



Australian Government
Registrar of Aboriginal Corporations

YEARBOOK 2005-06



How we performed in 05–06

Number of corporations

At 30 June 2006, 2529 corporations were registered under the ACA Act, a targeted reduction of 56 (nearly 2 per cent) of corporations that were no longer required (see Attachment 10, p. 63).

Information and 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 made up of:

- ➔ 67 days of information sessions, made up of one and two-day sessions, attended by 992 participants, mainly ORAC working one-on-one with corporations and groups on pre-incorporation, constitutional redesign and corporate compliance governance issues
- ➔ 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 and provided board members, senior staff and members with key corporate compliance and governance skills and encouraged further accredited study (see p. 35).

Examinations and 'healthy organisation' checks

- ➔ actively regulating corporations to avoid corporate failure, including 49 examinations (good governance audits).

Corporations for examination were selected in response to evidenced problems or as part of a program of rolling examinations to assess their 'health'. The criteria used to identify risk include size, purpose, time since last examination, compliance status and history of member or other complaints (see Attachment 3, p. 55).

Compliance with reporting

➔ achieving ORAC's highest compliance result with 46 per cent of corporations compliant under the ACA Act for 2004–05 and 95 per cent of large corporations.

Approximately 46 per cent of corporations and 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 2005–06 or have been exempted due to their size. While this does not meet the target, it is the highest compliance result ORAC has ever had. Compliance with reporting is set out in Figure 3 and Table 5. The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* will further help reduce non-compliance by providing a reporting regime that can be tailored to different sized corporations. Most corporations with ORAC are unfunded land holding bodies.

Corporations (Aboriginal and Torres Strait Islander) Act 2006

A new law—the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—was passed by the Australian Parliament in October 2006. It will start on 1 July 2007 replacing the *Aboriginal Councils and Associations Act 1976* and will affect all corporations that are registered with ORAC (see Attachment 12, p. 71).

From 4 May 2006 the placement of the Registrar of Aboriginal Corporations changed from the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to the Department of Families, Community Services and Indigenous Affairs (FaCSIA).

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Please be aware that this publication may contain the names and images of deceased people. The Registrar strives to treat Indigenous culture and beliefs with respect. We acknowledge that to some communities, it is distressing and offensive to show images of people who have died.

Produced by ORAC June 2007.

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year in review



PHOTO: Laura Beacroft, Registrar

Welcome to the Office of the Registrar of Aboriginal Corporation's yearbook for 2005–06. In it we highlight the successes we and our client corporations have achieved, as well as the thoughtful and often difficult work that underpins those achievements.

The Registrar of Aboriginal Corporations is a statutory appointed officer with 39 departmental staff at 30 June 2006. The office delivers incorporation, regulation and related services to Indigenous people, in accordance with the *Aboriginal Councils and Associations Act 1976* (the ACA Act). ORAC performs its work in a way that takes account of the special needs, requirements and risks of Indigenous corporations, consistent with the races power of the Australian Constitution and the *Racial Discrimination Act 1975*. It performs these functions within the context of Australian and international best practice on sound corporate governance.

ORAC's move from the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to the Department of Families, Community Services and Indigenous Affairs (FaCSIA) occurred on 4 May 2006. ORAC has now experienced several changes in administrative arrangements in the past few years. The latest change is a logical move for ORAC into FaCSIA, particularly in dealing with corporations in remote parts of Australia that deliver municipal, housing and children's services with funding from FaCSIA.

This yearbook complements ORAC's contribution to the FaCSIA *Annual Report 2005–2006* by providing more comprehensive analysis of key information and issues, and more explanation of the thinking behind our work. It also explains how we fit into the FaCSIA portfolio, as well as outlining our other key relationships. Our performance is explained, in incorporation support, regulation, training and legislative reform.

During 2005–06, ORAC worked with the parliamentary legislation drafters on the two Bills that will support the new *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act), introduced into the Australian Parliament on 23 June 2005. All these Bills were passed on 18 October 2006 with support from the major political parties. The supporting laws—the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act*

2006 and the Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006—will ensure that corporations have a smooth transition to the new CATSI Act, and that both the CATSI Act and the *Corporations Act 2001* are consistent with each other. The legislation is available from <http://www.comlaw.gov.au>. ORAC has developed a policy on which incorporation regime is most appropriate for Indigenous groups, and what the CATSI Act offers corporations compared with the old ACA Act (see Attachment 14, p. 84). This policy is also available at: http://www.orac.gov.au/about_orac/client/default.aspx#2.

ORAC has also been developing the Regulations for the new Act. These will define the details of the law such as the thresholds for the different levels of reporting for corporations, depending on their size.

We would like to assure our corporations that while the new law may seem huge and complex, it is actually going to provide a much better framework for corporate performance. It clarifies many of the grey areas that exist in the ACA Act, bringing corporations into line with modern standards of corporate governance. At the same time, it allows groups to design their corporations to fit their own specific cultural needs and local circumstances, especially in the design of the corporations' rules. To explain the new rules for a corporation, ORAC has published a fact sheet—*What's in the corporation's rule book?* It is one of a suite of new fact sheets about the CATSI Act, including *Arrangements for corporations to move to the new CATSI Act*, *Duties of directors and other officers* and *What the Bill means for funding bodies*. These are all available in hard copy from the ORAC office, or can be downloaded from the website: http://www.orac.gov.au/about_orac/legislation/reform_act.aspx#6.

ORAC is the third arm in the Commonwealth's regulation of corporations, the other two being the Australian Securities and Investments Commission (ASIC) under the *Corporations Act 2001*, and the Australian Competition and Consumer Commission (ACCC) under the *Trade Practices Act 1974*. ORAC operates in a complex policy and compliance environment driven by developments in both corporations affairs (Treasury) and Indigenous affairs (FaCSIA).

With the confirmation of the budget measure, 'Strengthening Indigenous Communities—reforming the delivery capacity of Indigenous corporations', ORAC has been planning and setting up its new case coordination team. This team will draw on other relevant

sections of ORAC to handle critical regulatory work in communities where there may be more than one corporation in crisis, to deal better with the often complex causes of corporate risks. Currently the case coordination team is concentrating its effort on supporting ORAC's regulation and training work in the east Kimberley (including Balgo), on Palm Island and in central Australia (including Mutitjulu).

Also as part of the budget measure, ORAC is developing an appointment, retention and recruitment service, to secure the services of professionals aimed at improving the quality and retention of board members and/or staff in Indigenous corporations. The service will work closely with the Register of Disqualified Officers, which will ensure that mainstream standards for disqualifying officers from corporations apply so that unscrupulous individuals are banned from operating in any corporations in Australia.

ORAC continued to meet or exceed its targets set out in the Portfolio Budget Statements, including the number of training days (non-accredited and accredited) undertaken with board members and staff of corporations; and the number of good governance audits (or examinations) of corporations completed.

A higher proportion of corporations than ever before were deemed compliant or partially compliant—that is, around 46 per cent. This improvement is a result of ORAC continuing to analyse non-compliance and vigorously follow up those corporations that fall into this category. We expect the rate of non-compliance will be further reduced once the CATSI Act begins because reporting for smaller corporations is likely to be much less onerous, which is appropriate given their size (i.e. income less than \$100,000).

As I said in the *Yearbook 2004–05*, there are no quick fixes in Indigenous affairs. Much of our work is done in close cooperation with others—federal and state agencies, local government, trainers, auditors, management consultants, but most importantly, the members, directors and staff of corporations themselves. The work, often involving long lead times, high level planning and intensive resources, shows improvements in community stability through the appointment of administrators (see p. 40), assistance with resolving disputes (see p. 38), better reporting and general compliance by our corporations (see p. 41) and increased governance skills for training graduates (see p. 36). However, often key systemic issues delay further improvements. These issues might be structural ones connected to the delivery of

municipal services, or the need for effective capacity building of corporations, especially for those in remote parts of Australia where members and directors may speak English as a second, third or even sixth language.

A key strategy in the success of this complex work is our communications with corporations, through incorporation support, training and public information. This is achieved through our one-on-one sessions with corporations, our three-day workshops and Certificate IV Business (Governance), our publishing program and radio campaigns. We also publish our unique information about Indigenous corporations on the online Public Register (see p. 16) at http://www.orac.gov.au/searches/register_corporations.aspx. Our greater accessibility and higher profile has led to a rise in the number of inquiries and complaints, many of which involve complex issues.

In this yearbook, as in previous years, we analyse our corporate clients, identifying their size, location/remoteness and source of funding. During the year, the fall in numbers of corporations was just 56 (nearly 2 per cent)—a smaller drop than previous years—to 2529. This year, we publish for the first time the names and locations of our top 100 corporations which are compliant.

As commencement day—1 July 2007—approaches for the start of the CATSI Act, we would like to remind our corporations that they have two years to switch over to the new law. For the financial year 2007–08, corporations can choose whether to report under the ACA Act or the CATSI Act. It is only for the following year, 2008–09, that reporting under CATSI becomes mandatory. However, ORAC has a comprehensive communications and information strategy underway, involving radio campaigns, publications, information sessions, presentations, training workshops, and face to face assistance to get corporations geared up and ready. ORAC will also have a new electronic tool available to make it easier for corporations to complete their rule books. Corporations are also welcome to call our hotline—1800 622 431—or email us at info@orac.gov.au to request further help or get your queries resolved.

I would like to congratulate ORAC staff and the people on our panels such as administrators and trainers for their determination to provide the best possible service to our corporations. They are committed to helping corporations transition to the new law as smoothly as possible, as well as providing a high level of professionalism and dedication to their work.

Laura Beacroft



Letter from the Governor General



about ORAC



PHOTO: Staff from the Registrar's office
PHOTOGRAPHER: www.geoffcomfort.com

Our vision—Aboriginal and Torres Strait Islander people securing strong and viable futures through good governance of their corporations.

ORAC's objective

To support the delivery of incorporation, regulation and related services for Indigenous people in accordance with the *Aboriginal Councils and Associations Act 1976* (ACA Act). We aim to deliver our services in a way that takes account of the special needs, requirements and risks of Indigenous corporations and within the context of Australian and international best practice on sound corporate governance.

What is ORAC?

The ACA Act establishes the Registrar of Aboriginal Corporations—an independent statutory office holder appointed by the Minister for Families, Community Services and Indigenous Affairs (FaCSIA).¹ Ms Laura Beacroft, a solicitor, was appointed to the position from 1 August 2002 for three years and was reappointed for a further two years to 31 July 2007.

The Registrar administers the ACA Act through the Office of the Registrar of Aboriginal Corporations (ORAC).

The ACA Act is a regime under which Indigenous organisations can incorporate. It allows some scope for flexible incorporation in line with cultural practices. It also provides for active monitoring and regulation of Indigenous corporations, some of which pose special risks and have special requirements.

¹ From 4 May 2006 the reporting arrangements for the Registrar of Aboriginal Corporations changed from the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to the Department of Families, Community Services and Indigenous Affairs (FaCSIA).

The ACA Act was reviewed in 2002, and in response to that review new legislation has been drafted that will better serve Indigenous corporations. The Corporations (Aboriginal and Torres Strait Islander) Bill 2005 was introduced into the Australian Parliament on 23 June 2005. The Bill was then passed by the parliament in October 2006, becoming the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and will start on 1 July 2007, replacing the ACA Act. Some parts of the Act are likely to impact after that date to make it easier for corporations to switch over to it.

Consistent with the key recommendation of the review, the Act specifies that it is a special incorporation law designed to meet the special needs of some Indigenous people (see Attachment 12, p. 71).

While many Indigenous corporations are incorporated under the ACA Act, others are not and are instead covered by state/territory and other Commonwealth legislation. Although incorporation under the ACA Act is largely voluntary, for some it isn't—for example, the prescribed bodies corporate established through the *Native Title Act 1993*.



ORAC's corporate direction

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

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

ORAC works closely with other regulating bodies and funding agencies, in line with the principle of whole-of-government service delivery, to achieve better results for our clients.

Our guiding principles

The following principles guide ORAC's work.

Building sustainability—encouraging corporations to adopt good practices in management and governance that maximise the use of resources and help them achieve their purpose.

Eliminating poverty—commitment to eliminating poverty in Indigenous communities and making sure we include the most disadvantaged and marginalised people in communities in any strategies to build capacity (e.g. women, children, the disabled).

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

Being accountable—raising awareness that accountability to members, beneficiaries of corporations' services and communities underpins good governance and management practices. Organisations should meet their legal and other requirements in line with expectations of funding agencies, members and the communities they serve.

Managing conflict and disputes—helping organisations to resolve conflicts and develop effective conflict resolution processes. These processes should acknowledge different interests, build capacity and fit within cultural and community contexts.

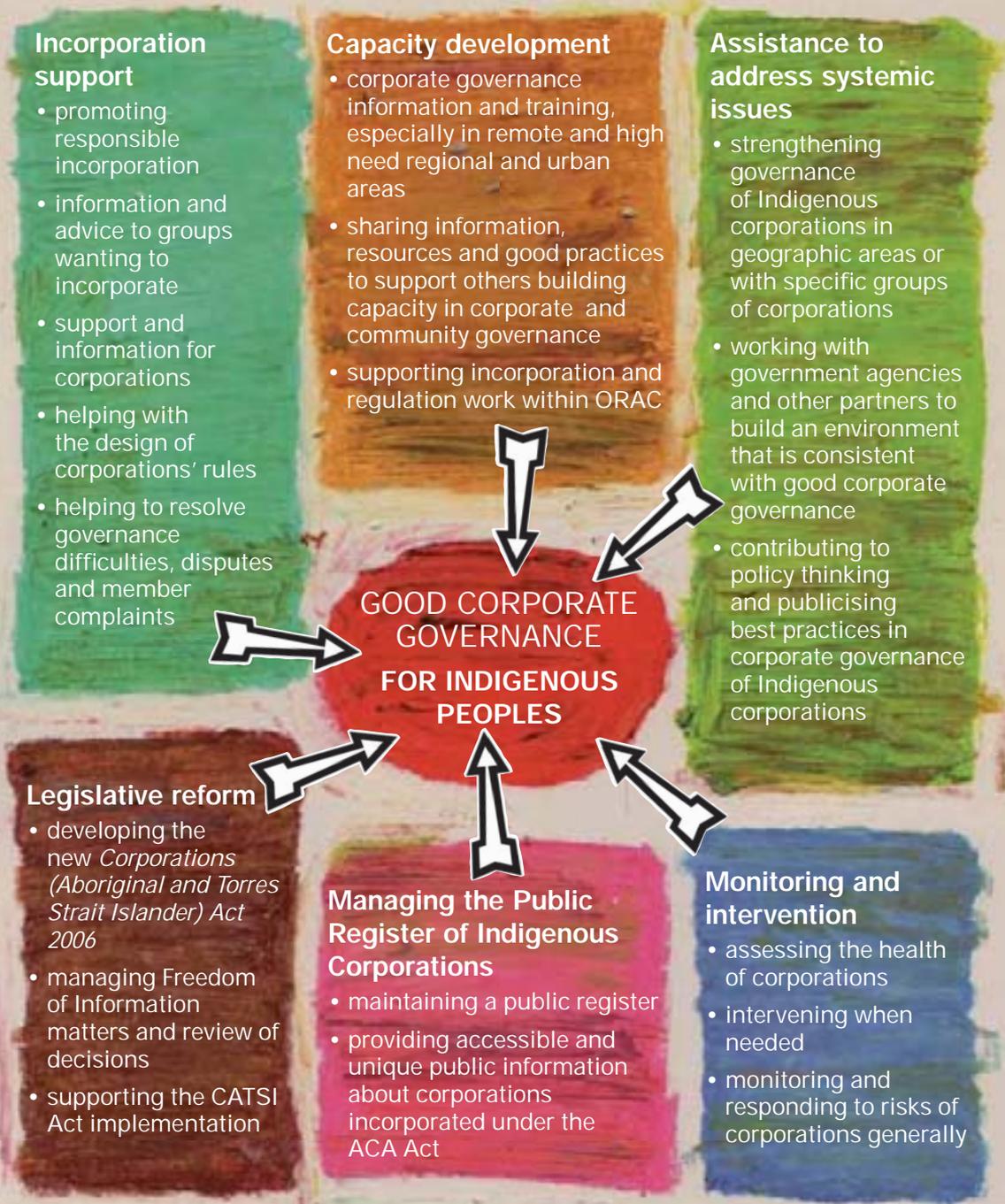
Promoting knowledge management—recognising that access to information, experience and knowledge is an empowering process and making sure any management processes are user friendly and accessible.

Fitting with culture—making sure incorporation models and processes fit with culture in specific communities and localities, and that interactions with Indigenous corporations are relevant to communities and localities.

Being responsive and accessible—tailoring our information and services to the needs of our clients and making sure they are easy to access and use.

