



**Office of the
Registrar of Aboriginal Corporations**

Annual Report 2001 - 2002



Office of the Registrar of Aboriginal Corporations

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The Hon. Philip Ruddock
Minister for Immigration,
Multicultural and Indigenous Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to provide a report on the administration of the *Aboriginal Councils and Associations Act 1976* for the year ended 30 June 2002. The report covers the period that Mr Joe Mastrolembo of this office acted as the Registrar. Mr Mastrolembo has reviewed the report and agrees with its content.

Although the current legislation does not require the Registrar of Aboriginal Corporations to prepare an annual report, I consider it appropriate and desirable to do so.

Yours sincerely

Laura Beacroft
Registrar of Aboriginal Corporation

17 February 2003

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Our Vision is:

Aboriginal and Torres Strait Islander people managing their own affairs as separate legal entities and being able to resolve disputes internally without the need for the Registrar's intervention.

Our Corporate Direction is:

- ▶ to administer the Aboriginal Councils and Associations Act efficiently and effectively.
- ▶ to provide support services for all matters arising out of the administration of the Aboriginal Councils and Associations Act.
- ▶ to improve governing committees' awareness and understanding of their responsibilities under the Aboriginal Councils and Associations Act as well as their roles in managing the affairs of Aboriginal and Torres Strait Islander corporations.
- ▶ to promote the requirement for corporations to be accountable to their members.

Our Guiding Principle is:

In recognition of the traditional and cultural diversity of Aboriginal and Torres Strait Islanders, we strive to make the work of the Office of the Registrar of Aboriginal Corporations culturally appropriate and as far as possible, we aim to do business in a simple and flexible way.



2001-02

The Year at a Glance

What we did:

- ▶ Conducted a review of the Aboriginal Councils and Associations Act 1976;
- ▶ Developed and implemented a new computer system that will facilitate faster, paperless processes, and performance information;
- ▶ Developed enhanced training for directors/boards of organisations;
- ▶ Improved relationships with other key Indigenous agencies;
- ▶ Maintained the public database of over 3000 corporations;
- ▶ Answered an average of over 90 telephone enquiries per week;
- ▶ Assessed and dealt with over 120 complaints from members, government agencies and the public about misconduct within corporations;
- ▶ Conducted 844 searches;
- ▶ Amended the rules/objects or other data for 804 corporations.



Main activities	This year	Last year	% change
Total corporations	2783	2709	2.4%
New incorporations	187	171	9.4%
Searches	844	656	28.7%
Telephone enquiries	4660	4500	3.5%
Information and training workshops	35	25	40%
Examinations completed	18	36	50%
Administrators appointed	6	5	20%
Deregistrations	167	106	58%
Corporations under liquidation	65	96	43%
Amendments to corporation details	804	526	53%
Resources			
Staff employed (FTE)	22	22	nil

Review of the Act and Regulations

The Aboriginal Councils and Associations Act 1976 (the Act) has not been amended since 1992. Since this time significant changes have occurred in the environment in which Aboriginal corporations operate.

A review of the Act was commissioned by the Registrar in November 2000 and completed in late 2002.

The review found that an Indigenous-specific Act is still needed but that it needs to be modernised.

The review recommends that the Office of the Registrar provide special assistance to corporations to build capacity at all stages of their development, and that the Act align as much as possible with mainstream standards of corporate reporting administered by Australian Securities and Investments Commission (ASIC).

The review also recommends that the legislation be more flexible and culturally appropriate by allowing

Indigenous corporations to design their own constitutions and rules and reflect traditional decision-making processes.

The Federal Government will use the review and the results of the consultations as the basis for legislation to reform the Act during 2003.

Progress on the review is covered in Chapter 1 while a copy of the report of the Review of the Aboriginal Councils and Association Act 1976 and an Executive Summary can be viewed at www.orac.gov.au.

Electronic Register of Indigenous Corporations

A new computer based workflow-oriented system and database of incorporation records has been implemented and will be further refined to meet its full potential in 2003.

Developing Relationships

The Office of the Registrar of Aboriginal Corporations (ORAC) continued to develop better working relationships with other agencies involved in Indigenous affairs during 2001-02.

Agreements have been entered into with a number of agencies to establish a framework for cooperation in areas of common interest in respect of the effective and efficient performance of each of the agencies respective operational and supervisory functions.

During the reporting period ORAC entered into Memorandums of Understanding with ATSIC's Network and Regional Offices, Aboriginal Hostels Limited and the Torres Strait Regional Authority.

Refer Chapter 4 for further detail.

Training and Information

Chapter 5 sets out details of ORAC's training and assistance provided to corporations during the reporting period and outlines its plans for implementing competency-based training in 2003.

During the year 35 training and information workshops were conducted.



During the period ORAC recognised a need for additional training and assistance for corporations. This training is conducted on a one on one basis with corporations. It is considered to be a valuable addition to the current training program and is rapidly gaining in popularity.

ORAC decided to align its training with the Indigenous Organisation Training (IOT) competency-based project with the principal objectives to:

- ▶ Demonstrably improve skills of potential and existing Indigenous directors and Boards of Indigenous organisations i.e. by accreditation of individual directors against key competencies.
- ▶ Contribute to improved Indigenous governance and management by targeting Indigenous directors and Boards involved with developing sectors (ie family violence, women's organisations), highest risk essential service organisations.
- ▶ Facilitate carriage of this project by mainstream providers, with ORAC providing limited, highly targeted and tailored special measures training in partnership with other related initiatives.

Complaints and Disputes Management

A continuing focus of ORAC is to assist corporations and their members in resolving disputes. During 2001-02 ORAC received 120 formal complaints. Many of these were dealt with without the need to take formal action, with only 18 (15 percent) resulting in the need for an examination.

The most common complaints received during the year involved allegations about:

- ▶ breaches of rules;
- ▶ discriminatory conduct by governing committees;
- ▶ improper notices and conduct of meetings;
- ▶ financial mismanagement; and
- ▶ the lack of information available to members.

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Chapter One

The Aboriginal Councils and Associations Act



The Minister for Immigration,
Multicultural and Indigenous Affairs,
The Hon Philip Ruddock

History

The need to have special legislation, which would allow Aboriginal people and Torres Strait Islanders to incorporate groups and or associations, was identified in the late 1960s.

It was considered that incorporation would provide Indigenous communities with a **legal entity** for dealing with outsiders and a means of receiving government funding for employment, business and other purposes. The Council for Aboriginal Affairs which was established by the Holt government following the 1967 referendum, concluded that the existing legislation and the experiences of Indigenous groups incorporated under the Companies Act had shown that the existing laws were too complex and onerous for most Indigenous people, especially those living in remote areas. Accordingly, it was decided that an easier and more appropriate method of incorporation was required.

However, it was not until the 1970s and the election of the Whitlam government that further discussion on this issue led to its enactment. The legislation which eventually led to the enactment of the *Aboriginal Councils and Associations Act* 1976 (the ACA Act) went before Parliament in 1976 and after considerable debate received royal assent in 1978.



Review of the Act

Since the last amendment of the ACA Act in 1992 (which saw increased external “accountability” measures introduced) there have been several significant reviews of the ACA Act, as well as two Bills proposing legislative reform, both of which eventually lapsed. The reasons for the lapse of these Bills and the findings of the reviews not being acted on in legislative reform are varied. However, there are a number of important issues raised by those reviews and proposed amendments which remain unanswered and unresolved.

There have also been significant external developments since that period. Most notably, fundamental changes to the Corporations Act, the advent of native title (and the complex interactions between the Native Title Act 1993 (Cth) (“the NT Act”) and the ACA Act) and even greater emphasis by government on the need for “accountability” of Indigenous corporations for public monies.

In November 2000 the Registrar of Aboriginal Corporations commissioned a review of the ACA Act to:

- determine its capacity to meet the contemporary corporate governance needs of Aboriginal and Torres Strait Islander people; and
- identify areas for possible legislative reform and possible changes to the regulations to more adequately meet these corporate governance needs.

To ensure the independent nature of the review an open tender process was conducted from which a multi-disciplinarian team headed by Corrs Chambers Westgarth, Lawyers of Sydney, was selected.

A Steering Committee was established to oversee the consultancy and the review process. Membership of the Steering Committee comprises the Registrar, the CEO of ATSIAC, ATSIAC’s Chief Legal Counsel, Commissioner Patricia Thompson, Peter Vaughan (Office of Aboriginal and Torres Strait Islander Affairs), Graeme Plath (Australian Securities and Investments Commission), and a representative from the Office of

the Minister for Immigration, Multicultural and Indigenous Affairs.

Since commencing work in April 2001 the Review Team has undertaken considerable consultation and research. This has included conducting workshops which were attended by representatives from a wide range of Indigenous organisations from throughout Australia, representatives of government agencies working in Indigenous affairs, State and Territory regulators, ATSIAC and other government funding bodies and representatives from major peak Indigenous organisations. The first workshop was conducted to obtain feedback from participants on issues requiring consideration as part of the review and experiences of the participants. The second workshop was to apprise participants of progress and seek their feedback on proposed changes to the ACA Act.

The Review Team also undertook separate visits and consultations with a range of ACA Act corporations, funding agencies and other government bodies, as well as considerable research of other incorporation regimes and their legislations based in Australia and overseas.

Since commencing this assignment the Review Team has prepared a number of papers detailing the outcomes of their research and consultations. One of these, the Consultation Paper, was widely distributed in March 2002. It was circulated to every ACA Act corporation, a number of non-ACA Act organisations, ATSIAC, the Australian Securities and Investments Commission (ASIC), Office of Aboriginal and Torres Strait Islander Health, the Indigenous Land Corporation, Aboriginal Hostels Limited, the Torres Strait Regional Authority, the NSW Aboriginal Housing Office, the National Native Title Tribunal, all State and Territory regulators and other government agencies involved in Indigenous Affairs, the Central Land Council and Northern Land Council and other peak Indigenous bodies. A copy of the report was also made available on the ORAC website www.orac.gov.au.

This paper detailed a number of issues on which general agreement had been reached but comment

was welcome, however its most important purpose was to raise two key issues on which feedback was sought. These issues were (1) whether there is a continuing need for a separate specific incorporation statute; and (2) if there is, should the incorporation statute be limited to small, simple corporations, or should the ACA Act be retained as an incorporation statute for all kinds of Indigenous corporations.

The overwhelming majority of those consulted supported the retention of the ACA Act and with it the incorporation and regulation functions of the Registrar. Also, the majority of stakeholders supported an incorporation model that caters for all sizes and types of organisations. Further, all those in favour of retaining the ACA Act and the Registrar supported the implementation of reforms to the Act that will ensure it is more flexible, increases its consistency with the Corporations Act, and expands the focus of the Registrar's office to capacity building and assistance.

At the time of writing the Review Team is putting the final touches to their final report. This report will include a proposed model for reform for the ACA Act and is expected to base many of its recommendations on the feedback and submissions received on the Consultation Paper. The review highlights that an Indigenous specific Act is relevant to achieving special measures for Indigenous people and organisations. However any new Act needs to achieve the following objectives:

- promote good governance and management, and create space for innovative and best practice to evolve
- provide for certainty in internal operations and transactions with 3rd parties
- overcome known legal and technical problems with current legislation
- open up pathways for Indigenous organisations to move towards other incorporation bodies, i.e. the Australian Securities and Investments Commission where appropriate
- minimise incompatibility with the Native Title Act and regulations
- regulate where appropriate, keeping in mind special issues that arise in Indigenous affairs
- align with mainstream corporations law and create special measures as needed.

