about ORAC

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

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

ORAC's objective

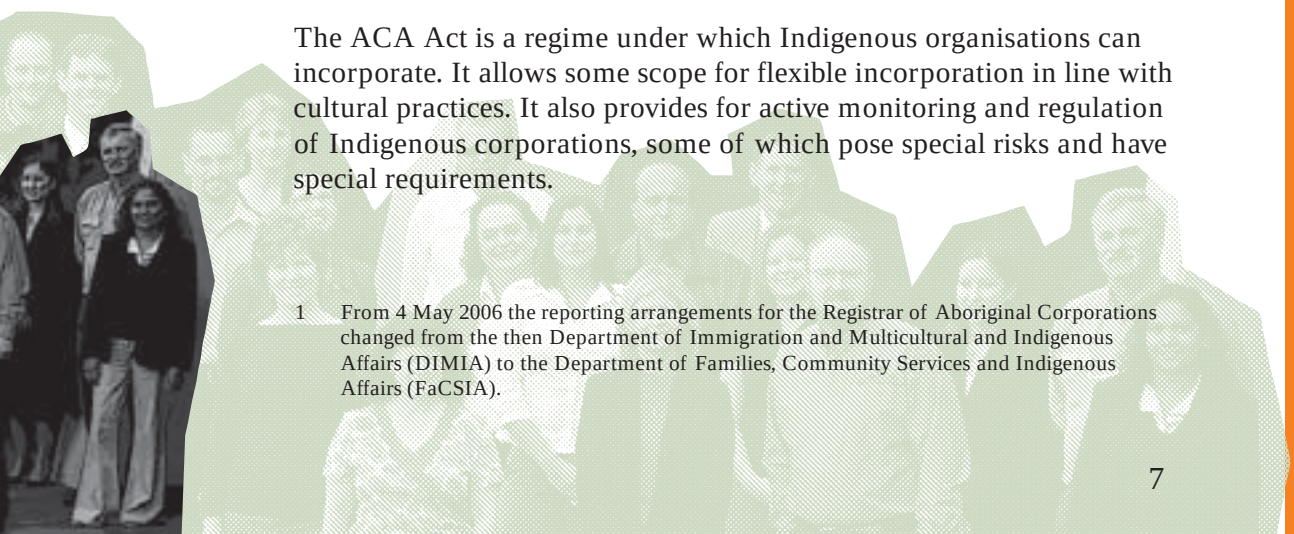
To support the delivery of incorporation, regulation and related services for Indigenous people in accordance with the *Aboriginal Councils and Associations Act 1976* (ACA Act). We aim to deliver our services in a way that takes account of the special needs, requirements and risks of Indigenous corporations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

What is ORAC?

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

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

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



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

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

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

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

ORAC's corporate direction

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

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

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

Our guiding principles

The following principles guide ORAC's work.