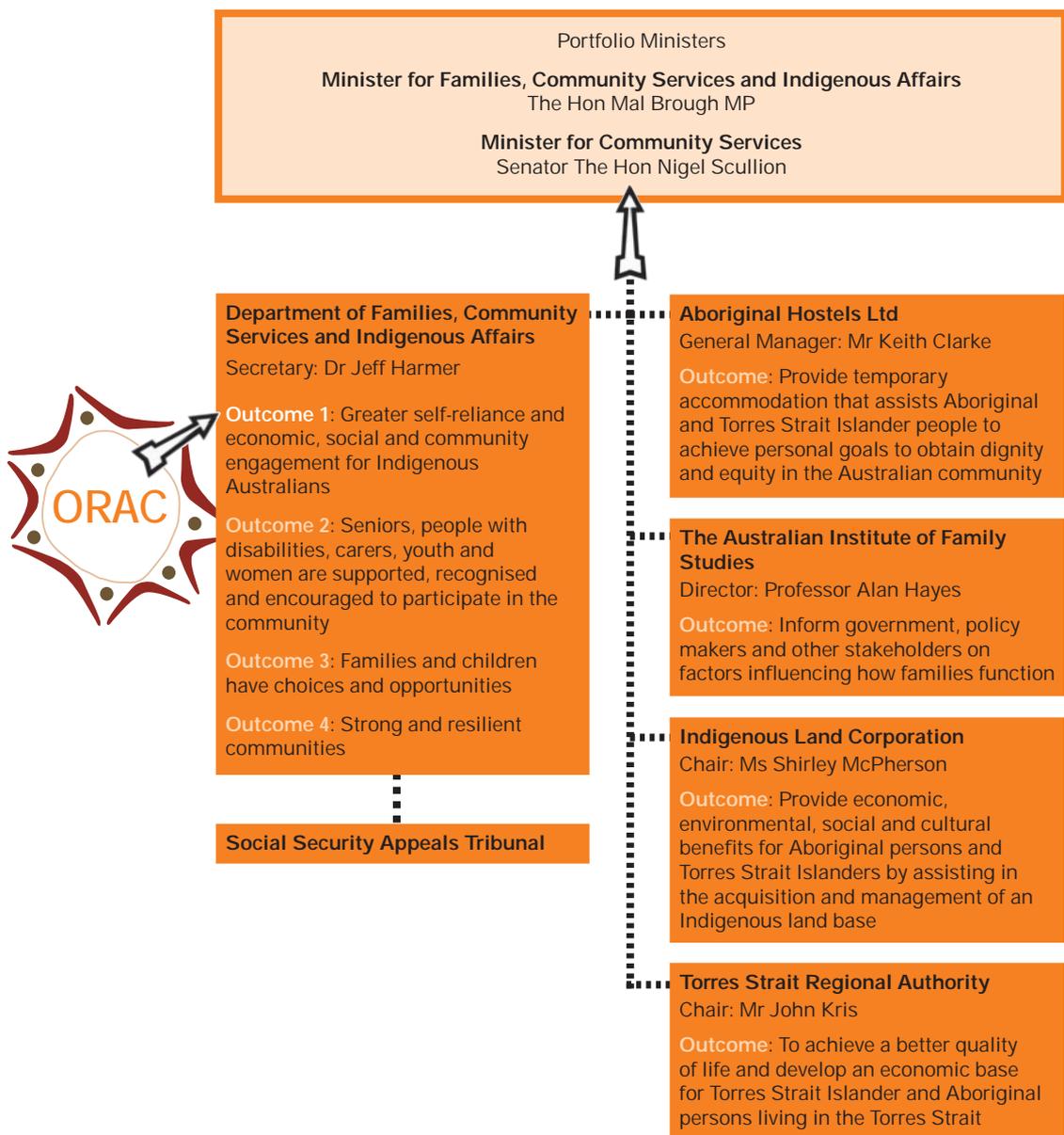
Building capability and social assets—developing capacity, knowledge and social assets to help build the sustainability of organisations.

Figure 1: ORAC's key roles



How does ORAC fit into the Families, Community Services and Indigenous Affairs portfolio?

Figure 2: Families, Community Services and Indigenous Affairs portfolio structure and outcomes



At 30 June 2006 ORAC reported under FaCSIA's Outcome 6: Innovative whole-of-government policy on Indigenous Affairs, as part of its Output group 6.2: Services for Indigenous Australians.

The *Services to Indigenous Australians* output contributes to Outcome 6 by delivering services aimed at accepting and recognising the collective rights of Aboriginal and Torres Strait Islander people as original custodians of Australia, promoting the repatriation and reconciliation programs and administering the *Aboriginal Councils and Associations Act 1976*.

Under FaCSIA's 2006–07 outcomes since July 2006 ORAC reports under **Outcome 1: Greater self-reliance and economic, social and community engagement for Indigenous Australians**

Services and assistance that promote greater self-reliance and engagement for Indigenous families and communities through: shared responsibility; practical support; and innovative whole of government policy.

Incorporation, regulation and building capacity of Indigenous corporations (Output Group 1.3) will contribute to Outcome 1 by:

- > supporting the delivery of incorporation, regulation and related services for Indigenous people in accordance with the *Aboriginal Councils and Associations Act 1976*.



The CATSI Act

A new law, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, will start on 1 July 2007. It will replace the Aboriginal Councils and Associations Act (ACA Act) and will affect all corporations that are registered with the Office of the Registrar of Aboriginal Corporations (ORAC).

It is a 'special measure' for Indigenous people intended to benefit Indigenous people:

- It is a flexible law—most small corporations will have less reporting to do once the new law has begun.
- It confirms that ORAC will provide support and training to help corporations succeed.
- The Registrar can intervene earlier to prevent corporations failing.
- It extends directors' duties to senior managers to make sure they act in a corporation's best interest. This offers more protection to boards and members.
- It will set up a new register to record people who are disqualified from managing a corporation.

For more information, see Attachment 12, p. 71.



Powers of the Registrar

The ACA Act gives the Registrar powers to intervene in a corporation's affairs, similar to those exercised by the Australian Securities and Investments Commission.

Some of the Registrar's powers require ministerial approval before they can be exercised. As a statutory officer, the Registrar is not under direction for decisions made under the ACA Act. The Registrar exercises their powers and functions according to the ACA Act, responding to the special needs, requirements and risks of Indigenous corporations. Ultimately, the aim is to build the independence and capacity of Indigenous individuals, groups and corporations.

See Attachment 1, p. 49 for a summary of the Registrar's existing regulatory powers, however, note these will change from 1 July 2007.

Our clients

Our clients include:

- > Aboriginal and Torres Strait Islander individuals, groups and corporations
- > people accessing the Public Register of Indigenous Corporations
- > the Minister for Families, Community Services and Indigenous Affairs, and agencies supporting the minister
- > the Australian Government and state and territory governments
- > agencies with interests in funds and/or assets controlled by Indigenous corporations
- > other agencies regulating the Indigenous corporate sector, e.g. the Australian Taxation Office, the Australian Securities and Investments Commission, and state and territory incorporating agencies
- > Indigenous peak bodies in critical sectors such as medical, housing, land holding and legal.

Our services

ORAC offers a range of support for Indigenous corporations, and responds to their special needs and risks.

Our key services are:

- > providing accessible information about corporations incorporated under the ACA Act on the Public Register of Indigenous Corporations
- > assisting groups that are considering incorporation and supporting them through the process if incorporation proves necessary
- > assisting groups once they are incorporated, including support for dispute management, helping with meetings and answering queries about corporate governance
- > assisting with concerns or complaints about corporations and taking action when necessary
- > delivering training and learning materials to clients
- > monitoring compliance of corporations with reporting requirements under the ACA Act and other key requirements such as tax
- > examining corporate governance ‘health’
- > intervening where necessary
- > deregistering where necessary
- > referring or conducting matters against individuals and corporations.



The Public Register

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

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

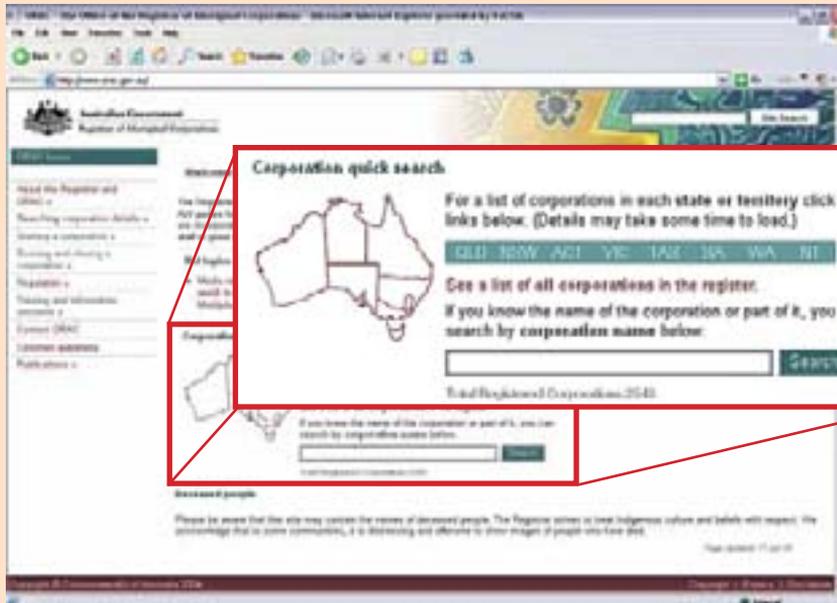
A list of all documents held by ORAC for any individual corporation since 1978 is available electronically. These documents are available in hard copy from ORAC and some, including corporations' rules (constitutions), are accessible online. A few corporations have requested that their lists of members not be published electronically, for justifiable reasons.

ORAC is in the process of developing online training and constitution design tools that will help corporations move to the new CATSI Act, while building the platform for some online lodgment of documents.

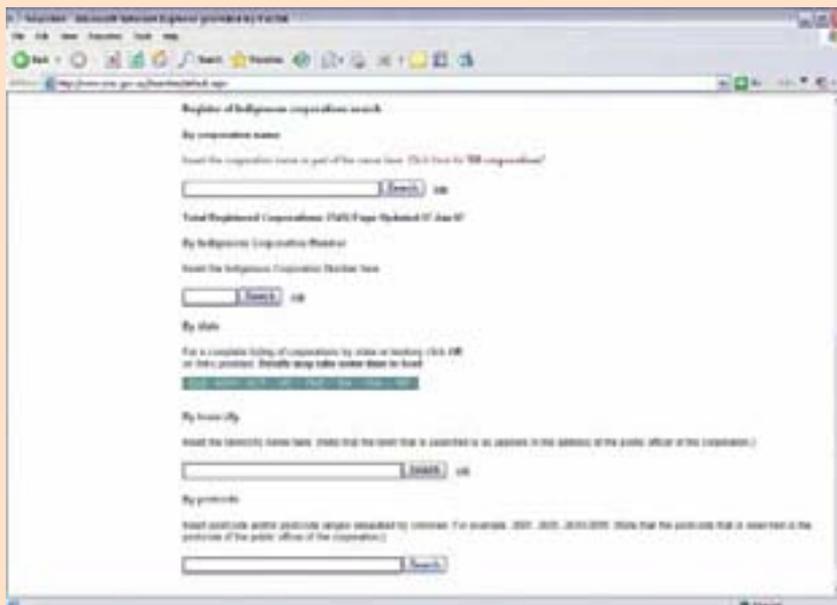


HOW to search our corporations

www.orac.gov.au (home page)



www.orac.gov.au/searches/default.aspx



Relationships with agencies

Relationship to Office of Indigenous Policy Coordination (OIPC)

During 2005–06 the Registrar and staff of ORAC were employees of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), although the changes announced by the Prime Minister in portfolio arrangements in February 2006 mean that ORAC now sits with the Department of Families, Community Services and Indigenous Affairs.² Funding for ORAC was \$8.1 million for 2005–06, coming within the DIMIA appropriation. Various arrangements were in place, including an agreement to enable ORAC, OIPC and DIMIA to manage possible conflicts of interest.

With the move to FaCSIA, a formal agreement will be put in place to support the Registrar and ORAC's placement within the department, consistent with the Uhrig report (<http://www.finance.gov.au/governancestructures/index.html>). This report, conducted by John Uhrig and released by the government in August 2004, recommended a broad template of governance principles and arrangements that the government could extend to statutory authorities and office holders. It sets out measures for ensuring the boundaries of responsibilities are better understood and clarifies the relationship between Australian Government authorities, ministers and portfolio departments.

Relationship to other agencies

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 incorporated under the ACA Act. ORAC builds close working relations with agencies that have an interest in the funds and/or assets held by corporations. ORAC also works with state and territory government agencies to improve outcomes for Indigenous people across Australia (see Figure 3).

² From 4 May 2006 the reporting arrangements for the Registrar of Aboriginal Corporations changed from the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to the Department of Families, Community Services and Indigenous Affairs (FaCSIA).

In recent years ORAC has developed a relationship with the Australian Securities and Investments Commission (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 once the Corporations (Aboriginal and Torres Strait Islander) Act has commenced.

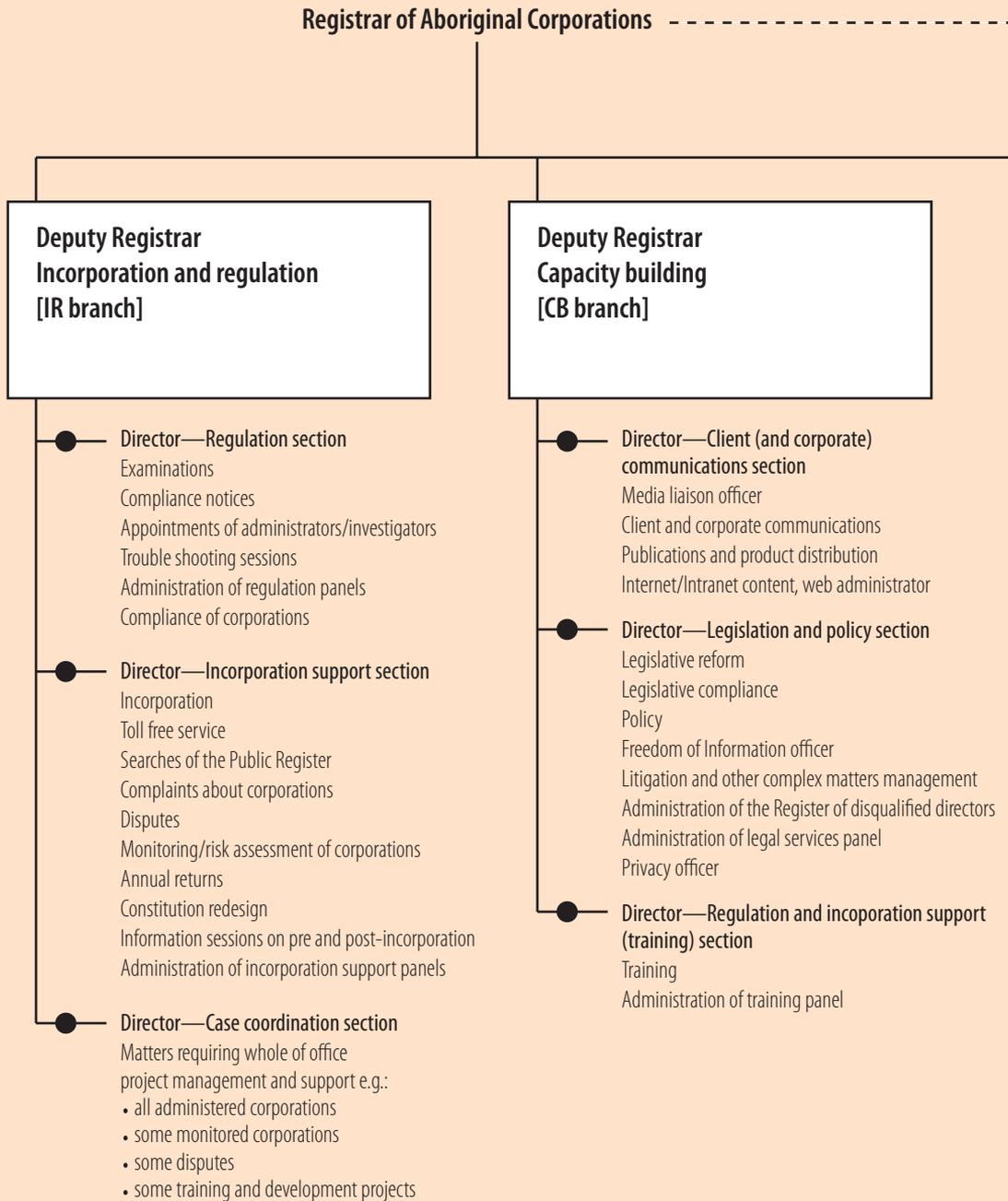
ORAC’s focus is on identifying and targeting key systemic issues that undermine the viability of Indigenous corporations and has been building closer relationships with the following agencies for this purpose: the Australian Taxation Office, agencies linked to the Council of Australian Governments (COAG) whole-of-government trial sites, individuals and agencies involved in corporate governance training, and state/territory government agencies, particularly in Queensland, Northern Territory and Western Australia.

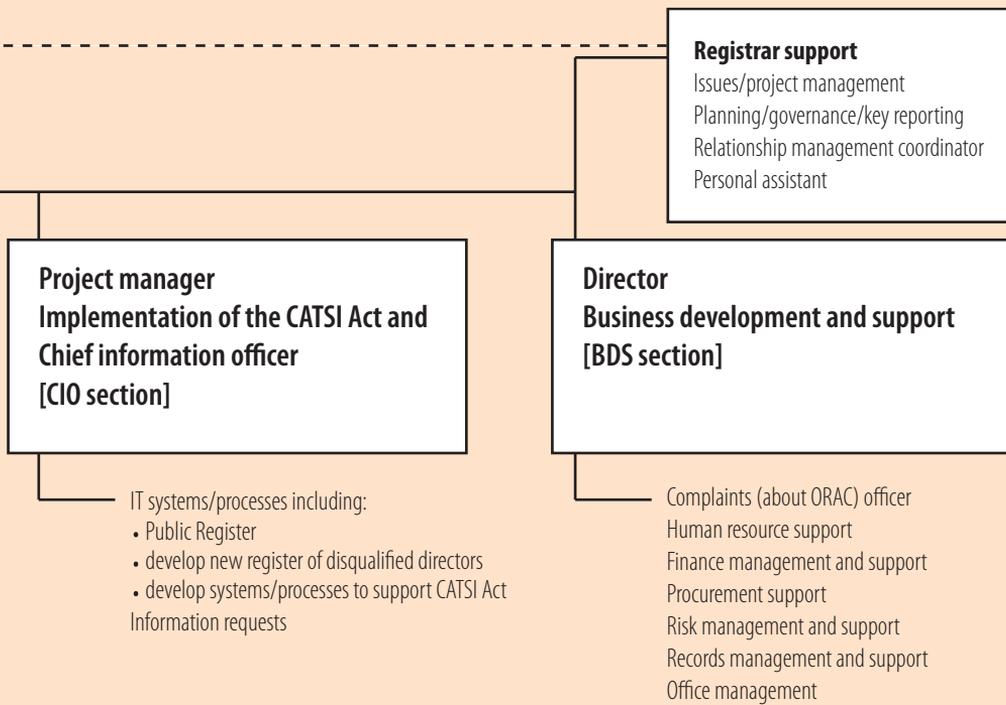
Figure 3: ORAC’s key relationships



Figure 4: ORAC’s organisation structure

During the year ORAC settled a new structure to provide better services. By 1 July 2007 it will be implemented.





our clients



PHOTO: Participants at the Introduction to Corporate Governance Workshop held in Canberra.