If these objectives are to be better met, the ACA Act will need to be substantially modernised in the areas of incorporation, regulation, reporting, director's and senior manager's duties, members remedies and penalties.

Recommendations will be presented to the government in 2003 for consideration, review and possible enactment. Enactment of reforms to the Act to introduce a more contemporary community capacity building role is a government initiative in its Indigenous policy.

Chapter **Two**

The Registrar



The Acting Registrar,
Joe Mastrolembo

Functions and Powers

The Registrar of Aboriginal Corporations is an independent statutory office holder appointed by the Minister for Immigration and Multicultural and Indigenous Affairs.

The Aboriginal Councils and Associations Act confers a range of functions and powers on the Registrar who is required amongst other things to:

- Advise Aboriginals and Torres Strait Islanders on procedures for establishing Aboriginal councils and for the incorporation of Aboriginal associations.
- Process applications for incorporation and subsequent changes to names, objects and rules.
- Maintain public registers of Aboriginal councils and incorporated Aboriginal associations.
- Arbitrate in disputes within corporations in so far as they relate to the Act and the regulations, or the rules of corporations.
- Conduct special general meetings as provided for under the Act, and as considered necessary by the Registrar particularly in relation to the resolution of disputes.



- ▶ Ensure compliance with the Act by:
 - monitoring the filing of documents and annual returns;
 - examining corporate records;
 - issuing statutory notices;
 - seeking injunctions;
 - initiating investigations into the operations of corporations;
 - appointing (with prior ministerial approval) administrators to conduct the affairs of corporations; and
 - petitioning for the winding-up of corporations.

Current Appointment

Since the resignation of Colin Plowman on 31 July 2001 the role of Registrar has been filled on an acting basis by Joe Mastrolembo.

During this period Mr Mastrolembo maintained and promoted the focus of the Office of the Registrar of Aboriginal Corporations (ORAC) as an 'office of assistance'. He actively sought opportunities to develop relationships, and form partnerships, with a number of agencies working in Indigenous affairs, and with State and Territory regulators which fulfil a similar role to that of ORAC, except in a mainstream context. He also continued to progress the reform of ORAC including pressing ahead with the review of the ACA Act.

Laura Beacroft was appointed as the Registrar on the 1 August 2002 for 3 years.

A list of all appointments to the position of Registrar is at **Appendix A**.

Chapter 3

Office of the Registrar



Masepah Banu from ORAC, performing at the launch of the Eddie Mabo video 'Apek Kebile'.

ORAC was originally established to assist the Registrar in the administration of the ACA Act. While this requirement continues to exist ORAC has commenced a process of re-engineering itself in the role of an 'office of assistance' with a primary focus on assistance to its clients.

Many of those who choose to incorporate under the ACA Act are disadvantaged in terms of literacy and education and are resource poor. ORAC is now focussing its attention on meeting the special needs of these clients.

While ORAC provides advice in assistance with incorporation it provides a program of after care which is not always available from other regulators. The additional assistance that is made available includes:

- assisting and advising on corporate governance issues within Aboriginal corporations;
- training for members of governing committees, other members and staff,

to assist with the effective running of associations;

- conducting special general meetings particularly in relation to the resolution of disputes;
- undertaking field visits to provide expert assistance in the resolution of problems, including attendance at Committee meetings and General Meetings;
- brochures and other materials to assist with understanding the roles and responsibilities of incorporation;
- a toll-free telephone number; and
- a web-site which contains information and forms to assist with good governance.

ORAC is mindful that its clients are not always available during business hours and has often provided assistance out of hours.



Strategies

Strategies employed by ORAC to ensure that it is providing the best possible service to its clients are:

- ▶ regularly reviewing and updating the ACA Act and the regulations to ensure that both are capable of meeting the present and future needs of indigenous corporations.
- ▶ continuously assessing the needs of those to whom we provide services.
- ▶ establishing strong links with indigenous corporations to ensure that ORAC staff are mindful of the Aboriginal & Torres Strait Islander heritage and culture and that they understand the current needs of clients.
- ▶ incorporating associations, approving rule and other changes and generally responding to client requests in a timely manner.
- ▶ working with funding bodies to provide a more

coordinated service and to minimise the reporting requirements of corporations.

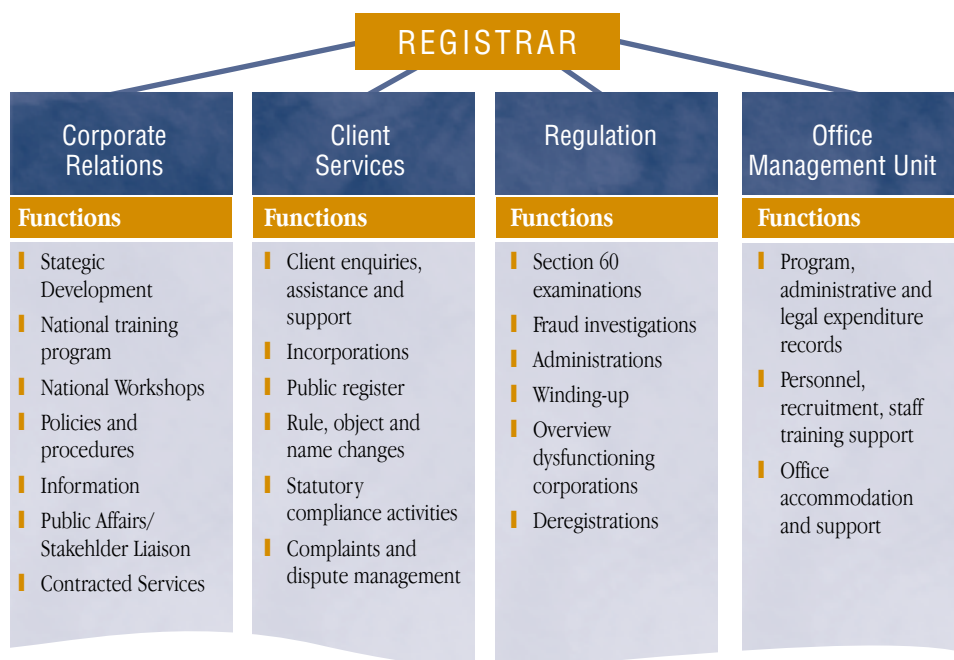
- ▶ maintaining an effective liaison with indigenous corporations and communities by conducting regular field visits.
- ▶ developing and widely distributing information that explains the roles of board members and encourages effective corporate governance.
- ▶ investigating methods to improve registration and compliance by utilising the latest technology.

Structure of the Office

ORAC comprises the Corporate Relations Section, Client Services Section, Regulation Section and an Office Management Unit.

The functional arrangements of the office are reflected in the organisational chart below.

Organisational Chart



Staffing

As at 30 June 2002 ORAC's full-time equivalent staffing level was twenty-two persons.

Table 2

Representation of EEO groups as a percentage of permanent staff	As at 30-6-02
Aboriginal and Torres Strait Islander staff as a percentage of total staff	9%
Women as a percentage of total staff	39%
Staff from non-English speaking backgrounds as a percentage of total staff	30%
Staff with disabilities as a percentage of total staff	-

Finances

Expenditure

During 2001-2002, the Office of the Registrar had a budget of approximately \$3.9 million which was spent under the following categories:

- \$1m program expenditure, which comprises costs relating to statutory examinations under section 60 of the Act, the costs of administrations pursuant to section 71 of the Act, and the costs associated with the Information and Training Program.
- \$1.5m salaries and related costs, for staff employed within the Office.
- \$0.8m administrative expenditure, covering administrative and other costs such as advertising and travel costs, as well as costs associated with information systems.
- \$0.3m legal costs - being the costs associated with the ongoing need for legal advice.
- \$0.3m Special projects (including the Review of the ACA Act and competency based training).

Receipts

Receipts collected during the year in respect of the fees collected for incorporation and searches, and amounts received from liquidators representing reimbursement in part or full of the Registrar's winding-up costs, amounted to \$62,666.55.

Electronic Register of Indigenous Corporations (ERIC)

In 2000-2001 ORAC identified that its computer based business system, CANDAs, was overdue for enhancement to cater for its current and future needs. A more detailed review revealed that to update and/or enhance the capabilities of CANDAs would not be cost effective. A business analysis was undertaken in early 2001 which produced a specification document that identified core functions, processes and the information needs. After consideration of a number of various options it was decided to develop a new integrated computer system that would be workflow oriented and which would facilitate faster, paperless processes, improved Public Register access, better performance information and eventually the possibility of electronic incorporation facilities. The new system is in place and being developed to meet its full potential in 2003.



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Chapter Four

Corporate Governance

ORAC recognises that if Indigenous corporations are going to meet their full potential and provide the essential services so desperately required by their communities they need to follow good corporate governance practices. Our attention is firmly focused on improving the corporate governance of Indigenous corporations so that they can compete on a level playing field and compete with non-Indigenous entities for valuable resources. We also recognise that funding bodies and creditors need to feel secure in the knowledge that they are dealing with a credible and well-run corporation.

The essential elements of corporate governance are:

- Election/Democracy
- Representation
- Member Participation
- Accountability

- The Governing Committee
- Management
- Service Provision
- Right Legislative Framework

In respect of Aboriginal and Torres Strait Islander corporations it encompasses issues such as the:

- design of a corporation's constitution;
- function of the governing committee;
- responsibilities and duties of committee members;
- rights of members;
- conduct of general meetings; and
- corporation's financial reporting requirements.





The legitimacy of the governing committee comes from representing the interests of members and includes the process of members electing the committee to conduct the affairs of their organisation as set out in its rules, and its enacting legislation. The ACA Act sets out the basic requirements for proper corporate governance and straightforward rules for all incorporated indigenous organisations to follow.

Every corporation established under the ACA Act must have a governing committee. The committee plays a critical role in the management and control of the corporation. It has responsibility to direct and control the corporation. It is a role similar to a Board of Directors of a public company.

The committee operates as a unit where only the committee as a whole makes binding decisions, and no one committee member makes decisions for the corporation.

If a corporation is small, and has few or no employees, committee members may be required to also carry out the day to day operational tasks. This requirement, however, should not be confused with the overall responsibility to govern.

For effective corporate governance a corporation needs to have a clear corporate structure with defined roles and responsibilities, and written policies and procedures on the relationships between the governing committee and executive staff.

The governing committee is required to act in a professional manner as it holds a position of trust, and

set good policies and procedures for staff to follow to carry out the day to day affairs of the corporation. While the committee is not required to be involved with the staff's daily activities it needs to act on reports from staff on the operation of the corporation.

Committee members should ensure that members are able to participate in the running of the corporation by seeking member and community involvement in governance through effective communication with their communities. They must disseminate information, seek input, stimulate debate and be an effective advocate for their communities. They have a responsibility to develop a range of communication and participation methods.