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

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

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

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

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

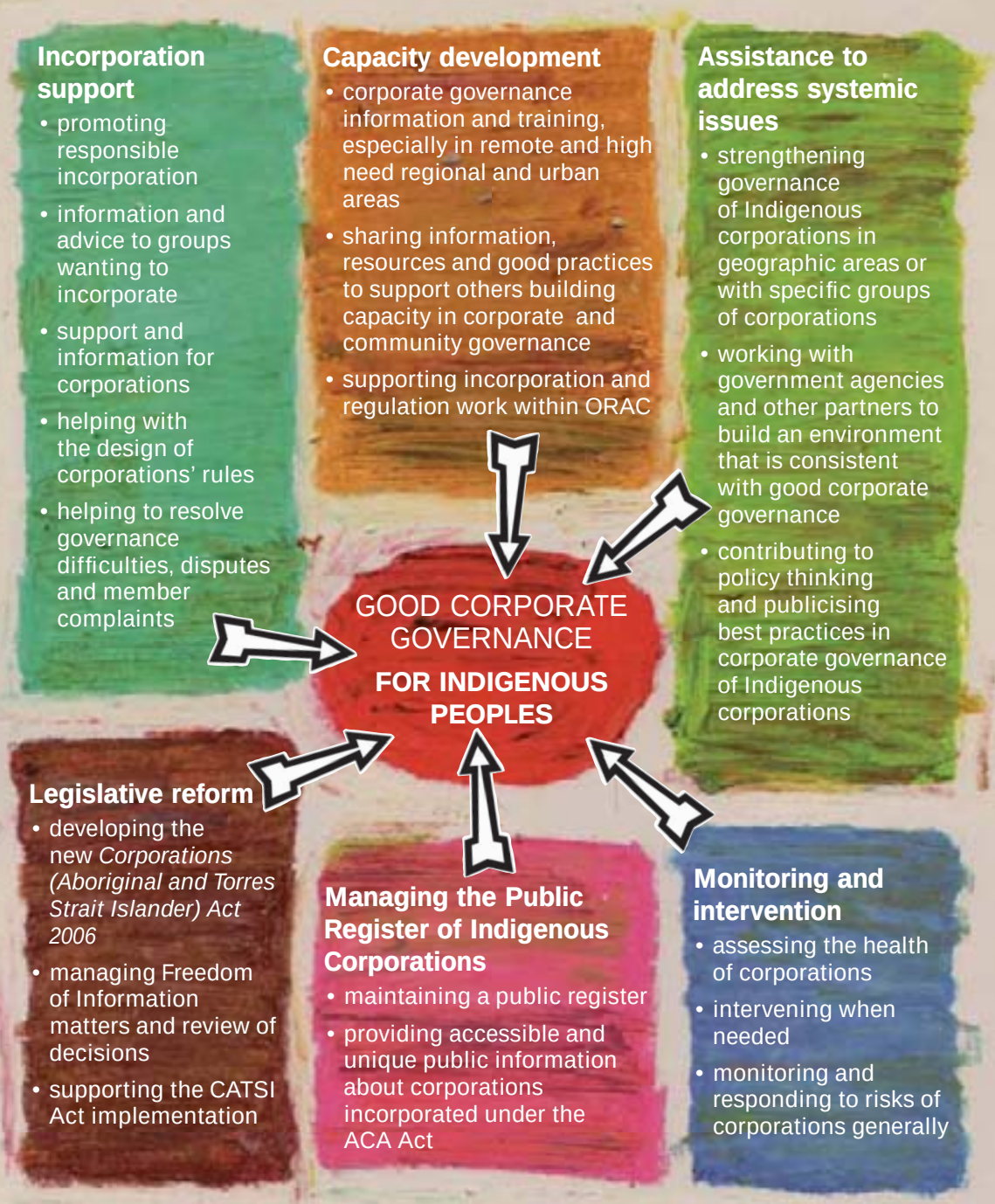
Promoting knowledge management—recognising that access to information, experience and knowledge is an empowering process and making sure any management processes are user friendly and accessible.