Overview of Indigenous corporations

Profile of corporations incorporated with ORAC

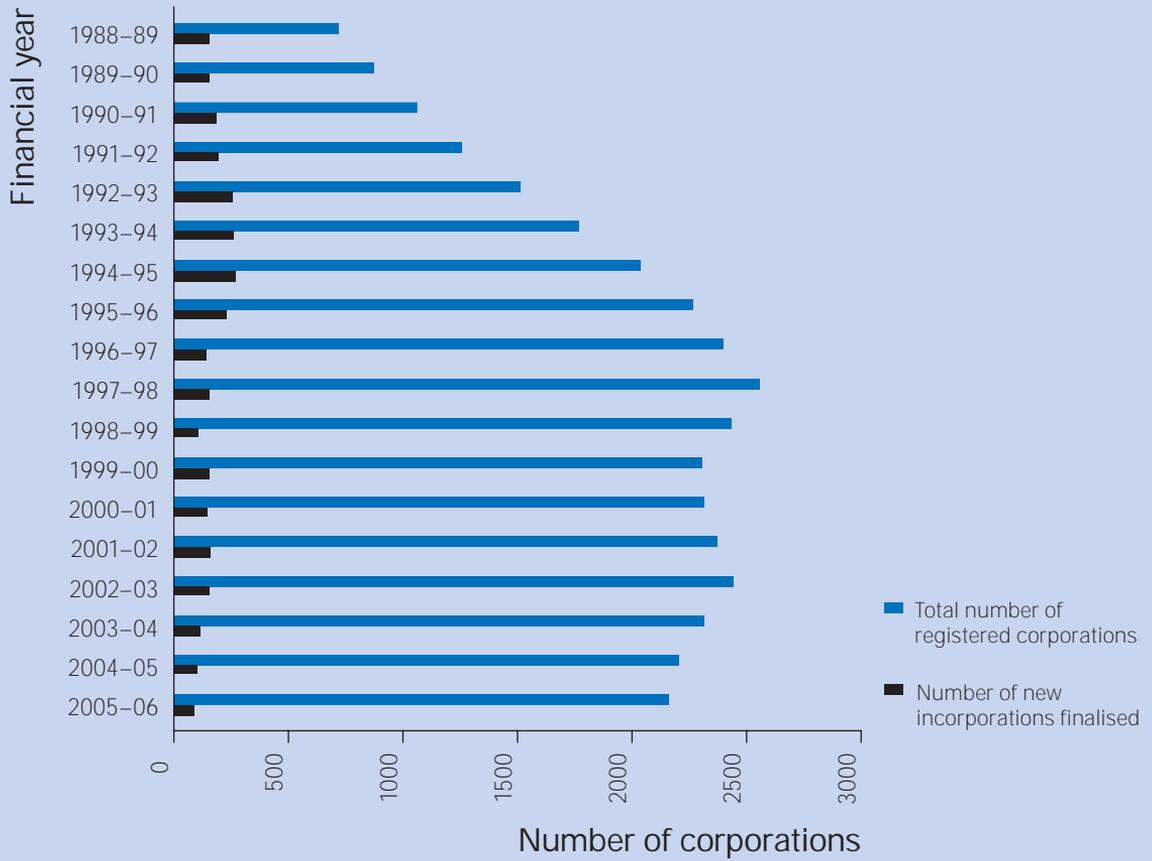
At 30 June 2006, 2529 corporations were registered under the ACA Act. This is a targeted reduction of 2 per cent in line with an emphasis on ‘responsible and necessary incorporation’. After rapid growth in Indigenous corporations under the ACA Act in the early 1990s, the number of incorporations annually remained steady for some years and has now started to decline (see Figure 5 and Table 1). It is estimated that at least as many Indigenous corporations are incorporated under other legislation. However, some of these corporations are interested in transferring to ORAC when the new Corporations (Aboriginal and Torres Strait Islander) Act commences, to gain the benefits of ORAC’s support and preventative work.

Corporate functions are diverse, from providing services such as health care and power supply to simply holding land, and many corporations are multifunctional.

Most groups incorporated under the ACA Act are located in remote areas (55 per cent), as Table 2 and Map 1 show, and are publicly funded. However, some generate substantial 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. See Figure 6 and Table 4 for the number of corporations, by income and assets, at 30 June 2006.

During 2005–06 corporation numbers fell overall, largely because of falls recorded in Queensland and NSW of 10 per cent and 3 per cent respectively. This was due to the program undertaken by ORAC to deregister corporations no longer needed, and falling numbers of new corporations (see Attachment 10, p. 63). Breakdowns of locations of ACA Act corporations by Indigenous Coordination Centre (ICC) regions are shown in Table 3 and Map 1.

Figure 5: Registered and new corporations, by year, 1988-89 to 2005-06



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



Table 1: Registered and new corporations, by year, 1988-89 to 2005-06

Financial year	Total number of registered corporations		Number of new incorporations finalised	
1988-89	843		180	
1989-90	1024		181	
1990-91	1244		220	
1991-92	1474		230	
1992-93	1772		298	
1993-94	2076		304	
1994-95	2389		313	
1995-96	2654		265	
1996-97	2816		162	
1997-98	2999		183	
1998-99	2853		128	
1999-00	2703		183	
2000-01	2709		171	
2001-02	2783		187	
2002-03	2861		183	
2003-04	2713		134	
2004-05	2585		120	
2005-06	2529		102	



PHOTO: Participants taking a break during an information session.

Table 2: Location of corporations, by remoteness and state/territory, 2005–06

State	Major cities	Inner regional	Outer regional	Remote	Very remote	Unknown	Total 2005–06	Total 2004–05	Change	% change
	ACT	16	3	-	-	-	0	19	19	0
NSW	78	158	126	27	15	0	404	415	-11	-3%
NT	-	-	92	268	261	0	621	603	18	3%
QLD	60	79	173	58	141	0	511	569	-58	-10%
SA	17	3	21	4	18	0	63	60	3	5%
TAS	-	14	3	2	-	0	19	19	0	0%
VIC	21	22	33	-	-	-	76	74	2	3%
WA	113	26	88	192	389	0	808	782	26	3%
Unknown						8	8	44	-36	-82%
Australia	305	305	536	551	824	8	2529	2585	-56	-2%
Percentage of total	12%	12%	21%	22%	33%	0%	100%			

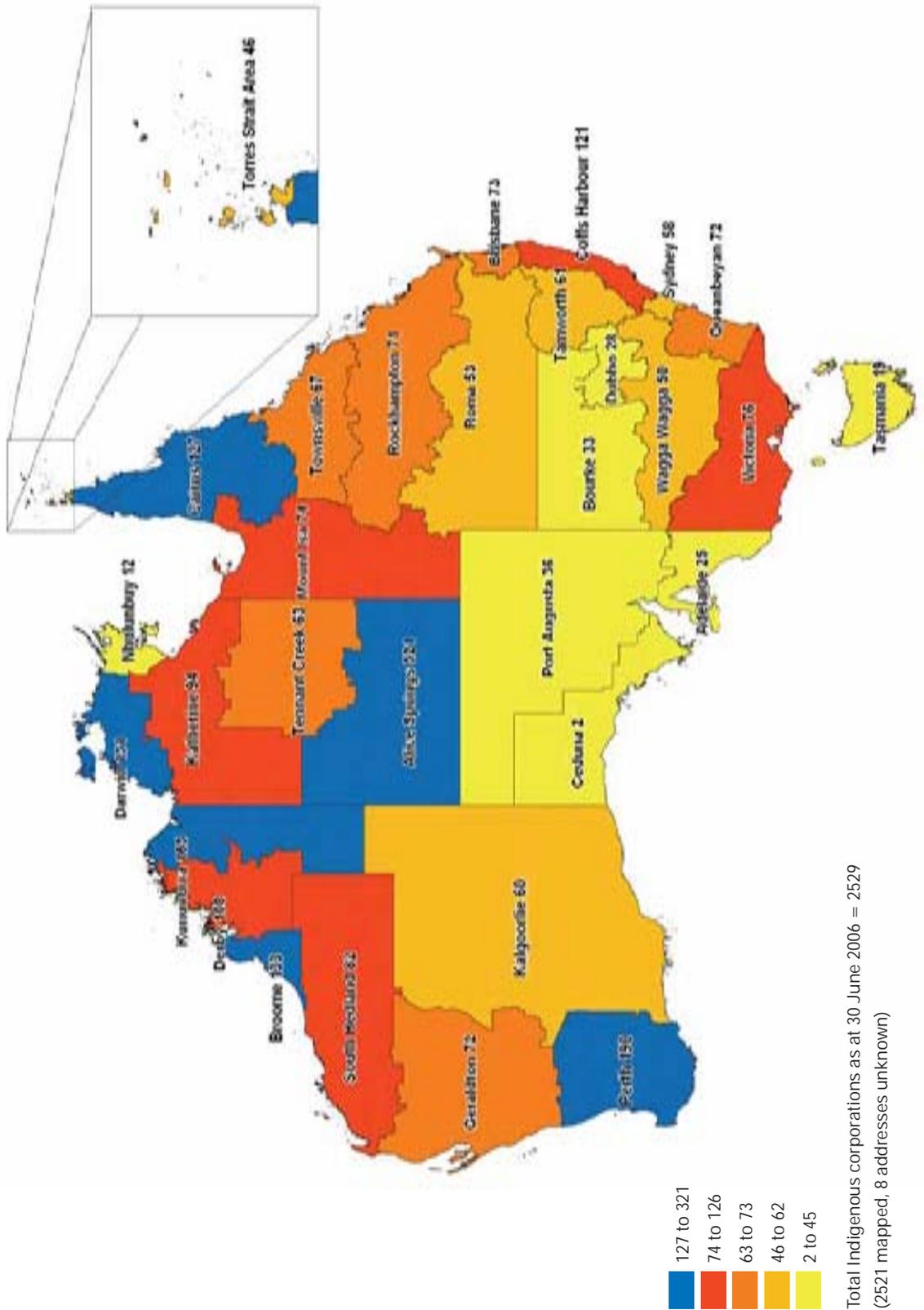
Table 3: Location of corporations by ICC regions at 30 June 2006

ICC region	Number of corporations	State	% total
Bourke	33	NSW	1.30%
Tamworth	61	NSW	2.40%
Coffs Harbour	121	NSW	4.80%
Dubbo	28	NSW	1.10%
Sydney	58	NSW	2.30%
Wagga Wagga	50	NSW	2.00%
Queanbeyan	72	NSW	2.90%
Darwin	131	NT	5.20%
Nhulunbuy	12	NT	0.50%
Katherine	94	NT	3.70%
Tennant Creek	63	NT	2.50%
Alice Springs	321	NT	12.70%
Mount Isa	74	QLD	2.90%
Cairns	127	QLD	5.00%
Townsville	67	QLD	2.70%
Rockhampton	71	QLD	2.80%
Roma	53	QLD	2.10%
Brisbane	73	QLD	2.90%
Port Augusta	36	SA	1.40%
Ceduna	2	SA	0.10%
Adelaide	25	SA	1.00%
Tasmania	19	TAS	0.80%
Victoria	76	VIC	3.00%
Broome	133	WA	5.30%
Kununurra	163	WA	6.50%
Derby	108	WA	4.30%
South Hedland	82	WA	3.30%
Geraldton	72	WA	2.90%
Kalgoorlie	60	WA	2.40%
Perth	190	WA	7.50%
Torres Strait Area	46	TSRA	1.80%

2521

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

Map 1: Location corporations by ICC region as at 30 June 2006



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

Income of corporations

Figure 6 and Table 4 show the wealth of 537 Indigenous corporations with ORAC where full details of income and assets are 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 (see Attachment 11, p. 68). Also, a 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 6: Number of corporations by income and assets as at 30 June 2006

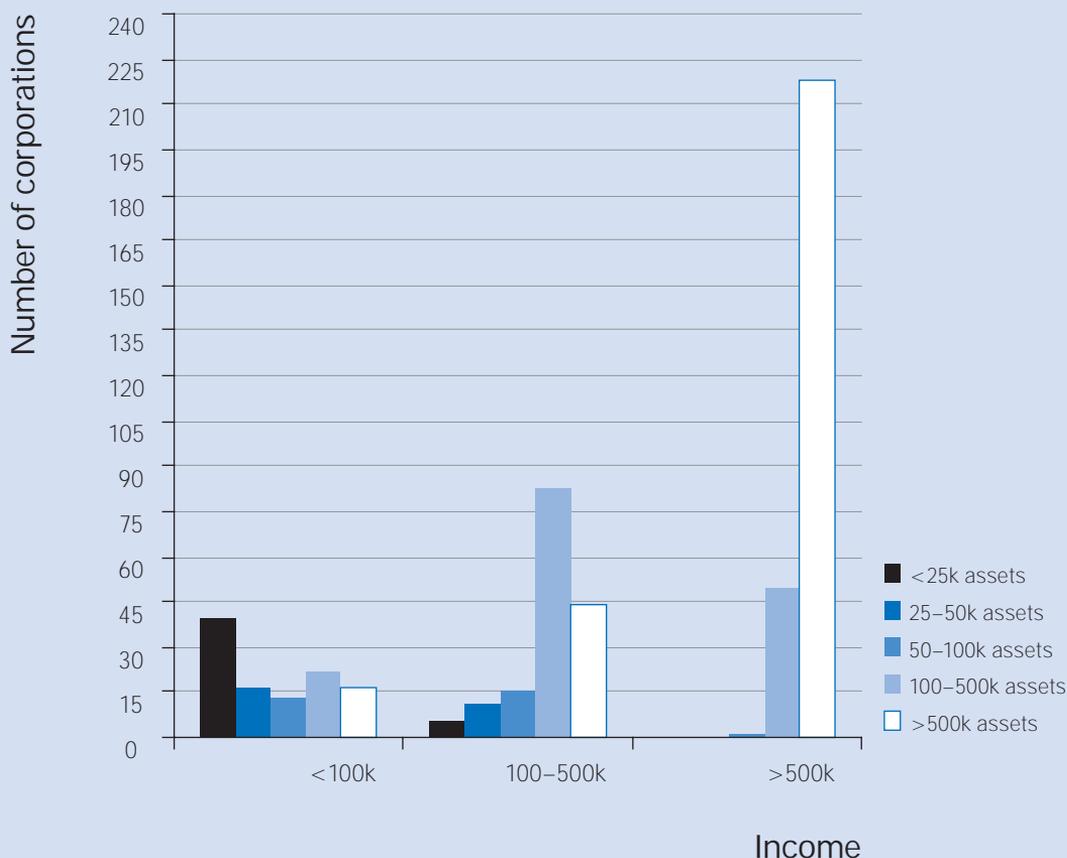


Table 4: Number of corporations by income and assets as at 30 June 2006

		Assets					total
		<25k	25–50k	50–100k	100–500k	>500k	
Income	<100k	40	17	13	22	17	109
	100–500k	6	11	15	83	44	159
	>500k	0	0	1	50	218	269
	total	46	28	29	155	279	537

Notes:

1. Income = total grant plus other income : assets = total of current plus non-current assets
2. Income and assets are for the financial year 1 July 2004 to 30 June 2005 since financial annual returns for 2005–06 are not due until 31 December 2006

Funding of corporations

The major known funding bodies of corporations under the ACA Act in 2005–06 were the Department of Employment and Workplace Relations, the Department of Families, Community Services and Indigenous Affairs, and the Office of Aboriginal and Torres Strait Islander Health (OATSIH) at the Department of Health and Ageing. The funding amounted to over \$400 million in total yearly grants.

Other sources of public funds include a wide range of Australian Government agencies and state/territory agencies, especially in Western Australia, Northern Territory and Queensland.

ORAC published a fact sheet for funding bodies during 2006 (see Attachment 13, p. 80). Also see Attachment 14, p. 84 for ORAC's policy to guide the use of the CATSI Act.

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.

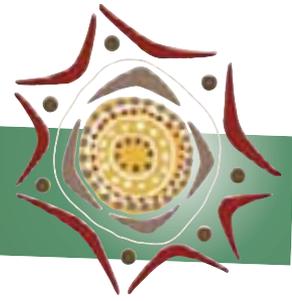
Assistance for corporations

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.



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).

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

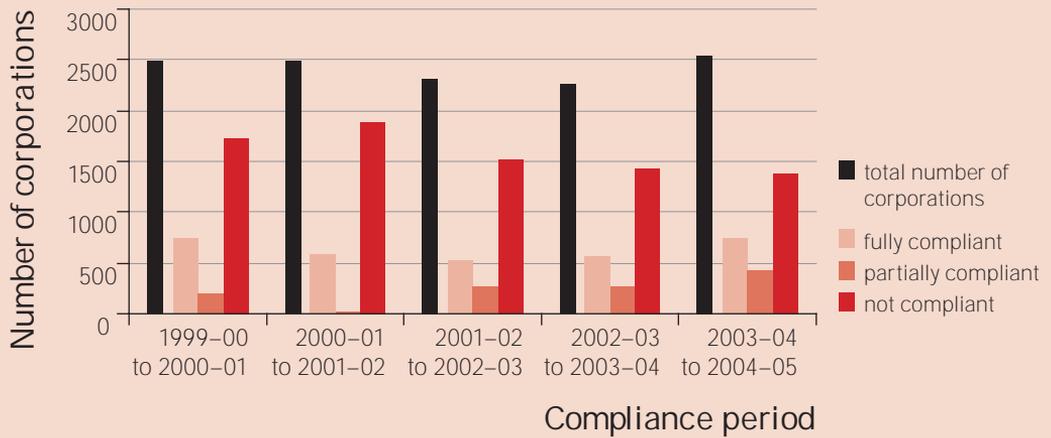
Under the ACA Act all corporations are required to submit certain documents to ORAC which are placed on the Public Register, including a list of members and financial reports, unless the corporation is exempted by the Registrar.

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.