As representatives of their members, elected to provide good governance for the members and the community, committee members are responsible for the direction and success of the organisation. The democratic governance role of committee members and their consequent accountability for the effective corporate governance of their corporation are interdependent. Good corporate governance requires prudent financial management, transparency including adequate auditing and reporting arrangements, and a high standard of budget management to ensure financial sustainability, value for money and the proper management of risks.

The central challenge of corporate governance is to ensure that the organisation is properly aligned, legally and ethically, with the directions of the governing committee and that the governing committee is well informed and served by the knowledge and skills of competent officers. A poor interface of committee and Executive will be reflected in poor relationships, a lack of mutual respect, and ultimately, poor decision-making by the governing committee.

Corporations provide and facilitate services to their communities consistent with the specific needs of their members and the wider community and in line with the objectives for which they have been established. The committee is responsible for ensuring that those services are provided efficiently and effectively in

accordance with their Corporate Plan.

Corporations need to have the right legislative framework to support good corporate governance. Review of legislation is required from time to time to ensure that it is relevant, current and workable. It is for these very reasons that the ACA Act is currently under review (refer Chapter 1 for details).

Best Practice

To ensure best practice of corporations, responsibility for accountability is required to be accepted and taken on board by the governing committee. Accountability is the responsibility to provide information in such a form that enables others to make informed judgements about the performance, financial position, financing and investing, and compliance of the corporation.

Aligned with best practice principles, the governing committee of a corporation needs to be aware of their fiduciary duty and any conflicts of interests when determining matters and making decisions on behalf of the corporation. The governing committee is bound to act on behalf of the organisation in good faith and for the benefit of the corporation and its members.

Promoting Good Corporate Governance

ORAC plays an important role in promoting good corporate governance practices within Indigenous corporations incorporated under the ACA Act.

Our strategy is to properly harness capacities that already exist in Indigenous corporations - this includes the use of existing cultural practices in governance matters. The activities undertaken during the reporting period were linked to providing Indigenous corporations with an enabling environment that is conducive to good corporate governance.

These activities have included:

- supporting the national competency standards for the governance of community organisations

(Chapter 5);

- reviewing the ACA Act (Chapter 1);
- improving relationships with other agencies involved in Indigenous affairs, for the benefit of corporations incorporated under the ACA Act;
- client assistance and support (Chapter 6); and
- monitoring of annual returns filed in accordance with the ACA Act (Chapter 8).

Developing Relationships

ORAC continued to develop better working relationships with other agencies involved in Indigenous affairs during 2001-02. The aim is to work cooperatively with other stakeholders to achieve better outcomes for Aboriginal corporations and to maintain the trust of their members, the business community, government, funding agencies and the public in the credibility of Indigenous organisations.

During the reporting period ORAC entered into Memorandums of Understanding (MOUs) with ATSIC's Network and Regional Offices, Aboriginal Hostels Limited (AHL) and the Torres Strait Regional Authority (TSRA). These formal relationships are in addition to those already in place with the Office for Aboriginal and Torres Strait Islander Health (OATSIH) and the NSW Aboriginal Housing Office (NSWAHO). The agreements have been entered into to establish a framework for cooperation in areas of common interest in respect of the effective and efficient performance of each of the agencies respective operational and supervisory functions.

ATSIC

ATSIC is responsible for:

- ensuring the maximum participation of indigenous people in the formulation and implementation of Government policies that affect them;
- promoting the development of self-management and self-sufficiency among Indigenous people;

- furthering the economic, social and cultural development of Indigenous people; and
- ensuring the co-ordination in the formulation and implementation of policies affecting Indigenous people by all levels of Government without detracting from their responsibilities to provide services to their Indigenous residents.

While a fully consultative and co-operative approach with ATSIC, particularly the ATSIC regional network, has been in place for some time both ORAC and ATSIC have entered into a formal agreement to ensure good working relationships.

ATSIC and ORAC cooperated on a number of occasions throughout the year, including a collaborative effort to sustain a CDEP in northern NSW which was in danger of collapse and which would have thrown hundreds of employees out of work. Also ATSIC and ORAC are working together to establish two new corporations in outback Queensland to enable the local community to take full control of a local cattle station.

TSRA

The TSRA is responsible for strengthening the economic, social and cultural development of the Torres Strait to improve the lifestyle and well being of Torres Strait islanders and Aboriginal people living in the region.

One of the benefits to already flow from the MOU was a jointly coordinated program of training and assistance. (Refer Chapter 5 for details).

OATSIH

OATSIH is the Commonwealth funded body with the principal responsibility for the health needs of Indigenous Australians in mainstream health programs, including the provision of funding to Aboriginal community controlled health and substance misuse services. Many of these services are incorporated under the Aboriginal Councils and Associations Act.

OATSIH and ORAC are currently considering a cooperative approach to provide training in corporate

governance to Indigenous medical services.

NSW AHO

AHO is responsible for planning, administering and expanding the policies, programs and asset base for Aboriginal housing in NSW. The AHO manages and coordinates a substantial annual capital works program, the majority of which is allocated for the management of Aboriginal community housing organisations. A significant number of these organisations are incorporated under the Aboriginal Councils and Associations Act.

AHO and ORAC have adopted a program of regular exchange of information, with a view to dealing more effectively with the non-compliant corporations.

AHL

AHL is a company that provides temporary accommodation to Aboriginal and Torres Strait Islander people and is funded by the Commonwealth Government. It provides opportunities that improve the lives of Aboriginal and Torres Strait Islander people and provides an appropriate hostel environment that helps Indigenous people gain access to services like hospitals and schools.

One of the benefits to already flow from this agreement is an increase in training and assistance for AHL funded agencies. An example of this is the training conducted in Alice Springs in June 2002. (Refer Chapter 5 for details.)

Informal Agreements

Indigenous Land Corporation

The Indigenous Land Corporation (ILC) is a Commonwealth statutory authority with national responsibilities to assist Indigenous peoples in Australia to acquire land and to manage Indigenous-held land.

The ILC's two main functions are to assist Indigenous people to acquire land and to manage Indigenous-held land to achieve social, cultural, economic and environmental benefits for themselves and for future generations.

During the period discussions were held with the ILC with a view to establishing a closer working relationship. While a formal MOU has not been signed a positive outcome from these meetings has been an agreement between both parties to work together. An early outcome of this agreement has been to jointly fund the administration of a corporation in Western Australia. Discussions have also been held regarding the possibility of ILC and ORAC jointly conducting training sessions for organisations to which land has been divested.



Joe Mastrolembo with Keith Clarke of Aboriginal Hostels Ltd.

Aboriginal Lands Trust

The Aboriginal Lands Trust (ALT) is a body corporate in Western Australia established by the Aboriginal Affairs Planning Authority Act 1972. It is responsible to the Western Australia Minister for Indigenous Affairs and has an overall responsibility to ensure that it acquires and holds land for the benefit of Aboriginal people.

As a trustee, in dealing with land matters at a local level and to ensure the most beneficial use of land, the ALT is required to manage and develop land in a manner that accords, as far as possible, with the wishes of the resident Aboriginal people. The ALT currently holds approximately 12% of the State (27 million hectares) under Crown reserve (20.2 M hectares), leasehold (6.7 M hectares) and freehold (10,000 hectares) tenures.

During the period ALT and ORAC developed a closer working relationship specifically to assist Indigenous groups in Western Australia. So that ALT staff had a better understanding of the roles and responsibilities of the Registrar and the assistance that ORAC could provide, the Acting Registrar delivered a presentation to ALT field officers in March 2002. As a result of this session and an increased recognition of the benefits offered by ORAC, field officers from ALT have requested and helped coordinate training for a number of corporations in their respective regions.

Both agencies have also worked closely together to try to resolve a dispute at a community based on an ALT lease outside of Laverton. This included officers from ALT

and ORAC attending a meeting with the community members and liaising with other government agencies in an attempt to have this situation resolved.

Aboriginal and Torres Strait Islander Affairs Portfolio CEO Forum

The Registrar is a member of the Aboriginal and Torres Strait Islander Affairs Portfolio CEO Forum. The Forum was established in 2001 to provide an opportunity for representatives from Indigenous peak bodies to meet and discuss high level issues and to highlight current activities and projects of their respective agencies. Stronger, valuable liaisons have been formed with participants since the inaugural meeting in June 2001.

The Forum is made up of representatives from the Office of the Minister for Immigration, Multicultural and Indigenous Affairs, the Office of Aboriginal and Torres Strait Islander Affairs, ATSIC, Aboriginal Hostels Limited, Indigenous Land Corporation, Reconciliation Australia, Australian Institute of Aboriginal and Torres Strait Islander Studies, Indigenous Business Australia, and ORAC.

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Chapter Five

Information and Training



Attendees at Yam Island workshop, Torres Strait

Information & Training Program

ORAC continues to provide a comprehensive information and training program aimed at helping corporations to better manage their affairs, and operate in accordance with the ACA Act and their rules. This has been one of the unique features of the office over the last few years.

The information and training needs of Aboriginal and Torres Strait Islander corporations, and the best practice method of meeting those needs, are constantly assessed and reviewed by ORAC.

Information and Training Workshops

ORAC staff and/or consultants who are suitably qualified and experienced in the management of Aboriginal corporations, and who are highly regarded for their communication skills, facilitate information and training workshops. ORAC makes all the arrangements and meets the cost of delivering the workshops.



The subjects covered at the workshops are adapted to meet the needs of particular communities, and usually include:

- role and responsibilities of the Registrar of Aboriginal Corporations and ORAC;
- Aboriginal Councils and Associations Act, and the rules of Aboriginal and Torres Strait Islander corporations;
- Annual reporting requirements of the ACA Act;
- Governing committees and committee meetings;
- Governing committee - duties and responsibilities;
- Annual and special general meetings;
- Members' rights;
- maintaining proper accounts and records;
- procedures to change corporations rules/objects/names; and
- Public Officer - appointment and responsibilities.

The workshops are designed primarily for governing committees but are also open to corporation staff and funding agency representatives.

Factors that ORAC takes into account when scheduling workshops include:

- written requests from corporations seeking training;
- the number and location of corporations proposing to participate;
- the number of committee members and other participants; and
- possible participation or involvement of other agencies.

35 formal Training Workshops were conducted during 2001-2002 in the following States and Territories:

- **New South Wales/ACT**
Bourke, Broken Hill, Canberra, Narrandera, Orange, Walgett.
- **Northern Territory**
Nhulunbuy.
- **Queensland**
Burketown, Cairns, Cardwell, Mackay, Mornington Island, Normanton, Torres Strait Islands, Townsville, Weipa.

- **South Australia**
Adelaide, Coober Pedy (conducted in Alice Springs).
- **Tasmania**
Flinders Island, Launceston.
- **Western Australia**
Halls Creek, Kalgoorlie, South Hedland, Warburton.
- **Victoria**
Healesville, Melbourne, Warrnambool.

Torres Strait Islands

In December 2001 ORAC staff met with the Board and staff of the Torres Strait Regional Authority (TSRA). As a result of these meetings it was agreed that ORAC would extend its information and training workshops into the Torres Strait for the first time. It was further agreed that a cost sharing arrangement would be entered into so that the workshops could be conducted at as many locations as possible.