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

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

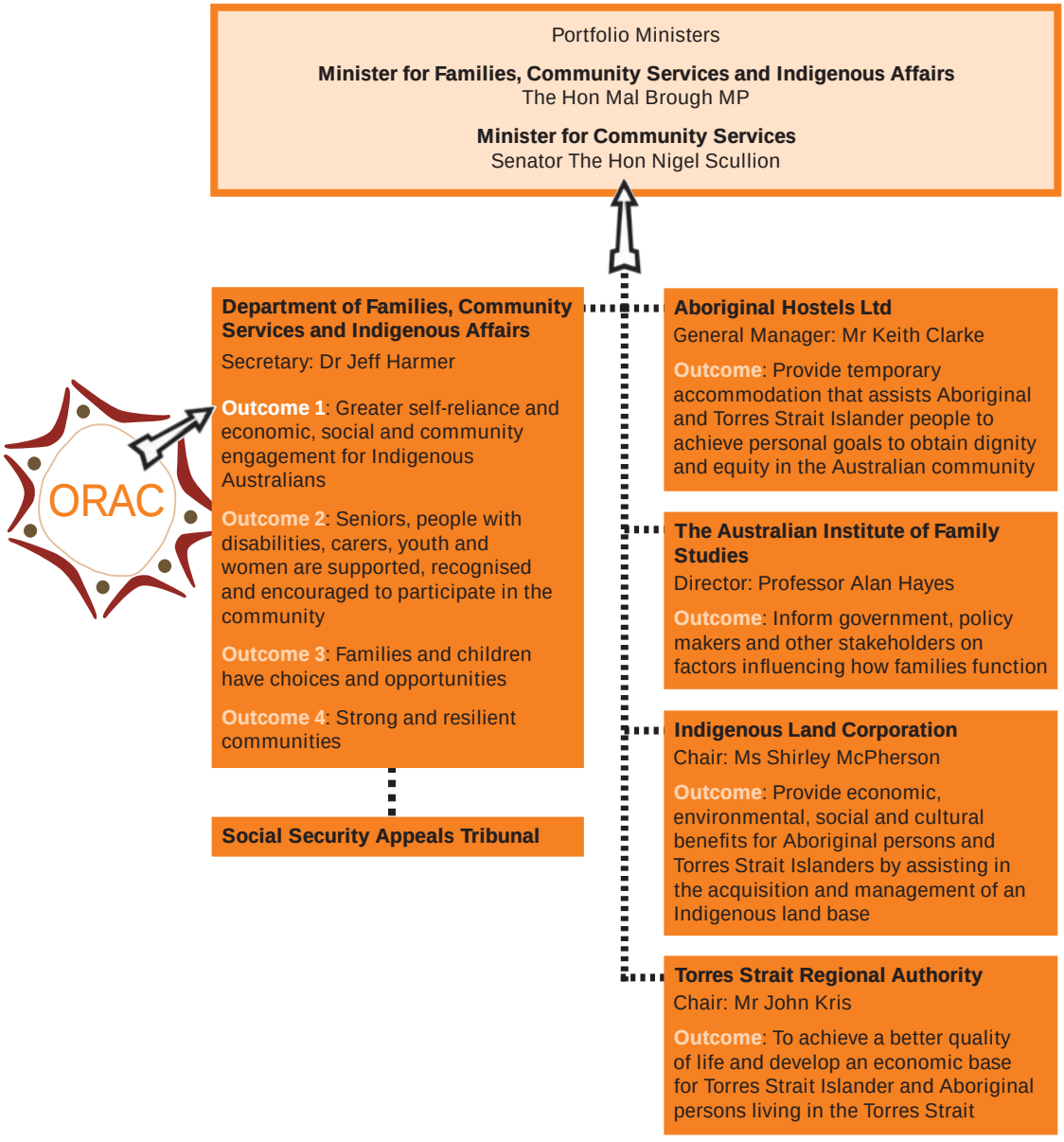
Building capability and social assets—developing capacity, knowledge and social assets to help build the sustainability of organisations.