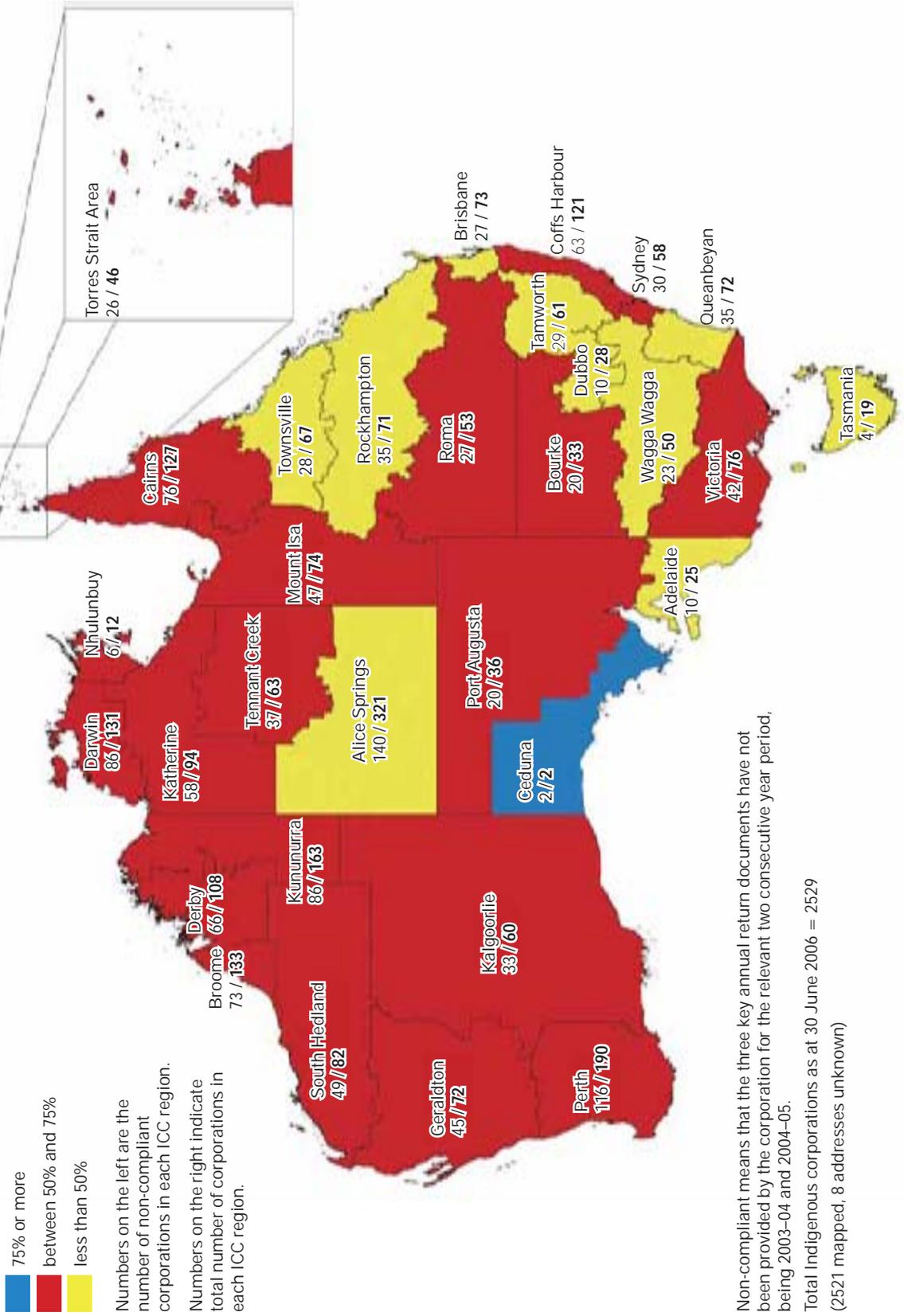
Table 6: Compliance of corporations,
by compliance period, 1999-00 to 2004-05

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



Numbers on the left are the number of non-compliant corporations in each ICC region. Numbers on the right indicate total number of corporations in each ICC region.

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.



attachments

Attachment 1

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

These powers will change from 1 July 2007.

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:

- when a special general meeting was not held within 14 days of the date advertised by the corporation's board
- when 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 constitution, or that there has been an irregularity in the corporation's financial affairs, the Registrar may issue a compliance notice. The compliance notice can require the board to take specified action, within specified timeframes, to remedy the suspected breach or irregularity.

Issue injunction show cause notice—sections 61(2), (3)

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

Injunction application—sections 61(2), (3)

After considering 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 constitution.

Winding-up application (liquidation)—sections 62A, 63, 65

The Registrar may apply to the court to wind up a corporation if this is recommended by an administrator, or if the Registrar believes that this would be in the public 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 to pay its debts.

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

Investigation—sections 68, 69, 70

The Registrar is given very broad powers to investigate the affairs of a corporation under the 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 constitution, or that there has been an irregularity in the corporation's financial affairs.

Under the investigation powers, the Registrar can:

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

Failure to attend, answer a question or produce a document results in a penalty of \$200. Knowingly making false or misleading responses, and hindering or obstructing the Registrar's access to premises and books, carry fines of \$1500.

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 if 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 constitution, and has failed to give a satisfactory explanation for the failure
- that board members have acted in their own interests rather than the interests of the members, or in any other manner that is unfair or unjust to other members
- that the appointment is required in the interests of members and creditors
- that the appointment is otherwise required in the public interest.

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

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

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

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

Deregistration—section 82, regulation 18

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

The process for deregistration operates under provisions of the *Corporations Act 2001*, imported through Regulation 18 of the Aboriginal Councils and Associations Regulations. 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).

Attachment 2

Incorporation and support services, 2001–02 to 2004–05

	2005–06	2004–05	2003–04	2002–03	2001–02
Incorporation services					
Incorporations					
Applications received	110	120	160	211	206
Total applications actioned during the year	123	134	143	205	207
Applications approved	102	120	134	183	187
Applications refused	1	–	–	–	–
Application lapsed/withdrawn	17	14	9	22	20
Constitution change requests					
Requests received	92	116	122	138	134
Total requests actioned during the year	127	131	114	127	143
Requests approved	92	112	106	94	98
Requests refused	9	4	4	22	21
Requests lapsed/withdrawn	20	15	4	11	24
Name change requests					
Requests received	11	27	26	20	24
Total requests actioned during the year	15	25	18	16	32
Requests approved	9	18	14	8	22
Requests refused	–	2	–	2	1
Requests lapsed/withdrawn	6	5	4	6	9
Post incorporation services					
Public register searches					
Search requests received	177	543	283	551	858
Search requests finalised	282	501	272	557	844
Members' complaints and dispute assistance					
Matters finalised	103	119	131	107	119
Annual general meeting extensions					
Matters finalised	197	137	104	–	–
Advice on corporation issues					
Inquiries finalised	882	682	634	622	245

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

Attachment 3

Corporations where examinations were initiated 2005–06



This table lists corporations for which examinations under section 60 of the ACA Act were initiated during 2005–06, and summarises follow-up action by the Registrar to the time of writing.

ICN	Corporation	Examination action
326	Albany Aboriginal Corporation	Section 60A notice issued 9 Oct 2006
3716	Allawah Aboriginal & Torres Strait Islander Corporation	ORAC wind up action initiated 23 Sept 2005
841	Arlparra Aboriginal Corporation	Section 60A notice issued 28 Feb 2006
1094	Bama-Ngappi-Ngappi Aboriginal Corporation	No further action—management letter issued 11 Oct 2005
4125	Banjelungup Aboriginal Corporation	Section 60A notice issued 10 Oct 2006
3429	Bargumar Aboriginal and Torres Strait Islanders Corporation	Section 60A notice issued 5 Mar 2006
2273	Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region	No further action—management letter issued 23 Sept 2005
3180	Bindal Sharks United Sport and Recreation Aboriginal Corporation	Section 60A notice issued 10 Oct 2005
2102	Bungala Aboriginal Corporation	Section 60A notice issued 3 Jan 2006
1978	Buttlingarra Aboriginal Corporation	No further action—Orderly restructure or wind up of affairs pending
3976	Cairns Regional Community Development & Employment Aboriginal & Torres Strait Islander Corporation	Section 60A notice issued 25 Oct 2005
2987	Deewin Kurim Aboriginal Corporation	No further action—management letter issued 15 Dec 2005
3027	Derby Aboriginal Health Service Council Aboriginal Corporation	Section 60A notice issued 21 Sept 2005
1025	Gindaja Substance Misuse Aboriginal Corporation	No further action—management letter issued 21 Oct 2005
2032	Giru Dala Council of Elders Aboriginal Corporation	Section 60A notice issued 11 Feb 2006 ORAC wind up action initiated 10 Apr 2006
1999	Gkuthaarn Aboriginal Corporation	Section 71 notice issued 24 Jan 2006 Administrator appointed 3 Apr 2006
2113	Goondi Aboriginal & Torres Strait Islanders Corporation	Section 60A notice issued 11 Jul 2006
3697	Gudu Wondjer (Sea Women) Aboriginal Corporation	No further action—Unfunded and non-operational, the creditor's have petitioned for wind up.
2916	Jurrugk Aboriginal Health Service Aboriginal Corporation	No further action—management letter issued 7 Sept 2005
3147	Karboyick Larkinjar Aboriginal Corporation for Health	Examiner's report received 3 Jan 2006— the members resolved to wind up

ICN	Corporation	Examination action
2202	Keriba Mina Torres Strait Islanders Corporation for Development	ORAC wind up action initiated 7 Dec 2005
3037	Kukatj Aboriginal Corporation	Section 71 notice issued 24 Jan 2006 Administrator appointed 3 Apr 2006
1213	Kuku Djungan Aboriginal Corporation	Section 60A notice issued 3 Jan 2006
2173	Kullila Welfare & Housing Aboriginal Corporation	Next action being considered
2169	Kurtijar Aboriginal Corporation	Section 60A notice issued 9 Feb 2006
3033	Kurtijar Land Trust Aboriginal Corporation	Section 60A notice issued 10 Feb 2006
680	Link-up (QLD) Aboriginal Corporation	Section 71 notice issued 28 Mar 2006 Administrator appointed 16 Jun 2006
2464	Living Waters Aboriginal & Torres Strait Islanders Corporation	No further action—management letter issued 7 Oct 2005
799	Minbani Aboriginal Corporation	ORAC wind up action initiated 22 Nov 2005
90	Mowanjum Aboriginal Corporation	Section 60A notice issued 28 Sept 2005
1881	Mulungu Aboriginal Corporation Medical Centre	Section 60A notice issued 6 Jan 2006
761	Mutitjulu Community Health Service (Aboriginal Corporation)	Section 71 notice issued 17 Jan 2006 Administrator appointed 13 Mar 2006
916	Ngallagunda Aboriginal Corporation	No further action—ORAC to monitor—finalised 14 Nov 2006
1866	Nirrumbuk Aboriginal Corporation	Section 60A notice issued 16 Feb 2006
1274	Njernda Aboriginal Corporation	Section 60A notice issued 5 Sept 2005
697	North Queensland Aboriginal and Torres Strait Islander Corporation for the Aged and Disabled Care	No further action—management letter issued 5 Dec 2005
1838	Nyangatjatjara Aboriginal Corporation	Section 71 notice issued 16 Jan 2006 Administrator appointed 28 Apr 2006
1519	Orana Aboriginal Corporation	Section 71 notice issued 4 Nov 2005 Administrator appointed 28 Nov 2005
1175	Pukatja Garage and Auto Spares (Aboriginal Corporation)	Section 60A notice issued 24 Nov 2006
2242	Pukatja Supermarket and Associated Stores Aboriginal Corporation	Section 60A notice issued 24 Nov 2006
1084	Ramingining Homelands Resource Centre Aboriginal Corporation	Section 60A notice issued 21 Sept 2006
1539	The Little Yuin Pre-School Aboriginal Corporation	Section 60A notice issued 3 Jul 2006
1273	Wahgunyah (Housing) Aboriginal Corporation	Section 60A notice issued 7 Aug 2006
587	Weigelli Centre Aboriginal Corporation	No further action—management letter issued 24 Aug 2005
2022	Wulgurukaba Aboriginal Corporation	Section 60A notice issued 22 Mar 2006
3975	Yabur Yulgun CDEP Aboriginal Corporation	Section 60A notice issued 24 Oct 2005
2000	Yargin Aboriginal Corporation	Section 60A notice issued 17 Jan 2006
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation	Section 60A notice issued 27 Oct 2005
1161	Yothu Yindi Foundation Aboriginal Corporation	Section 60A notice issued 25 Jan 2006

Attachment 4

Corporations issued with notices to rectify matters 2005–06



This table lists corporations that were issued with notices to rectify matters under section 60A of the ACA Act during 2005–06.

ICN	Corporation
841	Arlparra Aboriginal Corporation
3429	Bargumar Aboriginal and Torres Strait Islanders Corporation
3180	Bindal Sharks United Sport and Recreation Aboriginal Corporation
2102	Bungala Aboriginal Corporation
3976	Cairns Regional Community Development & Employment Aboriginal & Torres Strait Islander Corporation
3027	Derby Aboriginal Health Service Council Aboriginal Corporation
1508	Giangurra Aboriginal Corporation
2032	Giru Dala Council of Elders Aboriginal Corporation
2375	Kamilaroi Aboriginal Housing Aboriginal Corporation
1754	Kamilaroi Employment Aboriginal Corporation
1213	Kuku Djungan Aboriginal Corporation
2169	Kurtjar Aboriginal Corporation
3033	Kurtjar Land Trust Aboriginal Corporation
2250	Kutkabubba Aboriginal Corporation
1807	Manyallaluk Aboriginal Corporation
90	Mowanjum Aboriginal Corporation
1881	Mulungu Aboriginal Corporation Medical Centre
1061	Mungoorbada Aboriginal Corporation
500	Murchison Region Aboriginal Corporation
2062	Nindethana Aboriginal Corporation
1866	Nirrumbuk Aboriginal Corporation
1274	Njernda Aboriginal Corporation
584	Papulu Apparr-Kari Aboriginal Corporation
334	Pintubi Homelands Health Service (Aboriginal Corporation)
2999	Pulikutjarra Aboriginal Corporation
2249	Windida Aboriginal Corporation
548	Winton District Aboriginal Corporation
1302	Wongatha Wonganarra Aboriginal Corporation
2022	Wulgurukaba Aboriginal Corporation
3975	Yabur Yulgun CDEP Aboriginal Corporation
2000	Yargin Aboriginal Corporation
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation
620	Yarrowarra Aboriginal Corporation
1161	Yothu Yindi Foundation Aboriginal Corporation

Attachment 5

Corporations issued with notices to show cause why an administrator should not be appointed 2005–06

This table lists corporations that were required to show cause why an administrator should not be appointed under section 71 of the ACA Act during 2005–06.

ICN	Corporation	Due date	Outcome
269	Carpentaria Land Council Aboriginal Corporation	22 Jun 06	Administrator appointed 3 July 2006
2915	Eidsvold Wakka Wakka Aboriginal Corporation	2 Sep 05	Administrator appointed 16 January 2006
3830	Ghungalou Aboriginal Corporation	21 Oct 05	Administrator appointed 16 January 2006
1999	Gkuthaarn Aboriginal Corporation	9 Feb 06	Administrator appointed 3 April 2006
2824	Goreta Aboriginal Corporation	22 Jul 05	Administrator appointed 5 September 2005
1754	Kamilaroi Employment Aboriginal Corporation	22 Nov 05	Section 60A notice issued 16 January 2006
3037	Kukatj Aboriginal Corporation	9 Feb 06	Administrator appointed 3 April 2006
680	Link-up (QLD) Aboriginal Corporation	13 Feb 06	Administrator appointed 26 June 2006
761	Mutitjulu Community Health Service (Aboriginal Corporation)	31 Jan 06	Administrator appointed 16 March 2006
1838	Nyangatjatjara Aboriginal Corporation	3 Feb 06	Administrator appointed 28 April 2006
1519	Orana Aboriginal Corporation	11 Nov 05	Administrator appointed 28 November 2005
2	Urapuntja Health Service Aboriginal Corporation	21 Nov 05	Administrator appointed 16 March 2006
3409	Uwoykand Tribal Aboriginal Corporation	29 Aug 05	Administrator appointed 3 October 2005

Attachment 6

Corporations where new administrators were appointed 2005–06



This table lists corporations for which administrators were appointed under section 71 of the ACA Act during 2005–06.

Date appointed	ICN	Corporation	Administrator
29 Aug 05	3805	Billa Downs Aboriginal Corporation	Bob Brewster
16 Jan 06	2912	Eidsvold Wakka Wakka Aboriginal Corporation	Lindsay Roberts
16 Jan 06	3830	Ghungalou Aboriginal Corporation	Lindsay Roberts
3 Apr 06 1 Jul 06	1999	Gkuthaarn Aboriginal Corporation	Peter McQuoid Tony Birch
5 Sep 05	2824	Goreta Aboriginal Corporation	Peter Lanthois
3 Apr 06 1 Jul 06	3037	Kukatj Aboriginal Corporation	Peter McQuoid Tony Birch
16 Jun 06	680	Link-up (QLD) Aboriginal Corporation	Barry Jameson
13 Mar 06	761	Mutitjulu Community Health Service (Aboriginal Corporation)	Eamonn Thackaberry
28 Apr 06	1838	Nyangatjatjara Aboriginal Corporation	Eamonn Thackaberry
28 Nov 05	1519	Orana Aboriginal Corporation	Peter Scolari
29 Aug 05	942	Parnngurr Aboriginal Corporation	Brian McMaster
13 Mar 06	2	Urapuntja Health Service Aboriginal Corporation	Glen Walker
5 Oct 05	3409	Uwoykand Tribal Aboriginal Corporation	Glen Walker

Attachment 7

Corporations with administrators continuing from previous years at 30 June 2006

This table lists corporations with administrations continuing from previous years, and when the administrator was appointed.

Date appointed	ICN	Corporation	Administrator	Date cancelled	Outcome
5 Apr 04	1716	Armidale Employment Aboriginal Corporation	Bob Brewster	31 Aug 06	Liquidator appointed
18 May 05	1269	Dubbo Googars Aboriginal Corporation — CDEP	Andrew Bowcher		
16 Jul 02	2133	Goomburrup Aboriginal Corporation	Eamonn Thackaberry		
21 Nov 03	2541	Kununurra Region Economic Aboriginal Corporation	Eamonn Thackaberry		
12 Apr 04	54	Mount Morgan Aboriginal Corporation	Glen Walker	25 Sep 06	Handed back to members control 25 Sept 06
24 Mar 03	662	Munjuwa Health Housing and Community Aboriginal Corporation	Peter Sheville		
1 Nov 04	560	Piccadilla Aboriginal Corporation	Bob Brewster		
29 Sep 04	2749	Three Ways Aboriginal Corporation	Andrew Bowcher		
31 Oct 03	289	Wirrimanu Aboriginal Corporation	Bob Smillie	22 Nov 03	Replaced by Joe Schiavi
22 Nov 03			Joe Schiavi	23 May 04	Replaced by Ian Swan
24 May 04			Ian Swan	23 Feb 07	Replaced by Brian McMaster
24 Feb 07			Brian McMaster		
27 Jun 05	4088	Yapatjarra Aboriginal and Torres Strait Islander Corporation for Health Services	Lorraine Forman	9 Feb 07	Handed back to members control 9 Feb 07

Attachment 8

Liquidations in progress at 30 June 2006



This table lists corporations where liquidation was in progress under the ACA Act at 30 June 2006.