Due to the tropical weather conditions present in the Torres Strait travel between the islands is limited during the wet season. Accordingly it was some months after the above meeting before the workshops could be conducted.

In May 2002 a schedule of workshops was conducted on 9 islands over a 2 week period. The main attendees were representatives of Prescribed Bodies Corporate (PBC) and newly-formed fishing corporations. Others to attend were members of Island Councils and representatives of organisations incorporated under Queensland legislation.

Most of the PBCs have only recently been established and, following advice from the TSRA, particular emphasis was placed on the procedures involved in conducting AGMs, committee meetings and elections but other corporate governance issues were also covered.

The workshops were enthusiastically received with active participation by attendees. All participants

requested on-going provision of training to ensure that they maintained their knowledge and to enable other members and new committee members the same opportunity in the future.

Healesville

While the training provided by ORAC is essentially to assist organisations incorporated under the ACA Act from time to time, where resources allow, assistance is also provided to organisations incorporated under alternative legislation. A workshop conducted by ORAC in Healesville in Victoria is such a case.

Representations were made to ORAC by the Co-ordinator of the Indigenous Health Unit of the Yarra Valley Community Health Services, a Victorian Co-operative established under the Department of Fair Trading in Victoria.

The Co-ordinator had previously attended, as a representative of the Health Service, an ORAC training workshop held for Aboriginal corporations and other indigenous organisations in Melbourne in March 2002. The Co-ordinator advised that a similar training workshop in Healesville would be significantly beneficial for the Directors of the Health Service. She advised that training and assistance of this nature was not available from the regulatory body in Victoria and sought our assistance.

We agreed to provide training to the Health Service Board members who were very pleased with the outcome. They considered that they were now better equipped to handle their corporate governance responsibilities and thanked ORAC for its assistance.

This workshop is an example of a growing need for ORAC to fill the void in the apparent lack of training and assistance provided by State and Territory incorporation regimes to Indigenous bodies however, this type of service cannot always be accommodated under our current budget.

Success of Workshops

The workshops continue to be positively received with many people travelling long distances to attend. The majority of participants appreciate the chance to gain a better understanding of how a corporation should be managed in accordance with the ACA Act and their own Rules.

Training Program 2002-2003

The training program will continue to be delivered in 2002-2003 to meet the demand. The content will be reviewed to ensure consistency with the requirements of the national competency standards for Board members of community organisations.

One on One Training and Client Assistance

ORAC has recognised a need for additional training and assistance for corporations. This training is being conducted on a one on one basis with corporations. It is considered to be a valuable addition to our current training program and is rapidly gaining in popularity as it:

- allows for training to be conducted in a familiar environment (usually the Corporation's premises);
- enables the ORAC staff conducting the training to gain an appreciation of the conditions in which the corporation is working;
- puts the clients at ease;
- provides training which concentrates on the specific needs of the corporation, and
- deals with any problems the corporation is experiencing.

During the year ORAC staff conducted such training with the following corporations:

- ▶ Rio Aboriginal Corporation, Tabulam, NSW.
- ▶ Wellington Aboriginal Corporation Health Service, Wellington, NSW.
- ▶ Cooramah Housing and Enterprise Aboriginal Corporation, Glen Innes, NSW.
- ▶ Yabur Yulgan CDEP Aboriginal Corporation, Lismore, NSW.
- ▶ Murri Gundooos Aboriginal and Torres Strait Islanders Corporation, Rockhampton, Qld.
- ▶ Ngalikuru Ngukumarnta Aboriginal Corporation, South Hedland, WA.
- ▶ Iragul Aboriginal Corporation, Norseman, WA.
- ▶ Central Australian Aboriginal Alcohol Program Unit Aboriginal Corporation, Alice Springs, NT.
- ▶ Central Australian Stolen Generation and Families Aboriginal Corporation, Alice Springs, NT.
- ▶ Central Australian Aboriginal Child Care Agency Aboriginal Corporation, Alice Springs, NT.
- ▶ Kurtijar Aboriginal Corporation and Kurtijar Land Trust Aboriginal Corporation, Normanton, Qld.

Alice Springs

Some of the abovementioned sessions have been conducted as a result of approaches from funding agencies to assist with issues that they have identified with corporations and which are essentially of a corporate governance nature. An example of this is the sessions conducted in Alice Springs.

Following a request from the Regional Manager of Aboriginal Hostels Ltd (AHL) in Alice Springs, a major funding agency of corporations in the region, arrangements were made to conduct training workshops for the Committees of three corporations.

Central Australian Aboriginal Alcohol Program Unit Aboriginal Corporation

The workshop concentrated on the rules of the corporation and how amendments can be made to existing rules to cater for current inconsistencies. It was apparent that the Committee members attending were intent on becoming more cognizant of the roles and responsibilities of being a Committee member so as to make better informed decisions on behalf of the corporation.

By the end of the workshop, the committee members had gained a more comprehensive knowledge and an increased understanding of proper corporate governance processes.

Central Australian Stolen Generation & Families Aboriginal Corporation.

Discussions focused on the procedures to be followed when amending the rules, the proper way in which to hold committee and general meetings, and the way in which to handle conflict of interest situations.

The members attending participated enthusiastically in discussions at the workshop. As a result, they became more familiar with their roles and responsibilities towards the corporation.

Central Australian Aboriginal Child Care Agency Aboriginal Corporation

Committee members gained a great deal from the workshop, especially appreciating the chance to learn more of their roles and responsibilities. In particular the Committee was apprised of their responsibilities regarding the financial status of the corporation and ensuring its continuing viability.

It was evident during the workshop that the Committee was firmly focused on maintaining the services to the local community, particularly the youth of Alice Springs.

Enhanced Training for Indigenous Directors and Boards of Indigenous Organisations

Since 1999 ATSIIC has been a leading player in development of national competency standards for governing committees of Aboriginal and Torres Strait Islander corporations. The aim of the project is to deliver competency based training on corporate governance/management to the individual directors of boards of Indigenous organisations through as many training providers as possible.

The competencies were incorporated into the Business Services Training Package as a Certificate 4 in Business (Governance) and a Diploma of Business (Governance) which were endorsed by the Australian National Training Authority in September 2001.

Delivery of this project will result in improved directorship and management for targeted Indigenous individuals and related organisations and recognised accreditation of Indigenous directors against competencies, to assist individuals, organisations and funding bodies.

Accordingly ORAC has decided to align its training with the competency-based project with the principal objectives to:

- ▶ Demonstrably improve skills of potential and existing Indigenous directors and Boards of Indigenous organisations i.e. by accreditation of individual directors against key competencies.
- ▶ Contribute to improved Indigenous governance and management by targeting Indigenous directors and Boards involved with developing sectors (ie family violence, women's organisations), highest risk essential service organisations.
- ▶ Facilitate carriage of this project by mainstream providers, with ORAC providing limited, highly targeted and tailored special measures training in partnership with other related initiatives.

We have commenced a program of linking our non-competency based training to the endorsed competencies in 4 steps:

1. continue non-competency based training for the short term and refocus it to provide preparation for and underpinning knowledge relevant to competency standards;
2. provide targeted competency based training in key competencies, using Registered Training Organisation/s (RTOs) contracted to ORAC;
3. encourage and refer people to undertake further training with mainstream providers to complete a qualification;
4. work with individuals, organisations and funding bodies to maximise the outcomes from the training through linkages to other issues and initiatives

In anticipation of implementing the above 4 steps, ORAC engaged the Indigenous Studies Product Development Unit (ISPDU) at Tropical North Queensland Institute of TAFE to develop training materials relevant to underpinning knowledge and seven competencies. These materials were completed during the period.

These materials will be the basis of training to be conducted under the auspices of ORAC throughout Australia. ORAC will contract Registered Training Organisations (RTOs) to ensure that Aboriginal and Torres Strait Islander people have formal recognition of the competencies they achieve.

A tender will be called early in 2002-03 for RTOs to deliver this training with training expected to commence in early 2003.

The ORAC training will 'kick-start' the initiative and target highest need as a special measure. It will focus on a limited number of core competencies, leaving the other competencies to be provided through mainstream training bodies. Successful participants in ORAC's training will be referred to mainstream training bodies delivering the Certificate 4 or Diploma in Business (Governance).



Attendees at Melbourne Workshop

The seven (7) competencies on which ORAC will focus its training are:

- ▶ Meet the Roles and Responsibilities of a Board Member
- ▶ Use the Constitution
- ▶ Monitor Financial Management and Budgets
- ▶ Manage Assets
- ▶ Plan for Organisational Needs
- ▶ Develop and Implement Organisational Policies
- ▶ Communicate with the Community

The government stated in its re-election policy that it would “work with ATSIC and the Registrar [of Aboriginal Corporations]... to provide accredited training for directors of Indigenous organisations”. Since re-election the government has continued to re-affirm its commitment to this training. In line with government policy, this project will contribute to shifting the emphasis to individuals, provide a sound basis for individual responsibility, and target greatest need.

Funding bodies are interested in accreditation of directors/Boards to enable them to better deliver their outcomes, many of which are dependent on improved Indigenous governance. It is envisaged that the competency training will form one plank of an

accreditation system for Indigenous organisations over time, which will assist funding bodies assess risk and strengths of Indigenous providers.

Future targeting of the training by ORAC will take into account emerging initiatives, eg Cape York justice study follow-up, whole of government trials, capacity development pilots, growth in the family violence sector and better support for women’s and children’s organisations.

Key Indigenous, service, funding and government stakeholders are and will continue to be linked into this project to ensure it is well supported, utilised, that its outcomes are maximised and that it is integrated into capacity development work across Australia.

New Training Brochures

A set of 21 new training brochures was released in June 2002 to assist Indigenous corporations in the management of their organisations.

The training brochures were revised to take into account changes in the laws governing the affairs of Aboriginal and Torres Strait Islander associations. A feature of the new brochures is the presentation of the material in a manner that is easily read and understood.

Brochures have been distributed to ATSIC Network and Regional Offices, Regional Chairpersons, Aboriginal Land Councils, Aboriginal Hostels Ltd, Torres Strait Regional Authority, Indigenous Land Corporation, NSW Aboriginal Housing Office, Office of Aboriginal and Torres Strait Islander Health Services, and registered consultants.

These new revised brochures are also available in text form for downloading on the ORAC website.

Registrar's Website

Ongoing developments in Internet technology have enabled ORAC to redevelop its existing website to better meet the needs of corporations. Information on the site is presented in a relevant, friendly and non-technical manner.

As the availability of the site becomes better known its usage increases. There was an average of 1,722 visits per month in the first 6 months of the year, increasing to 1,922 for the second 6 month period for an overall average of 1,822 visits per month for the 2001-02 year.

The web-site can be found at <http://www.orac.gov.au>

Service Charter

ORAC's Service Charter is a dynamic document in that it continually changes and grows in accord with the changing circumstances in which ORAC operates.

The Service Charter for the period 1 July 2001 to 30 June 2004 was developed during the year with the staff of ORAC. It sets out the standards of service staff believe our clients expect and are entitled to receive. The document establishes measures by which ORAC's application of the standard of service can be assessed. By establishing these measures, both staff and clients will have a clearer understanding of what is expected and facilitate over time faster turn around times. It should be noted that during 2001-2002 turn around time for processing of incorporation applications significantly decreased.

