual phases of a case coordinated administration include:

- > consolidation of management, operational systems and accountability mechanisms restored
- > building capacity for future governance and management
- > preparation for exit of administrator
- > after care and ongoing support

Systems

ORAC's Electronic Register of Indigenous Corporations (ERIC)—a workflow and information management system—has continued to help staff in a number of areas, such as highlighting corporations that may require assistance or review, and providing a faster and more streamlined service. It also supports the Public Register of Indigenous Corporations, an increasingly popular online register which also enables ORAC to devote more staff, who used to do manual searches, to other services for clients.

A major project is underway to redevelop ERIC to align with the CATSI Act and ORAC's strategic objectives, including improving services to clients. Over time the new system will support online processing of some material that corporations are required to lodge with the Registrar. A related 'rule-book tool' is also being developed to assist corporations with amending their rules under the CATSI Act. The new system will further improve the public register and support a new online Register of Disqualified Officers.

Outlook

Indigenous corporations face an increasingly complex environment, with higher standards expected in governance and accountability, changed circumstances in the administration of Indigenous affairs by Commonwealth and state governments, and greater responsibility in the leadership and direction of their organisations.

Most of the corporations with ORAC are located in remote parts of Australia, often with the task of providing essential services to their communities. With the redefinition of their core functions, in the light of some funding instability, their roles are evolving in community as well as corporate governance.

Into the mix is thrown the new CATSI Act. But unlike its predecessor (the ACA Act), it will help cut red tape for smaller corporations, especially unfunded land holding corporations. The new law, and the compliance training and support provided by ORAC, will give corporations a unique opportunity to tailor their organisations to suit their own circumstances. And the legislation's emphasis on strengthened duties for directors and senior managers, and more effective accountability in line with mainstream law, will help corporations meet the standards of governance required by their members and by funding agencies.



PHOTO: ORAC staff celebrating NAIDOC week.