ICN	Corporation	State	Date appointed
2293	Aboriginal and Torres Strait Islander Corporation for All Sports, Health and Recreation	Qld	29 May 03
3716	Allawah Aboriginal and Torres Strait Islander Corporation	NSW	21 Oct 05
227	Balangarri Aboriginal Corporation	WA	28 Jul 99
893	Boree Aboriginal Corporation	NSW	13 Apr 04
1449	Carnma CDEP Aboriginal Corporation	NSW	13 Feb 04
164	Central Qld Aboriginal Corporation for Training Resources	Qld	30 May 97
198	Centralian Aboriginal Organisation Enterprise (Aboriginal Corporation)	NT	21 Nov 05
1766	Coolgaree Youth Movement Aboriginal Corporation	Qld	18 Aug 04
1930	Durahrwa Training and Development Aboriginal Corporation	NSW	10 May 05
4050	Gangali Aboriginal Corporation	Qld	13 Oct 05
2032	Giru Dala Council of Elders Aboriginal Corporation	Qld	25 May 06
2824	Goreta Aboriginal Corporation	SA	2 Mar 06
1696	Guddoo Marddah Aboriginal Corporation	WA	23 Feb 00
1674	Gundabooka Aboriginal Corporation	NSW	14 Aug 02
1579	Gunyah Construction Aboriginal Corporation	NSW	12 Jun 01
2202	Keriba Mina Torres Strait Islander Corporation for Development	Qld	2 Feb 06
328	Kerrup Jmara Elders Aboriginal Corporation	VIC	2 Apr 01
3950	Mackay Bama Dorge Lag Aboriginal and Torres Strait Islander Corporation	Qld	25 May 06
2416	Marruwayura Aboriginal Corporation	WA	16 Mar 06
3639	Martidja Bunyjima Aboriginal Corporation	WA	29 May 03
549	Mearu Djarula Aboriginal Corporation	WA	20 Apr 99
799	Minbarni Aboriginal Corporation	NT	13 Mar 06
3553	Murrin Bridge Vineyard Aboriginal Corporation	NSW	7 Mar 05
1476	Narrogin Aboriginal Corporation	WA	16 Aug 01
272	Ngaku Aboriginal Corporation Multi-Purpose Centre	NSW	3 Nov 04
957	NSW Women's Aboriginal Corporation	NSW	2 May 00
2704	Orana Barellan Aboriginal Corporation	NSW	12 Jun 99
3727	Port Hedland Indigenous Media Aboriginal Corporation	WA	23 Sep 05
87	Sports Aboriginal Corporation of Tasmania	TAS	6 Oct 00
1551	Wandanooka Aboriginal Corporation	WA	4 Oct 99
2323	Warrego Aboriginal Corporation	Qld	28 Nov 02
3221	Wiri/Yuwiburra "Touri" Aboriginal Corporation	Qld	7 Jun 02
778	Yabu Bindalynga Aboriginal Corporation	WA	5 Sep 95
235	Yagga Yagga Community Aboriginal Corporation	NT	23 Feb 06
2091	Yagga Yagga Enterprises Aboriginal Corporation	WA	23 Feb 06

Attachment 9

Liquidations finalised during 2005–06

The corporations listed in this table were liquidated under the ACA Act, and the liquidations were finalised during 2005–06.

ICN	Corporation
2690	Aboriginal Building Corporation (Aboriginal Corporation)
2452	Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation
2911	Cairns and District Indigenous Families Aboriginal and Torres Strait Islander Corporation
1228	Doonooch Self-Healing Aboriginal Corporation
2412	Euston Aboriginal Corporation
1122	Gubrun Aboriginal Corporation
1192	Karjini Aboriginal Corporation
1562	Manth-Thayan Aboriginal Corporation
147	Narwon Housing Aboriginal Corporation
166	North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care
77	Theodore Aboriginal Corporation
10	Tingha Aboriginal Corporation
1825	Youth Activities Services Torres Strait Islander Corporation

Attachment 10

Deregistrations completed during 2005–06

10

This table lists corporations that were deregistered under the ACA Act during 2005–06.

ICN	Corporation	State	State total
4067	Indigenous Womens Sport and Recreation Aboriginal Corporation	ACT	
3276	Jumby Mulla Aboriginal Corporation	ACT	
3730	Mulanggang Aboriginal Corporation Consultancy	ACT	3
3220	Anya-Gunya Housing Aboriginal Corporation	NSW	
3579	Bermagui Gaunji Housing Aboriginal Corporation	NSW	
2031	Bidjigal Aboriginal Corporation	NSW	
736	Brewarrina Aboriginal Cultural Museum Aboriginal Corporation	NSW	
2452	Brewarrina Aboriginal Cultural Tourism Aboriginal Corporation	NSW	
3298	Christian Aboriginal and Torres Strait Islander Corporation	NSW	
4156	Combined Council Hunter Valley Aboriginal Corporation	NSW	
3268	Cunnamulla Dreaming Aboriginal Corporation	NSW	
3799	Dhigabilla Aboriginal Men Support Group Aboriginal and Torres Strait Islander Corporation	NSW	
1228	Doonooch Self-Healing Aboriginal Corporation	NSW	
2503	Elders Council of Murrin Bridge (Aboriginal Corporation)	NSW	
2412	Euston Aboriginal Corporation	NSW	
3891	Forbes Aboriginal Corporation of Sisters	NSW	
49	Gilgandra Aboriginal Corporation	NSW	
2835	Gilgandra Aboriginal Corporation Health Service	NSW	
3148	Gluwan Nation Aboriginal Corporation	NSW	
3941	Guboo Foundation Aboriginal Corporation	NSW	
3757	La Perouse Community Aboriginal Corporation	NSW	
812	La Perouse United Aboriginal Corporation for Sport and Recreation	NSW	
3781	Marrambang Marra Aboriginal Corporation	NSW	
3856	Moree Kamilaroi Warriors (RLFC) Aboriginal Corporation	NSW	
2601	Muli Muli Health Post Aboriginal Corporation	NSW	
147	Narwon Housing Aboriginal Corporation	NSW	
3853	New South Wales Aboriginal Junior Rugby League Association Aboriginal Corporation	NSW	
2647	Ngamba Local Aboriginal Corporation	NSW	
1099	Ngarrpaana CDEP Aboriginal Corporation	NSW	
3787	Nhantu Karra Karra Indigenous Aboriginal Corporation	NSW	
3866	Niigarr Baygal Mens Aboriginal Corporation	NSW	
3372	Ningi Aboriginal Corporation	NSW	

ICN	Corporation	State	State total
3967	Nye Bros Aboriginal Corporation	NSW	
3813	Peak Hill Aboriginal Corporation	NSW	
3892	Thungutti Gooree Sports & Recreation Aboriginal Corporation	NSW	
3895	Thungutti Nulla Nulla Aboriginal Corporation Day Care and Pre School	NSW	
3894	Thungutti Rugby League Football Club (Aboriginal Corporation)	NSW	
10	Tingha Aboriginal Corporation	NSW	
3523	Tru Colors Aboriginal Corporation	NSW	
2620	Walealu Aboriginal Corporation	NSW	
3516	Walgett Youth and Community Development Aboriginal Corporation	NSW	
2154	Wdajri Myiral Elders Aboriginal Corporation	NSW	
3299	We Do Care Aboriginal Corporation	NSW	
3383	Winarrkirrpa Aboriginal Corporation	NSW	
819	Wutuma Keeping Place Aboriginal Corporation	NSW	
1639	Wyaliba Aboriginal Corporation	NSW	43
2690	Aboriginal Building Corporation (Aboriginal Corporation)	NT	
2680	Arrernte Security of Central Australia Aboriginal Corporation	NT	
3025	Gumatj-Rirratjingu Leasing Aboriginal Corporation	NT	
3621	Ikuntji Artists Aboriginal Corporation	NT	
3522	Laramba Arts Aboriginal Corporation	NT	
3532	Puntutjarrpa Council (Aboriginal Corporation)	NT	
3163	Warkuwa (Emu Rockhole) Aboriginal Corporation	NT	7
1464	'Gindaaja' Yarrabah Youth Sports and Recreation (Aboriginal Corporation)	QLD	
2892	'Kurrimundi' Aboriginal and Torres Strait Islander Corporation	QLD	
1518	'Woyan Min' The Aurukun Community Development and Welfare Aboriginal Corporation	QLD	
1884	Ait Kadal Clan Torres Strait Islander Corporation	QLD	
3932	Badi Fisheries (Torres Strait Islanders) Corporation	QLD	
2568	Badjiri Aboriginal Corporation for Culture and Land	QLD	
3778	Barbarian Woorawa Aboriginal Sports and Recreation Corporation	QLD	
1982	Bar-Bar-Rum Tribal Aboriginal Corporation	QLD	
1935	Binthi Aboriginal Corporation	QLD	
2408	Biraruki Djodjongatjoro Outstation Aboriginal Corporation	QLD	
2929	Budjiti Aboriginal Corporation for Land, Culture and Heritage	QLD	
3456	Bunda Cultural Aboriginal Corporation	QLD	
3524	Bundarra Aboriginal Corporation	QLD	
4413	Buruja Aboriginal and Torres Strait Islander Corporation	QLD	
3792	Bwgcolman Business Incubator Aboriginal Corporation	QLD	
1280	Bwgcolman Warrior Boxing Club Aboriginal Corporation	QLD	
2911	Cairns & District Indigenous Families Aboriginal and Torres Strait Islander Corporation	QLD	

ICN	Corporation	State	State total
1975	Cairns and District Aboriginal and Torres Strait Islander Corporation for Women	QLD	
1480	Caloundra and District Aboriginal and Torres Strait Islander Corporation	QLD	
2417	Cape York Environment Foundation Aboriginal Corporation	QLD	
2578	Central Queensland Kyou Aboriginal Corporation	QLD	
2211	Central Western Gangalu Aboriginal Corporation	QLD	
3765	Cherbourg Mens Action Group Aboriginal Corporation	QLD	
3794	Cloncurry Performing Arts Aboriginal Corporation	QLD	
3132	Creative Training Aboriginal Corporation	QLD	
829	Diocese of Cairns Catholic Council of Aboriginal and Torres Strait Islander Corporation	QLD	
3776	Duhlgubadda Aboriginal Corporation	QLD	
3933	Erub Mekik Le Torres Strait Islander Corporation	QLD	
3784	Gia Traditional Aboriginal Corporation	QLD	
1986	Gold Coast Aboriginal and Torres Strait Islander Corporation for Child Care	QLD	
1972	Gold Coast Aboriginal and Torres Strait Islander Corporation for Women	QLD	
2482	Goorin Mulla Regional Artist's Aboriginal Corporation	QLD	
3806	Gu-Gu-Bara-Bi Aboriginal Corporation	QLD	
3886	Gunggari Aboriginal Corporation for Land	QLD	
1568	Gurindal Aboriginal and Torres Strait Islander Corporation for Cell Visitors	QLD	
1665	Jukambe Aboriginal and Torres Strait Islander Corporation	QLD	
2610	Jymbilung Aboriginal and Torres Strait Islander Corporation	QLD	
2624	Kamu Kamu Jikan Bawa Ngananga Kari Aboriginal Corporation	QLD	
2655	Kargoolnah Blackall Aboriginal and Torres Strait Islander Corporation	QLD	
1146	Karloo Aboriginal and Torres Strait Islander Corporation	QLD	
2235	Kemus Torres Strait Islander Corporation	QLD	
2355	Komilario Land Aboriginal Corporation	QLD	
2051	Koranga Health Action Torres Strait Islander Corporation	QLD	
1516	Kuku Ya'o Aboriginal Corporation	QLD	
1562	Manth-Thayan Aboriginal Corporation	QLD	
2574	Mardigan Aboriginal Corporation for Land	QLD	
3821	Mathainab-au Fisheries (Torres Strait Islanders) Corporation	QLD	
3968	Miminni Indigenous Womens Aboriginal Corporation	QLD	
2847	Moonlight Aboriginal Corporation	QLD	
972	Mullen-Budda Tribal Aboriginal Corporation	QLD	
2039	Munda Goala Research Aboriginal Corporation	QLD	
3921	Murdi Gudi Mens Group Aboriginal Corporation Dalby QLD	QLD	
2100	Muthanth Aboriginal Corporation	QLD	
2174	Ngadjon Tribal & Cultural Aboriginal Corporation	QLD	

ICN	Corporation	State	State total
2377	Ngarang-Wal Gold Coast Aboriginal Corporation and Land Council	QLD	
1964	Ngarrabullgin Tourism Aboriginal Corporation	QLD	
938	Ngooderi Sports Aboriginal Corporation	QLD	
166	North Queensland Aboriginal and Torres Strait Islander Corporation for Child Care	QLD	
1118	Nyawaygi Aboriginal and Torres Strait Islander Corporation for Womens Issues	QLD	
445	Nyletta Aboriginal and Torres Strait Islander Corporation for Community Advancement	QLD	
803	Nynugmba Bukumba Aboriginal Corporation for Sport	QLD	
2710	Old Doomadgee Traditional Owners Aboriginal Corporation	QLD	
1208	Palm Island Aboriginal Corporation for Home and Community Care	QLD	
3709	Palm Island Mens Business Group Aboriginal Corporation	QLD	
802	Palm Island Netball Association Aboriginal Corporation	QLD	
3443	Pearson and Sons Aboriginal Corporation	QLD	
1927	Poonko Aboriginal Corporation	QLD	
3930	Porumal-Gal Fisheries (Torres Strait Islanders) Corporation	QLD	
2589	Queensland Aboriginal & Islander Health Forum (Aboriginal Corporation)	QLD	
2820	Queensland Indigenous Rugby League Association (Aboriginal Corporation)	QLD	
3534	Redbank, Sport, Culture and Recreation Aboriginal Corporation	QLD	
2549	Remote Indigenous Media Association of Queensland (Aboriginal Corporation)	QLD	
1865	Rirmerr Aboriginal Corporation	QLD	
2196	Sagiba Erubian Torres Strait Islander Corporation	QLD	
657	South East Queensland Aboriginal Community Care Agency Aboriginal Corporation	QLD	
3885	South West Indigenous Aboriginal Corporation	QLD	
3820	South West Queensland Aboriginal Corporation	QLD	
2471	Suibaidam Clan Torres Strait Islander Corporation	QLD	
2096	Thakilanchi Ikalin Cape Direction Aboriginal Corporation	QLD	
1967	The Harold Jackson Progress Aboriginal Corporation	QLD	
2558	The North Coast Aboriginal and Torres Strait Islander Corporation for Legal Service	QLD	
77	Theodore Aboriginal Corporation	QLD	
2387	Tjilpatha Aboriginal Corporation	QLD	
4222	TNQ Employment and Training Aboriginal Corporation	QLD	
3910	Toowoomba and District Aboriginal Corporation for Health	QLD	
3259	Toowoomba and Districts Aboriginal Corporation for Community Support Group	QLD	
1418	Townsville Aboriginal and Torres Strait Islander Corporation for Mental Health	QLD	
2207	Townsville/Thuringowa Torres United Sports and Recreation Torres Strait Islander Corporation	QLD	

ICN	Corporation	State	State total
2875	Undumbi Land Council Aboriginal Corporation	QLD	
1789	Waah'ur Paant Aboriginal Corporation	QLD	
1644	Waridube Aboriginal and Torres Strait Islander Corporation	QLD	
3931	Warraber-Gal Fisheries (Torres Strait Islanders) Corporation	QLD	
2354	Wide Bay Aboriginal & Islander Community Health Service Aboriginal and Torres Strait Islander Corporation	QLD	
3505	Wontoup Aboriginal and Torres Strait Islander Corporation	QLD	
2632	Wulburjubur Aboriginal Corporation	QLD	
3205	Wuli Wuli Aboriginal Corporation	QLD	
2576	Wunya Australian Aboriginal Corporation	QLD	
4078	Yapatjarra Aboriginal and Torres Strait Islander Corporation for Community Health Services	QLD	
2446	Yarwathin Aboriginal Corporation	QLD	
3798	Yelangi Aboriginal and Torres Strait Islander Corporation	QLD	
1825	Youth Activities Services Torres Strait Islander Corporation	QLD	101
3237	Arabana Utjulya Aboriginal Corporation	SA	
3775	Arabunna Finnis Springs Aboriginal Corporation	SA	
2682	Kokatha Mula Aboriginal Corporation	SA	
3518	MrunMile South East Land Council Aboriginal Corporation	SA	
1940	Network Youth Workers Aboriginal Corporation	SA	
3384	Newchurch Aboriginal Corporation	SA	
2810	Southern Land and Sea Council Aboriginal Corporation	SA	
2925	Waru Tjaangi Aboriginal Corporation	SA	8
2317	United Coalition Aboriginal Corporation	TAS	1
2981	Coomburra Community Justice Panel Aboriginal Corporation	VIC	
3074	Djeetgun Kurnai Womens Aboriginal Corporation	VIC	
1692	Glenthompson Aboriginal Corporation	VIC	
1701	Jmara Aboriginal Corporation Community Justice Panel	VIC	
1401	Koorie Diabetes Services Victoria (Aboriginal and Torres Strait Islander Corporation)	VIC	
2661	Victorian Aboriginal Corporation Golf Association	VIC	
3107	Wurruwila Aboriginal Corporation	VIC	7
762	Curtin Students Aboriginal and Torres Strait Islander Corporation	WA	
1122	Gubrun Aboriginal Corporation	WA	
1192	Karijini Aboriginal Corporation	WA	
2773	Kimberley Aboriginal Pastoralists Association Aboriginal Corporation	WA	
3700	Martu Land Aboriginal Corporation	WA	
753	MSU Aboriginal Corporation	WA	
3079	Ngurra Wangkamagayi Aboriginal Corporation	WA	
3511	Upper Blackwood Aboriginal Corporation	WA	
3512	Yok Mia Mia Aboriginal Corporation	WA	9

Attachment 11

Top 100 corporations with highest known income and assets

This table lists the top 100 corporations by income and assets during 2005–06.