Corporate Plan

ORAC developed a new Corporate Plan during the year which governs our overall strategic direction for the next three years. It sets out our vision, direction, client

focus, and establishes the goals we have set for ORAC to achieve by the end of 2004.

These goals highlight the refocus in our work including, but not limited to:

- implementing a program of capacity building.
- improving corporate governance.
- emphasising our role in the provision of training and information.

The Corporate Plan is a statement of partnership with our clients and our success in achieving the goals we have set will require the development of effective relationships and all parties working together.

Consultation

ORAC will continue to use a variety of means to provide corporations with information and to seek their input on important issues affecting their operations. This consultation process will include mail outs, surveys, information and training workshops, videos, indigenous television and radio broadcasts and brochures. Clients are always welcome to provide their views and may do so by using the means most convenient to them, including:

Postal address: Office of the Registrar of
Aboriginal Corporations
PO Box 2029 Woden ACT 2606

E-mail address: info@orac.gov.au

Toll free telephone: 1800 622 431



6 Chapter Six

Client Assistance and Support



During 2001-2002 ORAC continued to offer client assistance and support aimed at meeting Aboriginal and Torres Strait Islanders incorporation needs.

The type of assistance provided during the year included:

- advising Aboriginal and Torres Strait Islander groups on the requirements of incorporation;
- helping Aboriginal corporations with proposed rule, name and object changes;

- helping governing committees better understand their responsibilities under the ACA Act and their rules and thereby adhere to proper corporate governance;
- providing a toll-free telephone service offering information and assistance in respect of constitutional and other operational issues;
- assisting committee members on how specific issues and problems within their corporation may best be dealt with according to the ACA Act and their rules;
- advising members of their rights under the ACA Act and their rules; and
- assisting corporations manage complaints and disputes within the organisation.



Assistance to Applicants Seeking Incorporation

A distinguishing feature of incorporating under the ACA Act is that ORAC assists indigenous groups with the requirements of incorporation.

During 2001-2002 a significant amount of resources were utilised to assist groups in completing relevant documentation for incorporation and to respond to numerous telephone enquiries from Indigenous groups seeking to incorporate.

During the year, revisions were made to the incorporation kit to assist applicants intending to incorporate under the ACA Act. This kit now includes:

- a letter to applicants outlining the contents of the kit and an explanation of the documents required to be completed;
- an Interim Contact Person & Checklist;
- a guide to complete the application;
- a business incorporation information sheet;
- a copy of the model rules;
- an Independent Confirmation of Name Form; and
- an Independent Confirmation of Aboriginal/Torres Strait Islander Descent and Adulthood Form.

Applications for incorporation and forms required to be completed by applicants are also available on the ORAC web site.

During the year regular field visits were conducted to better meet the service needs of corporations, and to maintain effective liaison with Indigenous communities. The case studies below provide an overview of two visits.

Rio Aboriginal Corporation

In December 2001 a representative of the office travelled to the Tabulam community in NSW with a representative of the ATSIC Tamworth office to discuss the establishment of a new CDEP Aboriginal corporation.

During the field visit, the requirements of incorporation under the ACA Act were discussed in detail, and proposed rules to govern the affairs of the corporation were workshopped with community members.

Community members deliberated different aspects of the proposed rules and requested changes to meet their requirements. At the conclusion of the visit, community members had agreed on a set of rules including important principles on how they wanted to operate in the future to meet their specific needs.

The corporation was incorporated on 5 December 2001.

Yabur Yulgun CDEP Aboriginal Corporation

Assistance was sought from members of the community who were proposing to form a new CDEP corporation in Lismore. Discussions centred upon the corporation's establishment and naming, and draft rules. A considerable amount of time was spent with the members and the local ATSIC office representative in drafting, discussing and workshopping the rules to ensure that they best met the needs of the corporation and its members.

The rules were agreed and subsequently submitted to ORAC. The corporation was incorporated on 8 March 2002.

Assistance with Rules for Incorporation and Rule Changes

ORAC assists associations applying for incorporation by providing them with a set of model rules to help guide them in formulating their own set of rules. By using the model rules, an Indigenous corporation automatically ensures that it has adopted rules, which fulfil the requirements of the ACA Act. The use of the model rules has led to a better understanding of the requirements of the ACA Act.

During the year ongoing assistance and guidance was provided to Aboriginal and Torres Strait Islander groups to ensure that their proposed rules or proposed rule changes met the requirements of the ACA Act as well as reflecting the operations and circumstances of their corporation.

Many corporations submitted rule changes for pre-approval by the Registrar. This approach helps the corporation ensure that the proposed rule changes meet the requirements of the ACA Act, prior to calling a general meeting of members to consider those rules. Many corporations have significantly benefited from this service.

Enquiries and Information requests

ORAC aims to be responsive and flexible in dealing with enquiries and information requests of corporations and community groups, and providing consistent and timely information as required.

During the year a considerable amount of time was spent responding to general telephone enquiries, and written correspondences relating to specific issues in the way in which corporations conducted their business in accordance with the ACA Act and their constitutions.

Telephone Enquiries

The client services section of the office handled more than 4660 calls during the year through the office's toll-free telephone service. These calls were received at an average rate of approximately 90 calls per week.

Calls vary from requests for general information about incorporation to enquiries about the rules and the ACA Act. Assistance is also often sought in matters relating to membership, annual general meetings, committee meetings, special general meetings and reporting requirements, including records required under the ACA Act.

General Correspondences

A significant amount of requests were also received in writing and facsimile from governing committees and members of corporations seeking information and assistance. ORAC responds to all written requests.

During the year, the office also handled many requests for staff to visit communities and assist with specific governance issues affecting their stability. Due to a lack of resources not all requests can be accommodated but wherever possible and circumstances permit ORAC will try to assist by personal visit.

The following case studies provide examples of this type of assistance provided in 2001-02.

Murri Gundoos Aboriginal and Torres Strait Islanders Corporation

The corporation is located in Rockhampton, QLD, and has objects of improving the quality of life for the Aboriginal and Torres Strait Islander youth and the homeless of Central QLD.

ORAC received advice that the corporation's committee had been depleted to such an extent that it was incapable of forming a quorum. It was also noted that the corporation had not held an annual general meeting for a number of years. The corporation sought assistance from this office to ensure that it could operate validly.

We initially liaised with ATSIC's Rockhampton office to gain local information on the issues impacting on the corporation's operations. After consultation with ATSIC it was decided that attendance by the office was warranted.

A representative from ORAC attended the corporation's annual general meeting to ensure that it was held in accordance with the ACA Act and rules, that the committee was validly elected, and to discuss related issues.

The annual general meeting was successfully held; new committee was elected; and the members left with a better understanding of the roles and responsibilities of the committee and members; the meaning and application of rules and the ACA Act; and the procedures to be followed at meetings.

CDEP Forum in Cobar, NSW.

A representative from ORAC attended a Forum held in Cobar between 5 - 6 March 2002. Members of the governing committee and staff of various Aboriginal corporations in receipt of CDEP funds in the Bourke region were present. A presentation was delivered on the subject of corporate governance, specifically, members concerns relating to responsibility for payment of outstanding debts incurred by a Corporation. The presentation was particularly well received.

Kurtijar Aboriginal Corporation (KAC) and Kurtijar Land Trust Aboriginal Corporation (KLTAC)

The Delta Downs cattle station, known as Morr Morr to Kurtijar people, is situated in Queensland's Gulf country. It was purchased by ATSIC's forerunner, the Aboriginal Development Commission some 20 years ago to provide jobs and managerial skills for the traditional owners. The station has grown under the joint ownership of ATSIC and the Kurtijar people who have developed the property into a thriving business enterprise and is recognised as one of Australia's top cattle properties.

The success of the enterprise has been such that ATSIC decided to hand over full control of the property to the Kurtijar people. The Kurtijar Aboriginal Corporation (KAC) and Kurtijar Land Trust Aboriginal Corporation (KLTAC) were formed

to facilitate this transfer. KTLAC for the title and lease of Delta Downs and KAC for the Morr Morr Pastoral Company shares.

Both the KAC and KLTAC recognised that if they were to continue to be successful they required support and sought assistance from a number of sources including ORAC. ORAC and ATSIC coordinated assistance to both corporations including field visits focused on helping both corporations with the conduct of committee and general meetings, assistance with rule changes, and the provision of information sessions aimed at improving committee members understanding of their roles and responsibilities under the ACA Act.

An example of this assistance was in April 2002, when two ORAC staff attended the Annual General Meetings of the KAC and the KLTAC, at the request of KAC's Governing Committee, for the purpose of providing assistance with the conduct of the AGMs and on any issues that might arise in the course of the meetings.

The KAC annual general meeting was successfully conducted, but the KLTAC could not hold its AGM as a quorum was not present. Nevertheless a meeting was held between ORAC staff and six members of KLTAC. At this meeting the relationship between the corporation, the ACA Act, and the rules was explained to the members.

Consequently, these members gained, for the first time, an understanding of the role of the corporation, knowledge of the rules, and direction on where to seek assistance in managing the affairs of the corporation.

The divestment of Delta Downs is scheduled to take place in September 2002. The Kurtijar will then be sole owners of both the land and the Morr Morr Pastoral Company. .



Gibb River Rd Roadhouse (Mount Barnett) WA

Complaints and disputes management

Assistance with dispute resolution and complaints management continued to be a significant focus of the office's operations during the year. The number of complaints and disputes referred to the Registrar by aggrieved members, committee members, employees, government agencies and members of the public remained high during 2001-02 with approximately 120 correspondences received.

ORAC provides an avenue for people to lodge complaints about the governance of Aboriginal and Torres Strait Islander corporations. The Registrar will follow up serious complaints and take appropriate action to remedy any wrongdoing that disadvantages the membership of a corporation.

Action taken varies according to the circumstances of the complaint, including meeting with the complainants, liaison with the governing committee and in more serious cases the appointment of an independent examiner under section 60 of the ACA Act, to report on the operations and financial affairs of the corporation. Examinations provide the Registrar with independent factual information on complaints and assist in identifying an appropriate course of action.

The most common complaints received during the year involved allegations about:

- breaches of rules;
- discriminatory conduct by governing committees;
- improper notices and conduct of meetings;
- financial mismanagement; and
- the lack of information available to members.

As far as practicable, the Registrar encourages corporations to resolve their own difficulties internally. Where a dispute arises, the Registrar can play a mediating role by providing independent information on the requirements of the ACA Act and, if appropriate, advice on a corporation's rules. The majority of disputes are settled with this type of assistance.

On other occasions, a special general meeting of members may be recommended. If the governing committee is unwilling to convene one, the Registrar has the power to call a special general meeting if necessary.

The two case studies below provide examples of assistance provided to corporations during the year with complaints and disputes management.

Wellington Aboriginal Corporation Health Service

The Wellington Aboriginal Corporation Health Service situated in Wellington NSW operates an Aboriginal medical service to cater for the health needs of Aboriginal people in Wellington and the surrounding region.

An attempt by the governing committee of this corporation to conduct an annual general meeting in early March 2002 had to be aborted because of disruption at the meeting. Subsequent to the failed meeting, the governing committee of the corporation sought ORAC's assistance with the conduct of a new annual general meeting.

