

year in review



PHOTO: Laura Beacroft, Registrar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Laura Beacroft



Letter from the Governor General