ICN	Corporation name	Total	Rank
29	Bawinanga Aboriginal Corporation	\$40,330,856	1
868	Julalikari Council Aboriginal Corporation	\$22,461,952	2
2719	Kaarta-Moorda Aboriginal Corporation	\$19,999,601	3
104	Marra Worra Worra Aboriginal Corporation	\$19,999,321	4
2102	Bungala Aboriginal Corporation	\$19,614,471	5
1925	Kurra Aboriginal Corporation	\$18,865,962	6
1902	Anangu Pitjantjatjara Services Aboriginal Corporation	\$16,422,242	7
2001	Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation	\$16,244,209	8
232	Southern Aboriginal Corporation	\$16,156,117	9
3027	Derby Aboriginal Health Service Council Aboriginal Corporation	\$16,028,131	10
2169	Kurtijar Aboriginal Corporation	\$15,978,181	11
500	Murchison Region Aboriginal Corporation	\$15,456,509	12
1124	Booroongen Djugun Aboriginal Corporation	\$15,405,671	13
27	Durri Aboriginal Corporation Medical Service	\$15,344,739	14
557	Ngaanyatjarra Health Service (Aboriginal Corporation)	\$14,545,380	15
319	Western Desert Puntukurnuparna Aboriginal Corporation	\$14,014,684	16
1270	Yarnteen Aboriginal and Torres Strait Islanders Corporation	\$13,901,498	17
1034	Mildura Aboriginal Corporation	\$13,111,614	18
21	Kimberley Land Council Aboriginal Corporation	\$12,997,335	19
181	Illawarra Aboriginal Corporation	\$12,674,755	20
447	Mawarnkarra Health Service Aboriginal Corporation	\$11,858,978	21
3068	Katherine West Health Board Aboriginal Corporation	\$11,771,705	22
267	Tjuwanpa Outstation Resource Centre (Aboriginal Corporation)	\$11,272,940	23
4170	Sunrise Health Service Aboriginal Corporation	\$11,238,046	24
178	Indigenous Tasmanians Aboriginal Corporation	\$11,026,542	25
1195	Granites Mine Affected Area Aboriginal Corporation	\$10,885,151	26
1065	Winnam Aboriginal and Torres Strait Islanders Corporation	\$10,331,040	27
12	Broome Regional Aboriginal Medical Service (Aboriginal Corporation)	\$10,077,154	28
2570	Maari Ma Health Aboriginal Corporation	\$9,482,826	29
1725	Coen Regional Aboriginal Corporation	\$9,445,120	30

ICN	Corporation name	Total	Rank
414	Ngurratjuta/Pmara Ntjarra Aboriginal Corporation	\$8,953,314	31
2958	South-West Aboriginal Medical Service Aboriginal Corporation	\$8,910,546	32
197	Bega Garnbirringu Health Services Aboriginal Corporation	\$8,905,283	33
283	Anyinginyi Health Aboriginal Corporation	\$8,881,737	34
1084	Ramingining Homelands Resource Centre Aboriginal Corporation	\$8,450,359	35
651	Ngoonjuwah Council Aboriginal Corporation	\$8,339,674	36
1094	Bama-Ngappi-Ngappi Aboriginal Corporation	\$8,234,913	37
90	Mowanjum Aboriginal Corporation	\$8,126,058	38
2004	Goondir Aboriginal & Torres Strait Islanders Corporation for Health Services	\$8,071,109	39
1855	Wirraka Maya Health Service Aboriginal Corporation	\$8,050,312	40
1467	Julalikari Buramana Aboriginal Corporation	\$8,043,120	41
3897	Groote Eylandt and Bickerton Island Enterprises Aboriginal Corporation	\$7,995,132	42
3003	Nooda Ngulegoo Aboriginal Corporation	\$7,531,921	43
1870	Ngangganawili Aboriginal Community Controlled Health and Medical Services Aboriginal Corporation	\$7,364,400	44
1386	Wurli-Wurlinjang Aboriginal Corporation	\$7,330,482	45
1061	Mungoorbada Aboriginal Corporation	\$7,314,709	46
2043	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation	\$7,241,040	47
2458	Gundjeihmi Aboriginal Corporation	\$7,229,801	48
1274	Njernda Aboriginal Corporation	\$7,172,907	49
285	Kuwinywardu Aboriginal Resource Unit Aboriginal Corporation	\$7,148,979	50
275	Ord Valley Aboriginal Health Service Aboriginal Corporation	\$6,994,607	51
67	Central Australian Aboriginal Media Association (Aboriginal Corporation)	\$6,907,453	52
2705	Wila Gutharra Community Aboriginal Corporation	\$6,820,959	53
2065	Amangarra Aboriginal Corporation	\$6,802,461	54
2256	Pilbara Meta Maya Regional Aboriginal Corporation	\$6,752,691	55
593	Burringurrah Community Aboriginal Corporation	\$6,606,238	56
309	Yulella Aboriginal Corporation	\$6,587,732	57
4028	Southern Barkly Aboriginal Corporation	\$6,500,309	58
840	Kabi Kabi Aboriginal Corporation	\$6,462,854	59
42	Mindibungu Aboriginal Corporation	\$6,409,409	60
559	Pius X Aboriginal Corporation	\$6,323,914	61
1716	Armidale Employment Aboriginal Corporation	\$6,104,762	62
426	Djarindjin Aboriginal Corporation	\$6,092,308	63
3783	Townsville Thuringowa Indigenous Peoples Community Employment Enterprise Development Aboriginal Corporation	\$6,083,620	64
1866	Nirrumbuk Aboriginal Corporation	\$6,022,155	65
182	South Coast Medical Service Aboriginal Corporation	\$5,994,837	66

ICN	Corporation name	Total	Rank
134	Walungurru Community Council Aboriginal Corporation	\$5,890,486	67
2653	Doomadgee CDEP Aboriginal Corporation	\$5,855,930	68
616	Jarlmadangah Burru Aboriginal Corporation	\$5,813,319	69
2409	Kunawarrtji (Aboriginal Corporation)	\$5,810,006	70
2273	Bidgerdii Aboriginal and Torres Strait Islanders Corporation Community Health Service Central Queensland Region	\$5,765,264	71
1239	Winda-Mara Aboriginal Corporation	\$5,755,987	72
552	Yura Yungi Medical Service Aboriginal Corporation	\$5,717,061	73
35	Kununurra Waringarri Aboriginal Corporation	\$5,470,662	74
268	Carpentaria Land Council Aboriginal Corporation	\$5,381,386	75
1213	Kuku Djungan Aboriginal Corporation	\$5,366,348	76
1754	Kamilaroi Employment Aboriginal Corporation	\$5,364,614	77
3593	Ngarliyarndu Bindirri (Corporate CDEP) Aboriginal Corporation	\$5,335,558	78
3061	Hedland CDEP Aboriginal Corporation	\$5,150,441	79
631	Mudth-Niyleta Aboriginal and Torres Strait Islanders Corporation	\$5,149,362	80
2960	Aboriginal Movement for Outback Survival Aboriginal Corporation	\$5,140,143	81
620	Yarrowarra Aboriginal Corporation	\$4,976,753	82
1471	Ramahyuck District Aboriginal Corporation	\$4,955,451	83
1310	Warlayirti Artists Aboriginal Corporation	\$4,880,758	84
1956	Puntuturnu Aboriginal Medical Service Aboriginal Corporation	\$4,878,877	85
914	Broome Aboriginal Media Association (Aboriginal Corporation)	\$4,864,744	86
1302	Wongatha Wonganarra Aboriginal Corporation	\$4,861,262	87
3202	Guri Wa Ngundagar Aboriginal Corporation	\$4,823,798	88
3309	Kaata-Koorliny Employment and Enterprise Development Aboriginal Corporation	\$4,735,508	89
364	Goldfields Land and Sea Council Aboriginal Corporation	\$4,725,244	90
113	Kalumburu Aboriginal Corporation	\$4,723,729	91
1163	Cape York Land Council Aboriginal Corporation	\$4,640,815	92
913	Gurang Land Council (Aboriginal Corporation)	\$4,597,141	93
97	Quirindi Aboriginal Corporation	\$4,559,953	94
108	KASH Aboriginal Corporation	\$4,510,765	95
69	Walhallow Aboriginal Corporation	\$4,500,775	96
2541	Kununurra Region Economic Aboriginal Corporation	\$4,492,463	97
1998	Charleville and Western Areas Aboriginal and Torres Strait Islanders Corporation for Health	\$4,433,254	98
1996	North Queensland Land Council Native Title Representative Body Aboriginal Corporation	\$4,407,365	99
1497	Jibulwanagu Outstation Resources Association Aboriginal Corporation	\$4,404,349	100

Attachment 12

Booklet— Get in on the Act

12

What is it?

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) will replace the *Aboriginal Councils and Associations Act 1976* (the ACA Act). For most Aboriginal and Torres Strait Islander corporations it is an optional law to take account of their special needs and circumstances.

When will it start?

The CATSI Act was passed by the Australian Parliament in October 2006. It will start on 1 July 2007, to coincide with the start of the financial year 2007–08.

Who does it affect?

It affects all corporations incorporated under the ACA Act, and groups and corporations planning to incorporate under this Act.

What do corporations need to do?

Corporations registered with the ACA Act will not have to apply for registration under the CATSI Act. This is because a second Act, called the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*, makes sure that all corporations that are under the ACA Act will automatically be covered by the CATSI Act.

The main thing that existing corporations should do to prepare is to learn about the changes.

In the coming months, the Registrar's office will publish a set of rules that corporations can adopt before the CATSI Act starts so that they are as ready as possible. Groups and corporations planning to incorporate under the ACA Act before 1 July 2007 will be able to adopt these rules so that they do not need to make as many changes after the CATSI Act starts.



Will corporations be given time to make changes?

While the CATSI Act will apply from 1 July 2007, corporations will have up to two years to make the necessary changes to comply with the new law. This is called the 'transitional period' and the Registrar can allow corporations an extra period of six months to comply if they have special reasons.

More information on this transitional period is available in ORAC's fact sheet *Arrangements for corporations to move to the new CATSI Act*.

Why a new Act?

Since 1976 there have been many changes in the role and functions of Aboriginal and Torres Strait Islander corporations. There are now about 2500 of them registered under the ACA Act. Many deliver essential services such as medical care, and infrastructure such as power stations, to remote Indigenous communities or they might hold land for Indigenous groups. Most native title corporations are registered under the ACA Act, as are most remote Indigenous arts centres.

There have also been many changes to the law of corporate governance and regulation. The ACA Act is 30 years old and is out-of-date with these modern corporate governance laws.

The new Act has been developed from an independent review of the ACA Act.

Since the new Act was introduced into parliament in June 2005, amendments have been made to take into account people's concerns. To support the Act, two other Acts have been passed:

- the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*, which will help corporations transfer to the new law
- the *Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Act 2006*, which amends the Corporations Act, removing any contradictions or gaps between the two laws.

Why is it so big?

The new Act creates more flexibility for corporations to design a set of rules that better suit their own culture and circumstances. While this creates more sections, it will be of great benefit to the corporations themselves.

The Act also reduces red tape by, for example, streamlining how corporations have to report. Most small and medium corporations will have reduced reporting requirements whereas large corporations are likely to have more. Setting out all these different reporting requirements makes the Act larger but will benefit most corporations.

It also includes new provisions such as the rights and obligations of directors and other managers, the rights of members and the support that is available.

The ACA Act was unclear about which parts of modern corporations law applied to Aboriginal and Torres Strait Islander corporations. To understand the ACA Act you needed to read case law and parts of the Corporations Act. The new Act includes the parts of the Corporations Act that are mirrored in the new Act.

Impact on corporations

Rights

NEW The Act says it is a special measure intended to benefit Indigenous people, providing a safeguard for how it is interpreted and administered.

Registration

NEW To register, corporations must have at least five members, although the Registrar can exempt small corporations from this requirement under certain circumstances.

NEW People wanting to incorporate must give evidence that they are ready for it—for example, that 75 per cent of the group have agreed to apply for registration and that they have agreed to the rules. This encourages registration of corporations that will be sustainable.

NEW A body corporate registered under another law will be able to seamlessly transfer its registration to the CATSI system if certain requirements are met. A CATSI corporation will also be able to easily transfer its registration to the Corporations Act or a state or territory law. A large corporation, for example, may decide that its future development would be best served by becoming a Corporations Act company.

NEW Corporations will be able to amalgamate, either by an administrative process approved by the Registrar or by applying to a court. Amalgamations will be voluntary and may be desirable when a number of different corporations service a particular area or Indigenous group.

Names

NEW A corporation will be required to have the words ‘Aboriginal corporation’, ‘Torres Strait Islander corporation’, ‘Indigenous corporation’, ‘Aboriginal and Torres Strait Islander corporation’ or ‘Torres Strait Islander and Aboriginal corporation’ as part of its name. This replaces the requirement for all corporations registered under the ACA Act to use the words ‘Aboriginal Corporation’ or ‘Torres Strait Islanders Corporation’ as part of its name.

NEW A registered native title body corporate will have to use these words or the abbreviation ‘RNTBC’ as part of its name to signal to third parties that the corporation looks after native title rights and interests.

Indigeneity

NEW Corporations can choose whether to allow non-Indigenous people, for example, experts, spouses and step children, as members or directors through their constitution. Indigenous people will always be in the majority so even if a corporation chooses to allow non-Indigenous members the corporation will always be controlled by Indigenous people. This is an option for corporations—it is not compulsory to allow non-Indigenous people to be members or directors; it just gives corporations a new option.

Native title

NEW The new Act makes sure that requirements imposed on a corporation or individual by native title legislation does not conflict with obligations under the Act.

Internal governance framework

NEW A sensible approach to internal governance is built into the Act to set corporations up to succeed, with room to tailor rules to their own special circumstances.

NEW All corporations will be required to have a constitution which sets out the corporation's aims, its name, a process for resolving disputes and any other matters the corporation wishes. An eligibility requirement, such as that a member must live in a particular region, is an example of a matter that the corporation may wish to include in its constitution.

NEW Like the Corporations Act, the new Act provides a system of replaceable rules which gives guidance on critical matters related to internal governance. These rules can be modified or replaced by the corporation in its constitution. An example of a replaceable rule is that directors appoint the chair of a general meeting. A corporation could replace this with a rule, for example, that members appoint the chair.

NEW There are also provisions of the Act related to internal governance that the corporation must apply. These cannot be modified or replaced by the corporation unless the Registrar provides an exemption. An example is the rule that a corporation must hold an annual general meeting every year. The Registrar could, for example, exempt small corporations from this requirement and instead require that they only have to hold an annual general meeting every second year.

NEW The Registrar has the power to change the constitution in some circumstances, especially if the corporation acts against the interests of the members.

Registered office

NEW Large corporations must have a registered office to make sure members and others can get hold of important documents such as the corporation's rules and to make sure that people who need to can contact the corporation.

NEW Small and medium corporations must have a 'document access address' which is a place where people can inspect important documents. This can be a person's home and people wanting to inspect documents have to give seven days written notice.

Secretaries and contact persons

NEW Large corporations will be required to have a corporation secretary who is responsible for making sure that the corporation meets certain responsibilities such as lodging documents with the Registrar.

Small and medium corporations will have a contact person which is essentially a 'mailbox' role for receiving and passing on information to the directors. This is a simpler mechanism than requiring a registered office or a corporation secretary.

Members' rights

NEW Aboriginal and Torres Strait Islander corporations have members, not shareholders. The Act brings members' rights into line with the Corporations Act—for example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.

NEW The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards them.

Reporting

NEW Corporations will be streamed into small, medium and large for reporting purposes. Most small corporations won't have to provide as many reports as they did under the ACA Act. Large corporations will prepare a more comprehensive report.

NEW All corporations will have to prepare a general report. The general report will contain the basic details of directors, current members, the contact person and the document access address. Keeping this information up to date and keeping proper financial records are the key compliance requirements for small and medium corporations.

NEW The general report is much less than required under the ACA Act which, for example, requires all corporations to submit audited financial statements. Large corporations will still have to submit audited financial statements.

NEW Small corporations will only have to provide the minimum general report and may only have to provide this every second year.

NEW The streaming of corporations will be done according to their income, assets and number of employees. These amounts will be set down through regulations rather than in the Act because they will be easier to change to make sure the amounts remain relevant over the years to come.

NEW

A **small** corporation will have at least two of the following:

- Total gross operating income: less than \$100,000
- Total gross assets: less than \$100,000
- Less than 5 employees

A **large** corporation will have at least two of the following:

- Total gross operating income: more than \$5 million
- Total gross assets: more than \$2.5 million
- More than 25 employees.

Corporations that are neither large nor small will be classed as **medium**.

Note: CDEP participants will be treated as employees for the purposes of these thresholds.

Duties of directors and other managers

NEW

The Act clarifies the duties of directors and includes duties for chief executive officers and other people who manage the corporation. Directors and these managers are called officers. These duties are in line with the Corporations Act and are designed to make sure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.

NEW

These duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent.

Meetings

There are two kinds of meetings—directors and general meetings.

NEW

An annual general meeting must be held every year, although the Registrar can exempt corporations from having one if they have no need or no capacity to hold them. For example, the Registrar could allow a small corporation to hold an annual general meeting every second year.

NEW

Meetings can be held by video or teleconference—this is particularly important for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in language so long as some parts can be translated later if required.

NEW

The Registrar has a power to call general meetings. Sometimes members are concerned if meetings are not called, so this power can be used to prevent or minimise disputes.

NEW

The Registrar can also call a meeting of other people who might be interested in a problem that is affecting a particular corporation or a number of corporations. For example, the Registrar could ask government funding bodies, creditors and other corporations to all meet to sort out a particular problem.

Anti-nepotism

NEW Corporations will be prevented from giving financial benefits to directors or related parties (such as a spouse of a director) unless this is approved by members. These related party provisions will help prevent nepotism. The Registrar will be able to exempt corporations from these provisions if appropriate.

NEW The Act also strengthens members' capacity to participate in managing the corporation, such as being able to request information about director payments and approving related party transactions.

Penalties and offences

NEW While there are more offences under the new Act than previously existed under the ACA Act, most are based on those in the Corporations Act.

NEW People are prohibited from providing false or misleading statements and information—either to the Registrar, or by an officer or employee of a corporation to its directors, auditors and members.

NEW Also based on the Corporations Act is a new civil penalties scheme for serious contraventions of the Act and the option for a penalty notice scheme as an alternative to criminal prosecution.

Disqualification of directors and other managers

The Act retains the standard that people cannot be directors if they have been convicted of certain offences or are bankrupt.

NEW The Registrar will be able to apply to a court to disqualify a person from managing corporations if they have contravened a civil penalty provision of the Act, have repeatedly contravened provisions of the Act, or if they have been involved with two or more corporations that have experienced corporate failure. This is consistent with the Corporations Act.