Representatives of the office visited Wellington and held discussions with committee members regarding the procedures to be followed at the annual general meeting. In particular the committee sought guidance on how to handle difficult issues that were expected to be raised at the annual general meeting. Information was provided and the committee then asked the ORAC representatives to attend the annual general meeting as observers. The annual general meeting was successfully conducted and all business was completed, including the election of a new governing committee.

To build on this assistance, and in response to a request from the new committee of the corporation, on 23 May 2002 representatives of the office conducted a training session for Committee members. The session covered the roles and responsibilities of committee members, and facilitated discussions on how the committee could deal with specific issues the corporation was then confronting.

Cooramah Housing and Enterprise Aboriginal Corporation

At the request of the committee, an ORAC representative visited the corporation on 27 February 2002. The corporation sought assistance from the office in relation to recent complaints received from certain members, and issues relating to a petition received from members to conduct a special general meeting.

Discussions were held with committee members relating to special general meetings, general corporate governance, amendments to the constitution, and development of internal procedures for dealing with disputes. The committee acknowledged the support provided and expressed appreciation for ORAC's visit.

Chapter 7

Registration Functions



The ACA Act confers a range of registration functions and powers on the Registrar, including:

- the processing of applications for incorporation and subsequent changes to names, objects, and rules;
- maintaining the public register of incorporated associations and the processing of search requests from the public register;
- handling of requests for extensions of time; and
- the processing of public officer forms.

During 2001-2002 the provision of effective and timely registration services remained a key priority of the office. Key strategies included:

- being flexible and responsive in dealing with the registration needs of Indigenous groups;
- streamlining procedures and performing core registration functions in a timely and accurate manner;
- adopting a flexible approach when approving rules for incorporation or rule changes within the current parameters of the ACA Act.

Incorporations

Aboriginal and Torres Strait Islanders may form a corporation under the ACA Act for any social or economic purpose, including the conduct of business enterprises.

During 2001-2002 Aboriginal corporations were incorporated for a wide range of activities including ownership of land, native title prescribed body corporate purposes, the provision of training, youth support services, housing, legal and medical services, media production, community businesses and private businesses.



Incorporation Requirements

Aboriginal and Torres Strait Islanders seeking to incorporate under the ACA Act are required to submit the following documents:

- a completed Application Form (Form 6);
- an independent confirmation of Aboriginality/Torres Strait Islander descent and Adulthood;
- an independent confirmation of Name to confirm that the applicants are entitled to use the proposed traditional name under Aboriginal/Torres Strait Islander custom;
- proposed set of rules;
- application fee (\$50).

A minimum of twenty-five members is required to incorporate an Aboriginal corporation, except where a corporation is being formed principally for the purpose of owning land or holding title to land, or to engage wholly in business. In these cases, a minimum of five members is required.

Membership of Aboriginal corporations is limited to Aboriginals and Torres Strait Islanders and their spouses. Applicants must be at least eighteen years of age. It is the responsibility of applicants to provide independent confirmation of Aboriginality.

New Incorporations

There was a total of 187 organisations incorporated during the year which represents an increase of 9 percent on the previous period.

This provides an indication that many Indigenous groups still view the ACA Act as an important and preferred method of incorporation.

The time taken to incorporate organisations has improved throughout the year and efforts will be maintained to further reduce the timeframe from receipt to finalisation.

Native Title Incorporations

During the year many applications were received from associations applying for incorporation under the ACA Act as a prelude to their becoming a Prescribed Body Corporate (PBC) under the Native Title Act 1993. These associations were incorporated in a timely manner and within timeframes set by applicants. ORAC has provided ongoing assistance to many of these groups in formulating rules that met the requirements of both the ACA Act and the Native Title Act 1993. A flexible approach has been taken with the approval of rules for these associations with many providing for conduct of appropriate native title functions and responsibilities in accordance with Aboriginal custom.

The following case studies highlight two PBCs incorporated under the ACA Act during the year.

Lhere Artepe Aboriginal Corporation

On 5 December 2001 the Northern Land Council (NLC) approached the office for assistance with the incorporation of this association. The NLC was seeking the Acting Registrar's pre-approval of proposed rules for the association.

The association was being set up as a prescribed body corporate, following a determination of native title by the Federal Court, on 23 May 2000. The native title determination covered the land in and around Alice Springs, NT.

Following liaison with the office, the proposed rules of the corporation were settled on 10 December 2001. On 22 March 2002 the NLC formally submitted an application for incorporation of the association. The association was incorporated on 8 April 2002.

Distinguishing features of the rules of this association include:

- the objects of the association including the performance of functions of a registered native title body, and the protection of the native title rights and interests of Native Title holders;
- the making of native title decisions in accordance with the provisions of the Native Title Regulations;
- membership of the corporation being open to Mparntwe, Antulye and Irlpme native title holders; with native title holders nominating their representative members;
- the governing committee being representative of the three native title estate groups; and
- office bearers of the corporation being a chairperson and two deputy chairpersons, each person being from different estate groups

Hopevale Congress Aboriginal Corporation

In mid March 2001, solicitors acting on behalf of applicants of this association contacted ORAC advising that they wished to reactivate a previous application to incorporate this association.

Previous attempts to incorporate the association had been unsuccessful because of issues relating to the proposed rules of the corporation. The proposed rules were attempting to meet both the special needs of the native titleholders, the ACA Act and the Native Title Act and Regulations.

The primary purpose of incorporation was for the corporation to hold interests in land, act as a trustee for native title purposes on behalf of Aboriginal people, and to be the subject of an approved determination of native title under the Native Title Act.

On 22 March 2001 the applicant's solicitors provided the office with a proposed set of rules for comment. Following extensive but fully co-operative consultation between the applicant's

solicitor and the office, which included the office adopting a flexible approach in reviewing the rules, but at the same time providing constructive and important input, the rules of the corporation were settled. Common ground was found and on 27 August 2001, the applicants submitted a formal application for incorporation of the association with incorporation being approved on 30 August 2001.

Key features of these rules included:

- membership of the association being open to native title holders, which extended to eleven different clan groups;
- the governing committee being made up of representatives from the clan group, nominated by the clan groups, and ratified at the corporation's annual general meeting;
- committee members holding office for three year periods; and
- committee members meeting in person, by telephone, radio, video link, or any other means of communication by which all persons participating in the meeting are able to hear and be heard by all other participants.

Corporation Rules

An Aboriginal or Torres Strait Islander corporation, like any other corporation, needs rules to run its activities. In accordance with the ACA Act, applications for incorporation must be accompanied by a set of rules.

One of the key advantages of incorporating under the ACA Act is the provision for rules to be based on Aboriginal or Torres Strait Islander customs.

The circumstances of corporations and the way they conduct their business may change over time. Corporation members may alter their rules to cater for these changes and to ensure that their corporation runs efficiently and effectively.

The original rules of a corporation, and any changes to these rules during the life of the corporation, need to be approved by the Registrar.

The ACA Act also requires the Registrar to ensure that the corporation's rules are reasonable, equitable and, that they provide members with the effective control of the affairs of the corporation.

Rule Change Approvals

During 2001-2002 134 applications for rule changes were received, an increase of 46% from the previous year.

The Registrar exercises significant flexibility when approving rules that accompany applications for incorporation and subsequent alterations of those rules. During the year the Acting Registrar approved many rules allowing corporations to conduct their affairs in accordance with Aboriginal or Torres Strait Islander customs, or the unique circumstances affecting their local area.

Some of the rules approved by the Acting Registrar during the year included:

- provision for committee structures and membership of corporations to be based on different classes, including Aboriginal language groups, Aboriginal clans or Aboriginal traditional owner groups;
- provision to charge membership joining fees and ongoing annual membership fees;
- provision for groups to operate in the Torres Strait as fishing enterprises and to pursue fishery interests in the area;
- provision to conduct local regional general meetings and to elect regional governing committee members where the activities of an Aboriginal corporation extended to many regions, and/or many different communities;
- provision to elect committee members for a term of more than one year, and/or to elect committee members on a rotational basis. The objectives of these rules are to foster and provide stability to elected committees; and
- provision to operate as a profit making business.

Public Register Searches

In accordance with the ACA Act the Registrar is required to maintain a public register of Aboriginal corporations. All forms lodged with the Registrar are contained in this register, including applications for incorporation, certificates of incorporation, the rules of corporations, public officer forms, annual audited financial statements, lists of members, and governing committee statements of compliance.

The Aboriginal Councils and Associations Regulations (the regulations) provide that the Registrar may permit persons to inspect all documents filed with the Registrar at all reasonable times, and provide persons with copies of documents held on the public register.

Requests for copies of documents held on the public register are received from various sources, including members and governing committees of corporations; members from Aboriginal and Torres Strait Islander communities; government departments and agencies, creditors or persons acting on behalf of creditors; and members of the public dealing with Aboriginal corporations.

Requests for copies of documents held on the public register are subject to fees prescribed under schedule 3 of the regulations. The Registrar has the discretion not to apply the fees in certain cases eg in cases where members are seeking copies of their corporation's current list of members and rules.

Search requests actioned during the year

During 2001-2002 approximately 844 search requests were received and actioned. This represents an increase of 29 per cent from the previous year.

These figures indicate that interest in information held on the public register remains high. Many indigenous groups seek information from the public register for the purpose of helping with their corporation's operational and governance needs. An increase in requests for

information is often noticed immediately following information and education sessions conducted by ORAC, where members have recognised a need to know more about their corporation.

Public Register Information Available on ORAC Web-site

ORAC redeveloped its existing web site early last year and information from the public register was placed on the site.

The web site now includes a search facility of corporation's names and addresses, and public officer information. The web site is up-dated daily in respect of this information, from records held on the public register.

Many Indigenous groups and other parties have commented that they have found this facility extremely useful and cost effective.

Annual General Meeting Extensions

Corporations are usually required to conduct their Annual General Meeting (AGM) between 1 July and 30 September each year in accordance with the requirements of their rules.

During the year the office conducted a media campaign promoting the requirement for corporations to conduct annual general meetings in accordance with the requirements of their rules. Advertisements were placed in Indigenous newspapers, and radio advertisements were run on the National Indigenous Radio Service.

Situations may arise where corporations are not able to conduct their AGM within the time specified in their rules. The Registrar receives ongoing requests from corporations seeking an extension of time to conduct their AGM.

Some of the reasons why corporations are not able to hold their AGM within the time frame specified in their rules include:

- cultural reasons, including deaths within the community;
- failure to have audited financial statements finalised for presentation to the meeting;
- lack of quorum.

In line with the principle of adopting a flexible approach to the administration of the ACA Act, the Acting Registrar acknowledged 122 requests for an extension of time to conduct an AGM during the year.

Public Officer Appointments

The public officer is generally the first point of contact between the corporation and the public and is the person whom the Registrar and other external parties will communicate with when making official contact with a corporation.

The public officer has certain responsibilities under the ACA Act, including lodging certain documents with the Registrar and maintaining the corporation's register of members.

The governing committee has responsibility for appointing a public officer, and determining an official address for that public officer, within three weeks of the date of incorporation. The public officer does not have to be a member of the corporation unless the rules specify, but if they are a member, they may also be a member of the governing committee.

Within three weeks after this appointment (and therefore within a maximum of six weeks from the date of incorporation) the committee is required to notify the Registrar of the name and official address of the public officer.

From time to time the name and/or address of the public officer may change for various reasons, including situations where the public officer may resign, or where the governing committee may decide to change the public officer or the official address.



The ACA Act requires the governing committee to notify the Registrar of any changes to the name of its public officer and/or official address within three weeks of the change occurring.

A successful campaign was conducted in October 2001 to update the records of Public Officers resulting in a 64 per cent increase in the receipt of advices of changes to the Public Officer details.

Name Changes

Where members wish to change the name of their corporation, the ACA Act requires that the committee of the corporation first seek the Registrar's approval of the intended new name. If the new name is approved, the public officer of the corporation is then required to give notice to the Registrar once the members have resolved at a general meeting that the name be changed as proposed. The change of name does not take effect until the Registrar has issued a new certificate of incorporation.

The Registrar adopts a flexible approach when approving proposed names that may be of cultural or community significance to the members of a corporation. However, the ACA Act requires that he ensures that the proposed name is:

- ▶ available, ie. that the name does not duplicate, or too closely resemble, the name of any existing corporation incorporated under the ACA Act; or
- ▶ not an unauthorised name, i.e. a name that is, in the opinion of the Registrar, undesirable, or a name that would not be allowed under the Corporations Law. The kinds of names which are considered to be an unauthorised name include:
 - names that are likely to be offensive to members of any section of the public;
 - names, which are misleading in relation to the objects and activities of the proposed corporation;
 - names that are likely to be confused with other incorporated bodies or institutions such as building societies, co-operatives, universities, associations incorporated under other legislation etc;
 - names, which suggest any connection with the Crown, any level of Government, or any department or instrumentality of Government.

During 2001-2002 the Registrar approved 22 requests for name changes.



Chapter Eight

Annual Reporting by Corporations

Annual Reports

Section 59 of the ACA Act requires each corporation to file with the Registrar by 31 December of each year a committee's report and an examiner's (auditor's) report for the preceding financial year. Each corporation is also required to present these reports to members at the annual general meeting.

The committee's report comprises a statement of compliance, a list of members, a balance sheet and an income and expenditure statement. The examiner's report (audit report) is required to confirm whether or not the financial statements are based on proper accounts and records and whether the corporation has complied with the ACA Act and its rules.

The annual reporting requirements of the ACA Act help ensure that corporations conduct their affairs in the best interests of their members and the general public. The annual information provided by corporations to the Registrar and its members is also a mechanism for demonstrating sound management, financial accountability and operational transparency.

Filing and Review of Annual Returns

During 2001-2002 986 annual returns were filed with the Registrar. While this represents a small increase on the previous period it is still a low return rate. However, a significant point that has already come out of the current review of the ACA Act is that many corporations do not have the resources to complete even basic annual returns or to seek exemption (see below) from the need to lodge financial returns. Many of those not responding are likely to be land holding bodies only or have minimal or no assets.

During 2002-03 ORAC will be undertaking a review of all non-compliant corporations to ascertain those that could be exempted from the requirement to lodge annual returns and those which should comply. Corporations falling into the latter category will be actively pursued to ensure compliance.





Exemptions

The ACA Act was designed to provide Aboriginal and Torres Strait Islander people with a simple and inexpensive means of incorporation. Many Aboriginal corporations may not carry out extensive activities, their financial dealings and resources are limited, and they may not hold substantial assets.

Section 59A of the ACA Act therefore provides that the Registrar may exempt corporations from the annual reporting requirements of the ACA Act. Corporations may apply to the Registrar for exemptions from these requirements. In applying for exemptions, corporations are required to demonstrate that it would be unduly onerous or impractical for them to comply.

During 2001 - 2002, the Registrar readily exercised the discretionary provisions of the ACA Act to exempt corporations from the requirement to prepare and file audited financial statements.

Examples of circumstances in which the Registrar exempted corporations from the requirement to prepare and file audited financial statements during the year, included, where the corporation:

- had little or no income or expenses for the year;
- only held land;
- held minimal assets; or did not conduct any extensive activities;
- had lost or destroyed records.

In the 2001-2002 financial year 305 exemption requests by corporations were approved. The

exemptions granted included audited financial statements for the 2000 -2001 year as well as previous financial years.

Details of the corporations granted exemptions from preparing and filing audited financial statements in 2001-2002 are at **Appendix B**.

Assistance with Financial Reporting Requirements

The Registrar recognises that a focused approach is required to assist corporations better understand and meet the annual reporting requirements of the ACA Act. ORAC has progressively implemented an active and ongoing program to assist corporations meet the requirements of the ACA Act.

Ongoing Assistance

ORAC provides Aboriginal corporations with ongoing assistance to better understand the reporting requirements of the ACA Act.

During 2001-2002 the Registrar provided the following assistance to corporations:

- providing reminder notices to all corporations outlining the requirements to file annual returns.
- issuing information brochures to corporations on the annual reporting requirements of the ACA Act.
- media advertising - including advertisements run in indigenous newspapers, and radio advertisements run on the National Indigenous Radio Service.
- responding to daily inquiries by phone or in writing, from members of corporations, in respect of the annual reporting requirements of the ACA Act.
- providing information on the financial reporting requirements during training workshops conducted as part of the office's information and training program.

Follow-up Strategy

The Registrar has implemented a strategy to follow up corporations that have failed to file annual returns for three consecutive years.

The key features of the strategy include;


- ▶ sending out formal letters of demand to corporations that have failed to file audited financial statements for three consecutive years. The letters clearly explain the provisions of the legislation and make it plain that the Registrar will take further action if the requirements of the ACA Act are not met.
- ▶ providing details of non-compliant corporations to local Aboriginal land councils, such as the Northern Land Council and the Central Land Council. This was acknowledged as being helpful in enabling them to provide assistance to Aboriginal corporations in their area.
- ▶ providing details of non-compliant corporations to ATSIC and other Commonwealth and State/Territory agencies, including details of those Aboriginal corporations that are to be sent letters of demand and may be subject to wind-up or deregistration action.

- ▶ inquiries and follow-up with other appropriate agencies and organisations at a local level to establish the current status of corporations in chronic breach of the financial reporting requirements of the ACA Act.

Whilst the Registrar is continually looking for new opportunities, and reviewing existing procedures and practices to enhance the level of support available to Aboriginal corporations, and where all efforts fail to bring an Aboriginal corporation into compliance, the Registrar has no option other than to deregister the corporation where it is defunct and does not own any assets.

Where an Aboriginal or Torres Strait Islander corporation is deregistered, the action is carried out in accordance with the requirements of the *Corporations Law* as it applies to the ACA Act and the regulations.

During 2001-2002 167 corporations were deregistered. These corporations are listed at **Appendix F**.



Chapter **Nine**

Examinations

Section 60 of the ACA Act gives the Registrar authority to examine the records and financial affairs of Aboriginal and Torres Strait Islander corporations.

Examinations of the affairs of corporations provide an integral element of the accountability framework for promoting high levels of compliance with the requirements of the ACA Act and their rules. Examinations also provide an effective mechanism for ensuring that corporations carry out their activities in the best interests of their members and the general public.

The main objectives of examinations are to:

- ▶ assess and review the level of compliance with the ACA Act and the corporation's rules, and to draw attention to any irregularities;
- ▶ take action where potential or emerging problems are identified;
- ▶ improve accountability and operational performance; and
- ▶ increase awareness and understanding of the ACA Act and the corporation's rules.

Examinations should not be viewed as a negative or as unnecessary intervention in the affairs of corporations. Of the examinations undertaken during the period only one-third led to stronger regulatory action being taken. In most cases the issues that led to the examination were satisfactorily resolved at the time of the examination; were dealt with through the provision of assistance by ORAC; or were of a minor nature and handled through the issuing of Section 60 Compliance Notice (refer Chapter 10 for details). In a number of cases the corporation's members and/or governing committee were pleased to have some of these minor issues resolved with incorrect perceptions of the corporation's operations put to rest.





2001-2002 Examinations

A number of common themes emerged during the year in the conduct of examinations and these themes will now be brought to the attention of other corporations so that they do not encounter the same problems. Common issues that arose were whether:

- ▶ governing committees were properly constituted and whether committee meetings were conducted in accordance with the ACA Act and the rules;
- ▶ corporations dealt with membership applications in accordance with their rules and maintained a proper register of members, as required by the ACA Act;
- ▶ annual general meetings and special general meetings were conducted in accordance with the ACA Act and the rules;
- ▶ proper accounts and records were maintained and whether the management of financial matters accorded with the ACA Act and the rules;
- ▶ governing committees complied with the annual reporting requirements of section 59 of the ACA Act; and
- ▶ proper records were kept in relation to services delivered.

Eighteen examinations were completed during 2001-2002. Details of these examinations are at **Appendix C**.

No examinations were in progress as at 30 June 2002.

Common Findings from 2001- 2002 Examinations

The following points highlight findings that were common to all Section 60 Examinations conducted during the 2001-2002 year.

- ▶ The Register of Members was either not locatable, not kept at all or was not being kept in the format prescribed in Section 58 of the ACA Act;
- ▶ Minutes of Meetings did not identify the type of meeting (ie. Annual General Meeting, Special General Meeting or Governing Committee Meeting);
- ▶ There was a lack of separation of powers, either by Staff or the Governing Committee, when managing the financial affairs of the Corporation;
- ▶ A failure by the Governing Committee to ensure that adequate records of the Corporation's financial affairs were being maintained;
- ▶ A failure by the Governing Committee to maintain adequate controls over the Corporation's assets; and
- ▶ The lack of the provision of appropriate Notices (in accordance with the Corporation's Rules) to members in relation to Annual General Meetings and Special General Meetings.

These are essentially all fundamental elements that contribute to good and transparent management practices, and members are urged to check that the corporation is at the very least undertaking the above points satisfactorily.

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Chapter Ten

Statutory Notices

Section 60A Compliance Notices

Section 60A of the ACA Act provides that the Registrar may require an Aboriginal or Torres Strait Islander corporation to take remedial action where he suspects, on reasonable grounds, that it has not complied with the ACA Act or its rules, or that there are irregularities in its financial affairs.

In circumstances where the Registrar is satisfied that a corporation can attend to compliance deficiencies, and/or take the necessary corrective action in relation to its financial affairs, he may serve a section 60A compliance notice on it. The compliance notice sets out the action and timeframe for the implementation of corrective measures.

In most cases a section 60A compliance notice is served on a corporation on the basis of information gathered as a result of an examination of its affairs.

Section 60A Compliance Notices Issued

In 2001-2002, the Registrar issued nine section 60A notices to corporations.

Key remedial action required in section 60A notices issued during the year included:

- steps required to be taken to maintain a proper register of members and to properly admit individuals to the membership of the corporation;
- procedures required to be followed to properly conduct general meetings and committee meetings in accordance with the ACA Act and the rules;
- the need to file with the Registrar outstanding audited financial statements, a list of members and/or a statement of compliance;



- actions to be taken to maintain proper accounts and records and properly control expenditure, receipts and assets of the corporation; and
- the conduct of a committee meeting within 30 days of the issue of the notice to acknowledge the key findings of the examination and to implement the required remedial action.