NEW If a person is disqualified they must not 'participate in the management' of a corporation. This is broader than the ACA Act which just stops people being a director. This will help protect corporations from people who are disqualified from managing a corporation, such as chief executive officers or finance officers. This is consistent with the Corporations Act.

NEW If a person is disqualified from managing a corporation under the Corporations Act they are also automatically disqualified from managing Aboriginal and Torres Strait Islander corporations. Amendments are also planned for the Corporations Act to make sure that a person disqualified under the CATSI Act is also disqualified under the Corporations Act.

Registers

Like the ACA Act, the new Act requires corporations to keep a register of members and former members. The register of members is lodged with the Registrar.

NEW The CATSI Act allows Aboriginal and Torres Strait Islander corporations to keep the register of former members separate. This allows corporations to better manage cultural issues around publishing the names of people who may have passed away.

Other key information about corporations will be held on the Register of Aboriginal and Torres Strait Islander Corporations, including information about directors, the corporation's rules, reports such as financial statements etc. This free public register will provide key information to members and others interested in the corporation.

NEW The CATSI Act allows the Registrar to stop people inspecting some sensitive personal information contained on the Register of Aboriginal and Torres Strait Islander Corporations.

NEW The Act establishes a register of people disqualified from managing any corporations.

Registrar's powers

The Registrar can appoint an expert to examine a corporation's affairs. This means 'healthy organisation checks' can be carried out to help prevent any problems arising or increasing.

The Registrar can appoint a special administrator—this power can be used to provide a safety net against the possibility of corporate failure, especially for corporations providing essential services, infrastructure or holding land.

NEW The Registrar can examine a corporation's books and the corporation's holding company if they have one or more subsidiaries. If the books are not produced the Registrar can seek a warrant from a magistrate to support the Registrar's other powers.

The Registrar can investigate matters if necessary.

Review of decisions

NEW The Act gives people affected by certain decisions made by the Registrar the right to seek an internal review of these decisions.

NEW Most decisions made by the Registrar can also be reviewed by the Administrative Appeals Tribunal. This tribunal provides accessible review rights for people who don't agree with the Registrar's decisions.

Capacity building

NEW The Registrar can conduct research, training and education campaigns about good corporate governance for Aboriginal and Torres Strait Islander corporations.

NEW The Registrar can help corporations resolve disputes but cannot arbitrate any disputes because it might prevent the Registrar using other powers.

Complaints

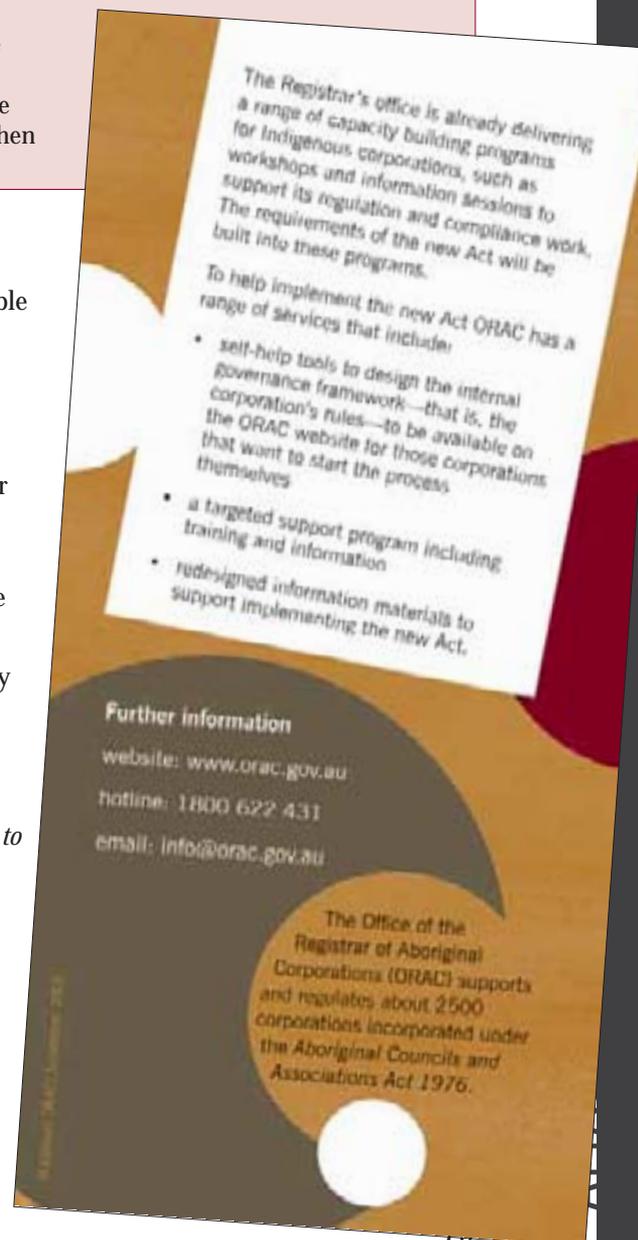
The Registrar can assist with complaints about corporations.

NEW Employees and officers can report suspected breaches of the Act to the Registrar and certain other persons, for example, auditors. Employers are prohibited from victimising them when they do so.

Implementation

Information about the Act is available on the website and from the Office of the Registrar of Aboriginal Corporations, such as:

- an overview of the CATSI Act
- the legislation itself and the other related laws that support it
- a detailed explanation of the Acts and amendments (called the explanatory memorandum)
- the minister's speeches when they were introduced in parliament
- this guide, *Get in on the Act*
- an animation featuring a bloke called Bill and others—*Say g'day to Bill*—available on CD
- fact sheets, providing more information about specific topics such as duties of directors.



13

Attachment 13

Fact sheet—What the Act means for funding bodies

What the Act means for funding bodies

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) was passed by the Australian Parliament in October 2006 and will replace the *Aboriginal Councils and Associations Act 1976* (the ACA Act) on 1 July 2007. It is the result of a review of the ACA Act in 2001, and largely reflects the review's recommendations.

Many corporations registered under the ACA Act receive funding from state and territory governments and Commonwealth government agencies. The Act makes a number of improvements that are relevant to funding bodies—such as encouraging better governed and more sustainable corporations, and providing for improved risk management by funding bodies and corporations. The measures are discussed in this fact sheet.

Corporations are set up to succeed

The Act ensures that corporations are set up to succeed. It does this by improving support for groups before and after they incorporate. Before incorporating, groups must provide:

- *evidence of readiness*: Groups wanting to incorporate must show that they are ready in a number of ways, including:
 - 75 per cent of the group has agreed to apply for registration and
 - the group has agreed on its internal governance framework.
- *an internal governance framework, which allows for tailoring rules to reflect local circumstances*: A sensible approach to internal governance for corporations is built into the Act, allowing them to tailor rules to their own special needs and circumstances while also meeting the standards set out in the Act (see a separate fact sheet—*What's in the corporation's rule book?*). For example, even though the Act is a special statute for Aboriginal and Torres Strait Islander peoples, corporations can choose to allow some non-Indigenous people as members, such as spouses, step children, directors who may be experts in a particular area or key staff members of the corporation. This will encourage better corporate governance, since it draws on expert and employee help relevant to the corporation's needs. The Act requires that Indigenous people will always be the majority, so even if a corporation chooses to allow non-Indigenous members the corporation will be controlled by Indigenous people.

Further information

website: www.orac.gov.au

hotline: 1800 622 431
(free except for mobiles)

email: info@orac.gov.au

Reporting

The Act aims to improve transparency of corporations. It does this through a number of mechanisms including:

- *group reporting*: If a corporation forms part of a larger corporate group it can report as part of the group—this is important for risk management of complex corporate and financial structures.
- *small, medium and large reporting*: Corporations will be streamed into small, medium and large for reporting purposes. Small and medium corporations will not have to provide as many reports as they did under the ACA Act. Large corporations will prepare comprehensive reports, consistent with the Corporations Act. Many already do this.

All corporations will provide a minimum 'general' report. This will contain the basic details of directors, current members, the contact person or secretary and the corporation's contact details. Keeping this information up-to-date and keeping proper financial records will be the key compliance requirements for small and medium corporations.

For small corporations this general report is the only one that they will have to provide to the Registrar, and they may only need to do so every second year. Small corporations may also only have to hold an annual general meeting every second year and can hold these by video or teleconference. This helps unfunded land holding corporations and small businesses reduce their reporting costs.

For medium corporations the general report is also the key report that they need to prepare. Some additional reporting may also be required for medium corporations. Large corporations will still have to submit audited financial statements.

If a corporation has a temporary increase in income, such as a capital grant, higher reporting may or may not be required and the Registrar may alter the registered size of a corporation to reflect this.

Ongoing support

The Act enables the Registrar to provide ongoing support to corporations such as:

- *compliance support*: The Registrar can assist Aboriginal and Torres Strait Islander corporations with compliance through training and specialist troubleshooting sessions about good corporate governance.
- *dispute resolution*: The Registrar can help corporations resolve disputes by providing non-binding advice about the registration of an Aboriginal and Torres Strait Islander corporation, the rules for the internal management of the corporation and its operations. The Registrar also aims to make sure corporations follow correct procedures during disputes to avoid litigation and if necessary refers parties to mediation (these are not funded by ORAC). The Registrar cannot mediate disputes because it might prevent the Registrar using other powers.
- *providing advice*: The Registrar can help with complaints about corporations by providing advice or referring parties to independent mediation and arbitration services (these are not funded by ORAC). The Registrar can also investigate complaints made about corporations, for example, those relating to corporate governance and compliance with legislation.
- *whistleblower provisions*: Employees and officers such as senior staff and directors can safely report suspected breaches of the Act to the Registrar and certain other people such as auditors. Corporations are prohibited from victimising whistleblowers when they report breaches. Whistleblowers whose disclosures meet certain criteria will be eligible for protection such as protection from employment termination.
- *power to call general meetings*: The Registrar has a power to call general meetings including meetings to elect boards. If members are concerned that meetings have not been called, this power can be used to step in when corporations cannot call a meeting due to quorum problems or will not call a meeting.
- *power to call meetings of interested people*: The Registrar can also call a meeting of other people interested in a problem that is affecting a corporation. For example, the Registrar could ask funding bodies, creditors and other corporations to meet to sort out a particular problem.

Clear governance standards

The CATSI Act supports clear governance standards for corporations by:

- *clarifying offences:* While there are more offences under the CATSI Act than previously existed under the ACA Act, most are based on the offences found in the Corporations Act.

For example, the CATSI Act prohibits false or misleading statements being made either to the Registrar, or by an officer or employee of a corporation to its directors, auditors and members.

- *introducing a new civil penalties scheme for serious contraventions of the Act:* The Act includes the option for a penalty notice scheme as an alternative to criminal prosecution. The Registrar can ask the Federal Court to declare a contravention has occurred. These provisions are based on the civil penalties scheme found in the Corporations Act.
- *retaining the Registrar's ability to automatically disqualify people from managing a corporation if they have been convicted of fraud or if they are bankrupt, and introducing new disqualification measures:* The CATSI Act introduces a new power for disqualifying individuals by a court if they have contravened a civil penalty provision of the Act, have repeatedly contravened provisions of the Act, or if they have been involved with two or more corporations that have experienced corporate failure. This is consistent with the Corporations Act.

The Registrar will maintain a register of people who are disqualified from managing corporations. This register will be publicly available. At a minimum funding bodies should be checking it regarding directors of corporations from 1 July 2007.

- *clarifying the duties of directors and extending the duties to chief executive officers and other people who manage the corporation:* Directors and senior managers are referred to as officers. Their duties include a duty of care, a duty of honesty, duties of disclosure and to avoid conflicts of interest, and a duty not to trade while insolvent. These duties are in line with the Corporations Act and ensure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.
- *providing anti-nepotism measures:* These prevent corporations from giving financial benefits to directors or related parties (such as a spouse of a director) unless approved by members.
- *strengthening members' capacity to participate in managing the corporation:* This is done by allowing members to request information about directors' payments and requiring members to approve related party transactions. These include transactions involving another business or personal interest of a director or even a relative of a director.
- *bringing members' rights into line with the Corporations Act:* For example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.

The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards members.

- *allowing for meetings to be held by video or teleconference:* This is particularly important for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in language so long as some parts can be translated later if required.

Streamlined and targeted intervention by the Registrar

The Act retains the Registrar's special powers of intervention with broader and clear grounds for intervening.

For example:

- **healthy organisation checks:** The Registrar can appoint an expert to examine a corporation's affairs, including subsidiaries. This means 'healthy organisation checks' can be carried out to stop any problems arising or increasing.
- **special administrator:** The Registrar can appoint a special administrator. This power can be used to provide a safety net against corporate failure, especially for corporations providing essential services, infrastructure or holding land.
- **examination of books:** The Registrar can examine a corporation's books and, if they are not produced, seek a warrant from a magistrate to enable the Registrar to investigate matters if necessary.
- **other investigations:** The Registrar can investigate matters such as when public or private funds might have been misused.

Protecting assets

Under the CATSI Act funding bodies and creditors are better able to protect assets through strengthened rights as an interested party. For example, corporations and creditors can use the external administration provisions of the Corporations Act:

- voluntary administration
- receiver and liquidator provisions
- applications to a court to seek an order to protect assets.

Further information

website: www.orac.gov.au

hotline: 1800 622 431
(free except for mobiles)

email: info@orac.gov.au

Information sharing

- **sharing non-public information:** The CATSI Act enables the Registrar to share non-public information with relevant agencies, in line with the Privacy Act.
- **public information:** ORAC maintains the Public Register of Indigenous Corporations. The Public Register provides useful and unique information about Indigenous corporations to members of the public, funding agencies and corporations themselves.

Currently under the ACA Act the information in the Public Register held by ORAC includes certificates of incorporation, applications for incorporation, rules (constitutions), details of public officers, annual financial statements, exemptions from some reporting requirements, and some documents relating to regulatory action—for example, monitoring, administration, liquidation and deregistration.

A list of all documents held by ORAC for any individual corporation since 1978 is available electronically. These documents are available in hard copy from ORAC and some, including corporations' rules (constitutions), are accessible online. A few corporations have requested that their lists of members not be published electronically, for justifiable reasons.

The Act improves the amount and accessibility of public information that is available.

- **register of members:** Like the ACA Act, the CATSI Act requires corporations to keep a register of members and former members. The register of members is lodged with the Registrar and is usually a public document available on ORAC's website.
- **register of disqualified people:** The Act establishes a register of people disqualified from managing corporations.
- **other information:** Other key information about corporations will be held on the Register of Indigenous Corporations, including information about directors, the internal governance framework, and reports such as financial statements and some information about assets held and subsidiaries controlled by corporations.
- **readily available information:** Public information will be free and easily accessible to members, creditors and other interested parties. Providing readily available information about corporations promotes good corporate governance and gives funding bodies, creditors and members greater access to information about corporations. ORAC is constantly developing more streamlined access to its public information about Indigenous corporations.

14

Attachment 14 Policy—Incorporation under ACA Act/CATSI Act



Incorporation under the Aboriginal Councils and Associations Act 1976 / Corporations (Aboriginal and Torres Strait Islander) Act 2006

Comments about this paper should be directed to:
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telephone: 1800 622 431

Published February 2007

1. Purpose

The purpose of this paper is to provide information about the most effective use of the *Aboriginal Councils and Associations Act 1976* (ACA Act) and the legislation that will repeal and replace it, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), which will commence on 1 July 2007.

2. Background to the ACA Act and the CATSI Act

The ACA Act was envisaged as a simple and flexible means for incorporating associations of Aboriginal and Torres Strait Islander people and was reserved for the use of Aboriginal and Torres Strait Islander people only. Since it began in the late 1970s, the ACA Act has become a significant vehicle for incorporating a broad range of Aboriginal and Torres Strait Islander corporations—from holding land to delivering essential services. Today 56 per cent are located in remote areas. The ACA Act is administered by the Registrar of Aboriginal Corporations who is supported by staff within the Department of Families, Community Services and Indigenous Affairs (referred to as the Office of the Registrar of Aboriginal Corporations or ORAC).

The CATSI Act was passed by the Australian Parliament on 18 October 2006. It will commence on 1 July 2007 and will replace the ACA Act. It will also be administered by the Registrar (who will then become the Registrar of Aboriginal and Torres Strait Islander Corporations). The CATSI Act was drafted in response to the recommendations of an independent review of the ACA Act undertaken in 2001–02, which identified a number of shortcomings of the ACA Act, including inadequate protection for members, rigidity of corporate design and insufficient third party protection including for funding agencies. The CATSI Act offers a special incorporation statute to meet the needs of Aboriginal and Torres Strait Islander people. It introduces a strong but flexible legislative framework that aligns with the *Corporations Act 2001*, where practicable, but accommodates the particular needs and circumstances of individual localities and groups. To acknowledge the fact that most corporations are located in remote areas and may provide essential services or hold key assets such as land, the Act also offers additional safeguards through the Registrar’s unique regulatory powers.

All corporations registered under the ACA Act will be deemed to be corporations under the CATSI Act on its commencement on 1 July 2007. Transitional arrangements setting out the process for moving from the ACA Act to the CATSI Act are in the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*.

3. Basics of a corporation

A corporation is a separate legal entity which can perform all the functions of an individual, and has therefore become one of the main economic vehicles for a group to participate in the modern world. Broadly a corporation's functions include:

- the ability to sue and be sued, while limiting the liability of individual members
- remaining the same legal entity despite changes in the identity of its members
- the ability to acquire, hold and dispose of property, including money obtained through grants and other funding
- the requirement to keep records of its spending and assets.

Some types of corporations, such as those established for charitable purposes, may also be eligible for taxation concessions.

The conduct and powers of the corporation are determined partly by its own rules and, for Aboriginal and Torres Strait Islander corporations, by the ACA Act or the CATSI Act. Generally, ultimate power of a corporation resides in the members in a general meeting, who own the corporation. However, its rules, which form a contract between the corporation and each member, the corporation and each director, and between each and every member, may allocate certain powers to its board of directors (known as the governing committee under the ACA Act). Directors have duties, including the duty to act honestly and diligently in exercising their powers and functions. The CATSI Act will clarify the statutory duties required of directors and other senior staff by aligning them with those required of the officers of mainstream corporations under the Corporations Act. This is particularly appropriate given that the powers are delegated to management and staff to conduct the day-to-day affairs of the corporation.