It is the Registrar's normal practice to continue to monitor the activities of a corporation for a period of six months from the date of issue of a section 60A notice.

Details of the section 60A notices issued in 2001-2002 are at **Appendix D**.

Personal Service of Section 60A Notices

The Registrar acknowledges the importance of ensuring that Aboriginal and Torres Strait Islander corporations fully understand the requirements of the ACA Act and their rules, and the nature and extent of the remedial action required by the notices he issues.

During 2001-2002, where circumstances warranted and it was practical to do so, the Registrar continued with the practice of having his staff personally serve section 60A notices on the corporations and for them to meet with the governing committee and corporation representatives.

These meetings provide a forum for the Registrar's staff to fully explain the actions required by the corporation to comply with the ACA Act and the rules.

In addition, the meetings enable the Registrar's staff to answer questions and conduct informal training sessions on key issues such as:

- the roles and responsibilities of members of a governing committee;
- conducting committee and general meetings; and
- maintaining appropriate records.

The meetings are also a means of increasing the corporation's awareness of the role of the Registrar and ORAC, and the mechanisms put in place by the Registrar to assist corporations.

The personal service of the section 60A Notice was acknowledged by corporation representatives as assisting them to better understand the requirements of the ACA Act and their rules. As a result of the meeting with the Registrar's staff, a number of corporations identified the need for further specific assistance and training on the impact of the Act and their rules in their day-to-day activities.

Section 71 Notices

In accordance with section 71 of the ACA Act the Registrar may request that a corporation show cause why an administrator should not be appointed. Such action only takes place when the Registrar considers that there are serious issues/breaches which may constitute grounds for appointing an administrator to take control of a corporation's affairs.

In most instances the basis for the Registrar taking this action is based on information gathered as a result of an examination of a corporation's affairs.

In 2001-2002, the Registrar served show cause notices on nine Aboriginal corporations.

Details of the Aboriginal corporations issued with show cause notices are at **Appendix E**.

Following assessment of the corporation's response, the Registrar has the option of proceeding to appoint an administrator, issuing a section 60A notice and thereby giving the corporation an opportunity to remedy the issues without further intervention, or possibly choosing to do nothing further.

Deregistration Notices

The Registrar may deregister and strike off the name of an Aboriginal or Torres Strait Islander corporation from the Register of Incorporated Aboriginal Associations (the Public Register), if the corporation is not carrying on its activities or is not in operation.

The Registrar may initiate deregistration action in the following circumstances:

- ▶ as a result of a compliance improvement program and where reasonable enquiries have revealed that the corporation does not hold any assets and is inactive;
- ▶ where a liquidator has completed the wind-up of the affairs of a corporation, and applies to the Registrar to have the corporation de-registered;
- ▶ where a corporation advises the Registrar that it holds no assets and liabilities, and that it is no longer operational.

During 2001-2002, the Registrar issued Notices of Deregistration for 170 corporations. These Notices were also published in the Commonwealth Business Gazette.

167 corporations were deregistered during 2001-2002 and details are shown at **Appendix F**.





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Chapter Eleven

Administrations

Administrators

In accordance with the ACA Act, the Registrar has the power to appoint an administrator to take control of the affairs of an Aboriginal or Torres Strait Islander corporation.

The appointment is a serious intervention in the affairs of a corporation because, when an administrator is appointed they assume the roles and responsibilities of the governing committee.

The administrator takes control of the affairs of the corporation, manages its operations, and pursues its objectives in accordance with the requirements of the ACA Act and the corporation's rules.

Appointment of Administrators

Section 71 of the ACA Act sets out the grounds on which the Registrar may initiate action to appoint an administrator. The grounds include situations where:

- ▶ the corporation has traded at a loss for at least six months;
- ▶ the governing committee has failed to comply with the ACA Act, the regulations or the corporation's rules;
- ▶ the governing committee has acted in its own interest, or unfairly or unjustly in relation to the members;
- ▶ the appointment of an administrator is required in the interests of members and creditors of the corporation, or in the public interest



The decision to appoint an administrator is not taken lightly. In the first instance careful consideration is given to the corporation's response to a show cause notice why an administrator should not be appointed. If an administrator is still deemed to be necessary, the Registrar must brief the Minister for Immigration and Multicultural and Indigenous Affairs on the reasons for an appointment and seek the Minister's approval to appoint an administrator.

During 2001-2002 the Registrar appointed administrators to manage the affairs of six corporations.

Full details of all corporations under administration during 2001-2002 are at **Appendix G**.

Role and Responsibilities of Administrators

The primary role of the administrator is to take control of the affairs of the corporation so as to re-establish stability and best practice in an environment that promotes accountability and awareness of statutory and other responsibilities. Administrations are intended to assist corporations with resolving difficulties in the day-to-day management of their financial and operational affairs, and with laying the groundwork for efficient and effective management within the corporation after the administration ceases.

The principal responsibilities of an administrator include putting in place support to sustain the corporation's ongoing operation:

- ▶ Appropriate procedures, guidelines and policies in respect of core operations.
- ▶ Proper financial controls, systems and financial records.
- ▶ A sound financial position and, where appropriate, ongoing funding.
- ▶ Adequate staffing levels and structures.
- ▶ Securing all corporation assets including ensuring insurance cover is in place.

- ▶ An accurate and up-to-date membership register.
- ▶ Appropriate rules that reflect current operations.

An administrator is also required to investigate any misuse, misapplication or misappropriation of corporation funds or assets.

An administrator appointed to a corporation reports regularly to the Registrar on the progress of the administration. ORAC monitors the progress of administrations through these reports and visits to corporations.

The underlying reason for appointing an administrator is to put a corporation's affairs in order, to put in place relevant procedures and practices conducive to proper corporate governance with the view to ultimately returning the control of the corporation to its members. Administrators also seek to maintain contact with the membership through a consultative committee of member representatives. This assists members to better understand what is happening in their corporation and also assists with a more cohesive transition of control of the corporation's affairs back to the members.

However, an administrator in certain circumstances may not be able to achieve this outcome where, for example:

- ▶ the corporation is insolvent;
- ▶ there is lack of interest by members in the corporation's future;
- ▶ the corporation will not be able to pursue its objects;
- ▶ the corporation will not be able to conduct its affairs in accordance with the ACA Act and the rules.

In such circumstances the administrator may have to recommend to the Registrar that he commence proceedings to wind-up the corporation's affairs. It is pleasing to note that during the 2001-2002 year no corporations were wound up following the appointment of an administrator.



Elections of New Governing Committees

Having placed the corporation on a stronger financial basis and having instituted proper corporate governance practices, the administrator will then report to the Registrar that an administration is no longer necessary. If satisfied this is so, then in accordance with section 77D of the ACA Act, the Registrar must hold an election to elect a new governing committee.

The election of a capable, diligent and representative new governing committee to replace an administrator is a significant event for the corporation's future. The incoming committee elected by the members has the opportunity to consolidate and build on the processes, procedures and structures put in place by the administrator, and secure a stable and successful future for the corporation.

The election process is determined by the Registrar, taking into account the particular circumstances of the corporation under administration.

If the members of a corporation under administration are of a reasonable number, and all are located in one small area, the Registrar may decide to conduct the election of a new committee at a special general meeting of members.

During 2001-2002, the Registrar conducted three special general meetings for the purpose of electing a new governing committee following the completion of the administration.

In situations where a corporation has a large number of members, where it has a widely dispersed membership base, or where the election at a special general meeting of members is not considered appropriate, the Registrar may choose to conduct elections of new governing committees by postal ballot.

However in 2001-2002 there was no requirement to conduct governing committee elections by the postal ballot method.

Cancellation of Administrator Appointments

After the election of a new governing committee or where the affairs of a corporation under administration are placed into liquidation, the Registrar cancels the appointment of the administrator.

During 2001-2002 the Registrar cancelled the appointments of administrators of four corporations. Three of these corporations were handed back to the members to continue with their operations soon after the elections for the new Governing Committee were held.

The office has also worked with the new Governing Committees and members of each of these corporations to ensure they have an understanding of the roles and responsibilities involved in managing the affairs of the corporation.

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Chapter Twelve

Winding-up Petitions and Liquidator Appointments

Section 63 of the ACA Act provides that the Registrar, a member of a corporation or a creditor of a corporation may petition the Court to wind-up a corporation.

The grounds outlined under section 63 of the ACA Act for petitioning the Court to wind-up corporations are outlined as follows:

- ▶ the corporation has, in accordance with its rules, resolved to be wound up by the Court;
- ▶ the business of the corporation was not commenced within one year after its incorporation or has been suspended for a continuous period of one year;
- ▶ there are fewer than five members of the corporation;
- ▶ the corporation is unable to pay its debts;
- ▶ members of the committee have acted in their own interest or in a manner that appears unfair or unjust to other members;
- ▶ by reason of the complexity or magnitude of the activities of the corporation, it is inappropriate that it continue to be incorporated; and
- ▶ it is just and equitable for the corporation to be wound up.

2001-2002 Liquidations and wind-up orders

As at 30 June 2002, 65 corporations were under liquidation. These are listed at **Appendix H**.

During 2001-2002 winding-up orders were obtained in relation to three corporations, as a result of wind-up actions initiated by the Registrar. These orders were obtained on the basis of information gathered from an examination of the affairs of each corporation or information supplied by other parties.

A listing of corporations that were the subject of winding up orders as a result of actions by the Registrar is at **Appendix I**.



Chapter Thirteen

Administrative Review

The decisions made by the Registrar are subject to administrative review. This ensures that all decisions made by the Registrar are fair and equitable, and open to public scrutiny. These review mechanisms include the Commonwealth Ombudsman, Freedom of Information legislation, the Administrative Decisions (Judicial Review) legislation, and the right of individuals to initiate action in the Federal Court.

Freedom of Information

Under the *Freedom of Information Act* 1982 (the FOI Act), individuals may seek access to documents in the

possession of the Registrar. Requests are made to the Registrar as the principal officer of a prescribed authority. During 2001-2002 the Registrar authorised senior staff of ORAC to be decision makers under the FOI Act and they dealt with four requests.

Administrative Appeals Tribunal

If applicants are dissatisfied with the decision by the Registrar they may seek a review of that decision in the Administrative Appeals Tribunal (the AAT).



Administrative Decisions Judicial Review

The *Administrative Decisions Judicial Review Act 1977* (the ADJR Act) provides the broadest legislative avenue for an individual to seek a general review of decisions of the Registrar of Aboriginal Corporations.

Section 13 of the ADJR Act enables individuals to obtain from the Registrar a written statement of reasons for decisions made. The Registrar must give that statement within 28 days of the request.

The ADJR Act also provides for applications to be made to the Federal Court for a review of a decision, on the basis that the decision appealed was wrong in law on one or more of the grounds set out in the ADJR Act. Broadly speaking the right to seek review is on the basis that a matter has been dealt with unfairly.

Commonwealth Ombudsman

An individual who feels that they have been treated unfairly may request an investigation by the Ombudsman pursuant to the *Ombudsman Act 1976*.

There were no matters referred by the Ombudsman in relation to the operations of ORAC during this financial year.