4. Alternative incorporation regimes

Depending on their individual circumstances, a group may choose to incorporate under a number of different legal regimes. Apart from the ACA Act/CATSI Act regimes, each state and territory has its own legislation to incorporate non-profit organisations. These provide a simple and inexpensive method under which such bodies can be established and also provide limited liability for their members if the corporation fails. The legislation is not uniform and is administered by regulatory authorities in each state and territory, rather than the Australian Securities and Investments Commission (ASIC).

Commercial organisations established to trade or make a profit normally choose to incorporate under the Corporations Act which ASIC administers. This may also be appropriate for non-profit organisations that want

to operate in more than one state or territory. Under the Corporations Act the two main types of corporations are proprietary companies and public companies, although there are different categories within these two broad types, based on the extent of the liability of its members. Generally, a proprietary company is a private company designed for a relatively small group of people who do not want it to be able to invite the public to subscribe for its share capital or to lend money to it. A public company, in contrast, may raise funds by making offers or inviting the public to purchase or subscribe for securities. A public company also has greater obligations regarding the public disclosure of its financial affairs.

Many non-profit organisations decide to incorporate under the Corporations Act as a public company limited by guarantee. Such a company does not have the power to issue shares and if it is wound up without adequate funds to discharge its liabilities each person who is then a member is liable to pay an agreed sum, normally a small amount. A public company limited by guarantee may raise funds needed for its operations by loans, subscriptions or fees and may earn and distribute its profits.

It should be noted that the Corporations Act was enacted by the Commonwealth in 2001 after the states referred some of their respective legislative powers over corporations to the Commonwealth. This referral addresses a gap in the Commonwealth's existing constitutional power regarding corporations. The referral implemented an intergovernmental agreement between the Commonwealth, the states and the territories. This agreement also regulates any future amendments to the Corporations Act.

Aboriginal and Torres Strait Islander groups that incorporate to trade, conduct major business or for-profit enterprises can choose to incorporate under the Corporations Act. However an important consideration is that groups can still incorporate for business or for-profit purposes under the ACA Act and CATSI Act, unlike state or territory associations legislation which prevents distribution of profits to members.

5. When should an organisation incorporate under the ACA Act or the CATSI Act?

Whether the ACA Act or the CATSI Act provides an appropriate mechanism for a particular group depends on the individual circumstances of the group and its income source.

Some of the factors to consider in determining whether to incorporate under the ACA Act or CATSI Act are discussed below.

Indigeneity

Both the ACA Act and the CATSI Act have eligibility requirements for organisations to incorporate under them. The most important relates to Indigeneity. The ACA Act requires all members of a corporation to be an

Aboriginal or Torres Strait Islander person or the spouse of an Aboriginal or Torres Strait Islander person. Under the CATSI Act a corporation may have non-Indigenous members as long as they are in the minority and if permitted under its rules. This means corporations can access non-Indigenous expertise or advice through various mechanisms. For example, under the ACA Act a board may buy contracted expert services or involve key staff who attend every board meeting and provide advice. Under the CATSI Act experts and key staff may be appointed or elected to the board, even if they are non-Indigenous, as full board members with decision making powers where the corporation's rules allow it.

This provides a new option for corporations to have non-Indigenous people as members or board members, although it is not compulsory and must be agreed by the members through the rules.

Internal governance rules

The CATSI Act strengthens the requirements for the internal governance rules of a corporation so that the rules satisfy certain minimum governance standards. For instance, the corporation's rules must be internally consistent, adequate and workable, given the context in which the corporation operates. A corporation's rules must also deal with certain matters, such as what dispute resolution process will apply and who may chair a general meeting. Under the CATSI Act the Registrar can direct a change to rules in some circumstances. This is in contrast to the Corporations Act which generally provides much less guidance and prescription regarding the internal governance of its corporations.

Ineligible organisations

Some types of organisations are inappropriate for registration under either the ACA Act or the CATSI Act. A trade union or a corporation providing financial services, such as a bank or a building society, may not be registered under the CATSI Act. Similarly, neither legislative regime can incorporate businesses that need to raise share capital from the public.

Corporate membership

The CATSI Act allows corporate membership so that peak bodies can become members of relevant corporations.

Specialised assistance

In contrast to other regulators, ORAC can provide a high level of assistance to corporations, from help with the drafting of rules to providing information and training about the conduct of meetings and the duties and

responsibilities of their directors and officers. Such assistance makes the ACA Act or the CATSI Act particularly suited to:

- developing sectors such as the Indigenous arts industry
- organisations that require ‘prudential’ or active regulation such as essential service providers or those that hold essential assets
- organisations where membership or clients are disempowered, such as child care centres, aged care facilities and schools
- organisations in remote areas of Australia, particularly where English is not commonly spoken
- organisations that require greater risk management than other legislative regimes can provide
- organisations that are operating in a sector where many others are incorporated with ORAC since this provides a common incorporation platform and generates economies in risk management, capacity building and information management
- land holding and native title corporations which operate in a complex environment where ORAC has considerable expertise
- corporations or sectors that will benefit from the opportunities that the ACA Act and CATSI Act offer, especially in preventative approaches such as stronger guidance on corporate design and a rolling program of ‘good governance audits’ or examinations and follow up, combined with capacity building.

Specialised regulatory powers

The unique regulatory powers of the Registrar, including the ability to appoint examiners and administrators to corporations in difficulty, makes the ACA Act and the CATSI Act especially well suited to corporations that require significant risk management, for instance, those funded to provide an essential service to a remote community. The Registrar also has the power, in certain circumstances, to call and conduct meetings of a corporation. The public register of Aboriginal and Torres Strait Islander corporations, administered by ORAC, contains financial statements and other lodged documents and provides a greater level of transparency than most other incorporation regimes.

Considering appropriateness of incorporation

There may also be funding programs where incorporation is unnecessary or inappropriate. For instance, an appropriate recipient corporation may already exist, or the amount, or duration, of the funding may not warrant the expense or administrative burden of incorporation. Pursuing an ‘auspice body arrangement’ to manage the grant on behalf of another group may be

more appropriate in this circumstance rather than incorporation. Where a group will only provide advisory services or advocacy type functions to assist a government agency, and will not need to manage funds or deliver services, then incorporation again may not be appropriate. For most groups incorporating is voluntary. However, corporations holding or managing native title under the *Native Title Act 1993* must be incorporated under the ACA Act—a requirement that will continue under the CATSI Act.

Assessing risk of existing corporations through the public register

Information about a corporation, including its financial standing, can be obtained by checking lodged annual information including financial statements which are available on the public register (available at www.orac.gov.au). The most recent public documents filed with ORAC by corporations are available online through the ORAC website. ORAC can also assist with information regarding aggregated data on risk of corporations that might be required by funding agencies.

Disqualification provisions

Certain people may be disqualified from managing a corporation. For instance, under the ACA Act, people who are undischarged bankrupts are automatically disqualified and also those convicted of certain offences are automatically disqualified as members of the governing committee. Similar restrictions will apply under the CATSI Act to people managing Aboriginal and Torres Strait Islander corporations. The CATSI Act will also establish a public register of people disqualified at the initiative of the Registrar. People disqualified from managing corporations under the Corporations Act will also be automatically disqualified under the CATSI Act.

Amalgamations and transfers

Under the CATSI Act corporations will be able to amalgamate; enabling economies in corporate overheads (although this has to always be balanced with the risk that larger corporations pose). Aboriginal and Torres Strait Islander corporations registered under other legislation can also transfer into the ACA Act or CATSI legislation.

The ACA Act does not allow for the seamless transfer of corporations between incorporation regimes. When considering whether to transfer funding between different organisations, or whether to reorganise existing organisations, agencies should also be aware that, under the ACA Act, a decision to wind-up a solvent corporation can only happen if agreed to by a special resolution of the members, that is, a 75 per cent of eligible voters who vote at a meeting. Also corporations normally have rules about distributing surplus assets that remain after all previous debts and liabilities are satisfied.

In contrast, the CATSI Act has express transfer provisions which will allow a corporation to voluntarily transfer to or from another incorporation regime. This will ensure a seamless transfer of assets and liabilities and will save the corporation from having to be wound up under the losing legislation and then registered under the receiving legislation. These transfers will still take some time but they offer a key opportunity to work with a corporation to ensure that its corporate structure and design, including its constitution, is most appropriate for the functions it carries out. Ensuring corporate design is appropriate and that directors and others are aware of their legal responsibilities, and are equipped to carry them out, are key risk management strategies. The transfer process requires the agreement of the members and proof of that agreement, for example, the minutes of the annual general meeting showing the agreement of the members.

The provisions in the Corporations Act dealing with the external administration of insolvent corporations also apply to Aboriginal and Torres Strait Islander corporations, and standard legal principles also apply regarding the priority of creditors. For instance, if a corporation is liquidated for insolvency, the Commonwealth, by way of a funding agency, may be one creditor among many others. Under the CATSI Act the Corporations Act provisions dealing with insolvent trading and the protection of employees' entitlements such as long service leave apply to Aboriginal and Torres Strait Islander corporations.

6. Actions by funding bodies

To support good corporate governance funding agencies can:

- ensure that their staff are well informed about the requirements of incorporation and associated processes, such as the use of powers to regulate corporations.
- remember that any decision by an incorporated body to transfer between other regimes and the ACA Act or the CATSI Act is voluntary and must be agreed to by a majority of its members at a general meeting.
- ensure that policies and operations do not require things to be done that are inconsistent with the law and best practice for incorporation, or are contrary to the interests of a corporation e.g. requiring directors or members to move assets without following proper processes under the law being followed or ignoring the ownership of assets by corporations.
- carefully consider any direct or indirect requirements for incorporation that they may have in place or are considering, such as funding conditions imposed on organisations about which legislation they should incorporate under and tendering criteria about the preferred incorporation model.
- ensure that relevant interests are protected through appropriate measures to prevent loss of capital assets if funding for services is transferred to another organisation and keeping the relevant records for these protection measures secure and accessible for future agency staff.

ORAC can assist funding agencies review their policies and operations to ensure legal requirements and best practice strategies are in place and provide information sessions to key agency staff on a range of matters relevant to good governance and risk management.

Where a new program is being set up that involves new service providers, ORAC also provides a pre-incorporation service which promotes incorporation when and where it is necessary and responsible. This includes:

- conducting workshops with groups providing information and advice to prepare groups wanting to incorporate
- providing advice and assistance to groups with decisions on incorporation options
- providing information on the key features of incorporation under the ACA Act and CATSI Act
- helping with the design of corporations' rules that support good governance.

7. Contact ORAC

Further information about Indigenous corporations and ORAC, including the ACA Act and the CATSI Act is available online at www.orac.gov.au or by contacting ORAC on 1800 622 431. ORAC can also provide information sessions on the ACA Act, the CATSI Act and Aboriginal and Torres Strait Islander corporations more generally.

Attachment 15 Poster—Steps to the Corporations (Aboriginal and Torres Strait Islander) Act

Australian Government
Registrar of Aboriginal Corporations

STEPS TO THE CORPORATIONS (ABORIGINAL & TORRES STRAIT ISLANDER) ACT



- July 2007**

1 July 2007
The CATSI Act begins.

July–August 2007
Finalise your financial statements for 2006–07 (like under the ACA Act).
- August 2007**

August–December 2007
Get your financial statements for 2006–07 audited (like under the ACA Act).
- September 2007**

Send your annual returns for 2006–07 to the Registrar (like under the ACA Act).
- October 2007**

September–December 2007
Hold your annual general meeting for 2006–07—either according to your constitution or, if the directors agree, the CATSI Act. The CATSI Act says you must hold an AGM by the end of November.
- November 2007**

At the AGM
Choose an auditor (examiner) for your 2007–08 accounts.
- December 2007**
- 2008**

1 July 2007 to 30 June 2009
Adopt the new CATSI model rules or modify them sometime between 1 July 2007 and 30 June 2009.

Before 30 June 2008
In 2007–08 you can choose to report under the ACA Act or the CATSI Act. If you want to report under the ACA Act you must write and let the Registrar know before 30 June 2008.
- 1 July 2009**

1 July 2009
CATSI transition period ends unless you have already adopted the new rules. You should have a CATSI constitution by this date or seek an extension of up to six months.

Glossary of terms

administration	The Registrar can appoint an administrator to govern and manage the affairs of a corporation. They offer an alternative to winding up, and aim to achieve turnaround for a struggling corporation.
capacity building	ORAC’s approach is to support individuals, groups and organisations to build on their strengths and assets. Staff use participative methodologies and access to information and training to enhance self reliance.
case management	This is about ORAC providing one staff person who draws all ORAC’s services together to assist a corporation. This means corporations receive a more personal service, and ORAC can be more informed in the way it assists corporations.
compliance	Corporations must comply with the ACA Act which sets out some rules for how Indigenous corporations must be run, and also requires some reports to be forwarded to ORAC every year.
corporate governance	Corporate governance is how people lead and run their organisations.
corporate governance training	ORAC runs training on good corporate governance for Indigenous boards, members, key staff and others.
corporations’ rules	These are the rules for how a corporation is run. Some are set down in the Act and some are created by the corporation itself. Sometimes they are called the corporation’s ‘constitution’.
deregistration	Deregistration is the cancellation of a corporation’s registration, so that it ceases to exist as a corporation. Corporations which are not operating and no longer needed will be deregistered.
incorporation	Incorporation means becoming a legal body under Australian law. This gives groups which incorporate some extra rights, and also brings extra responsibilities.

incorporation support	ORAC provides information and advice to groups before incorporating, and to corporations after they have incorporated.
registered corporations	These are corporations which have incorporated under the ACA Act and are listed on the Public Register of Indigenous Corporations maintained by ORAC
place planning	This is developing a plan for an area that looks at all its corporate governance needs—so, if there are several corporations in a particular area, then they would be looked at together. ORAC can also respond better to any big issues that affect the whole area.
plain English	ORAC tries to make sure that its publications and information are written as plainly and clearly as possible.
Public Register	Key information about corporations registered under the ACA and CATSI Acts is held on the Public Register of Aboriginal and Torres Strait Islander Corporations, which is maintained by ORAC. It includes information about directors, the corporation's rules, and reports such as financial statements etc. This free public register can be searched through ORAC's website.
regulation	The Registrar has a number of regulatory powers under the ACA Act to intervene to solve problems within corporations, such as the power to examine the records and documents of a corporation, and to appoint an administrator.
size	Under the CATSI Act, corporations will be classed as small, medium or large, depending on their income, assets and number of employees. Most small corporations will have less reporting requirements than they do under the ACA Act. Analysis by ORAC indicates that most corporations under the ACA Act will be small or medium.

Abbreviations

ACA Act	<i>Aboriginal Councils and Associations Act 1976</i>
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investment Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
the Bill	Corporations (Aboriginal and Torres Strait Islander) Bill 2005
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
CDEP	Community Development Employment Projects
COAG	Council of Australian Governments
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
ERIC	Electronic Register of Indigenous Corporations
FACSIA	Department of Families, Community Services and Indigenous Affairs
FOI Act	<i>Freedom of Information Act 1982</i>
ICCs	Indigenous Coordination Centres
ICN	Indigenous Corporation Number
MOU	Memorandum of understanding
OATSIH	Office of Aboriginal and Torres Strait Islander Health
OEA	Office of Evaluation and Audit
OIPC	Office of Indigenous Policy Coordination
ORAC	Office of the Registrar of Aboriginal Corporations
the Registrar	the Registrar of Aboriginal Corporations
the Public Register	the Public Register of Aboriginal Corporations

ORAC publication order

Fax orders to (02) 6281 2739
Inquiries 1800 622 431

CUSTOMER DETAILS

Name: _____

Company: _____

Address: _____

Ph: _____ Fax: _____

Email: _____

QTY	VIDEOS	PUBLISHED
_____	Setting up an Aboriginal corporation (Jimmy Little)	
_____	Meetings Mean Business (Jimmy Little)	
_____	ORAC DVD—Managing in two worlds	2005
	ACCREDITED TRAINING DELIVERY SUPPORT MATERIALS	
_____	Managing in Two Worlds—Cert IV governance competencies (binder folder)	
_____	Managing in Two Worlds—Cert IV learning guides (CD Rom)	
	BOOKLETS	
_____	Service charter	July 05
_____	Corporate plan 2005–07	July 05
_____	Get in on the Act	Nov 06
	FLYERS	
_____	Changing your constitution?	Nov 06
	BROCHURES	
_____	Who we are, what we do	July 05
	FACT SHEETS	
_____	FS: The CATSI Act and the Corporations Act	Feb 07
_____	FS: The Bill and the Review	July 05
_____	FS: Native title	July 07
_____	FS: Duties of directors and other officers	Dec 06
_____	FS: What the Bill means for funding bodies	Sep 06
_____	FS: Arrangements to move to the new CATSI Act	Dec 06
_____	FS: What's in the corporation's rule book?	Dec 06
_____	FS: Meetings	Jun 07
	BOOKS	
_____	ATSIS annual report 2003–04	
_____	ORAC yearbook 2002–03	2004
_____	ORAC yearbook 2003–04	
_____	ORAC yearbook 2004–05	Oct 06
_____	Report—Forum on risk issues for programs funding Indigenous corps (Canberra 14 Oct 2004)	
	NEWSLETTERS	
_____	The Oracle—Get in on the Act	May 06
_____	The Oracle—What should corporations be doing now?	Sep 06
_____	The Oracle—At last a new Act	Dec 06
_____	The Oracle—How big is big?	Apr 07
	POSTERS	
_____	Steps to the CATSI Act	May 07

ORAC publications

General information

Who we are, what we do

ORAC corporate plan

ORAC service charter

Meeting mean business—a guide to conducting a successful board meeting (video)

Managing in Two Worlds—a snapshot of ORAC and some of our corporations (DVD)

Report—Forum on risk issues for programs funding Indigenous corporations

Information about the new Corporations (Aboriginal and Torres Strait Islander) Act

Get in on the Act

The Oracle newsletter (4 issues)

Fact sheet—The CATSI Act and the Corporations Act

Fact sheet—Native Title

Fact sheet—Duties of directors and other officers

Fact sheet—What the Bill means for funding bodies

Fact sheet—Arrangements to move to the new CATSI Act

Fact sheet—What's in the corporation's rule book?

Fact sheet—Meetings

Steps to the CATSI Act (poster)

Good governance brochures

These are currently being re-written to align with the new CATSI Act.

Training

ORAC offers three types of targeted training:

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

Forms

These are currently being re-written to align with the new CATSI Act.