Figure 1: ORAC's key roles



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

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



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

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

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

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

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

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

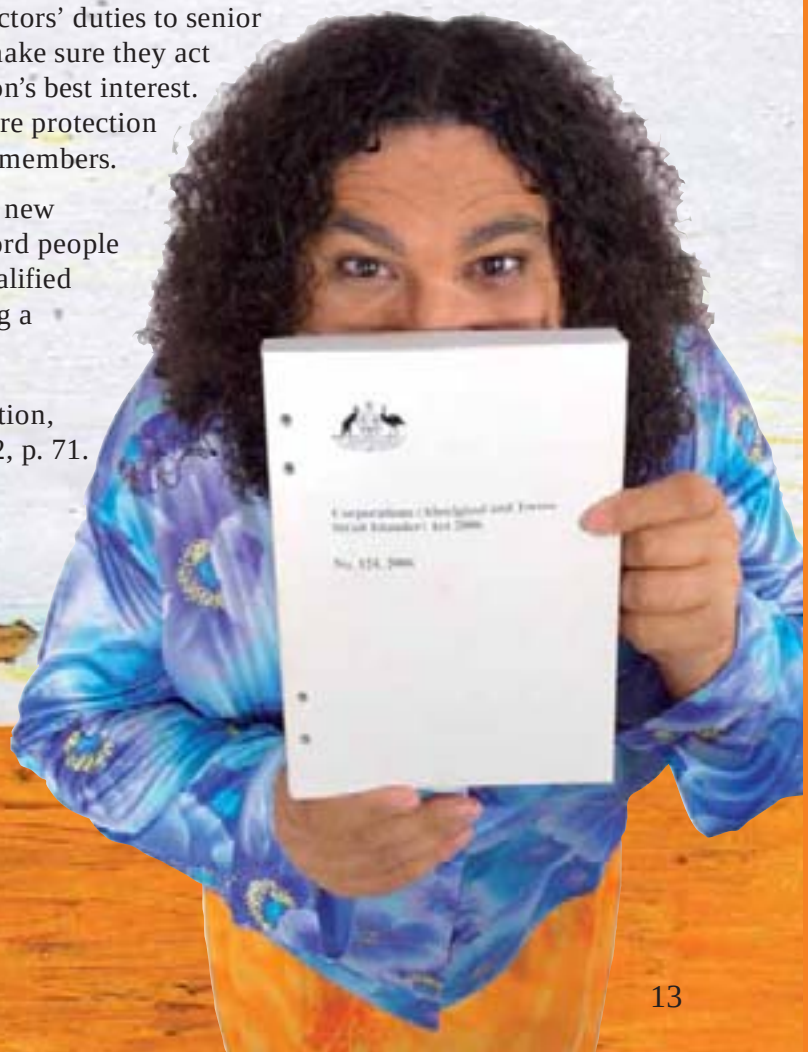
The CATSI Act

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

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

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

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



Powers of the Registrar

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

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

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

Our clients

Our clients include:

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

PHOTO: Participants at an information session.

Our services

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

Our key services are:

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

The Public Register

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

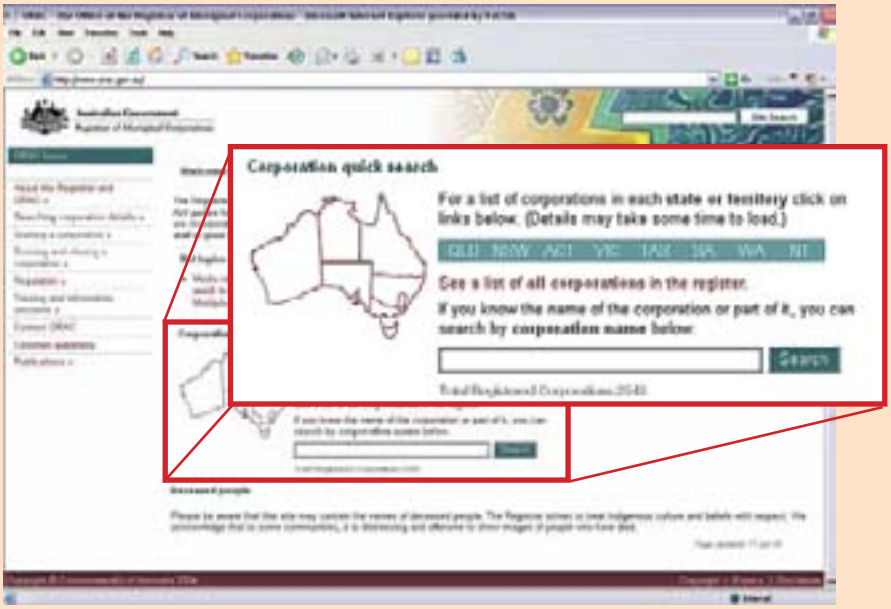
The information in the Public Register includes certificates of incorporation, applications for incorporation, rules (constitutions), details of public officers, annual financial statements, exemptions from some reporting requirements, and some documents relating to regulatory action—for example, monitoring,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

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

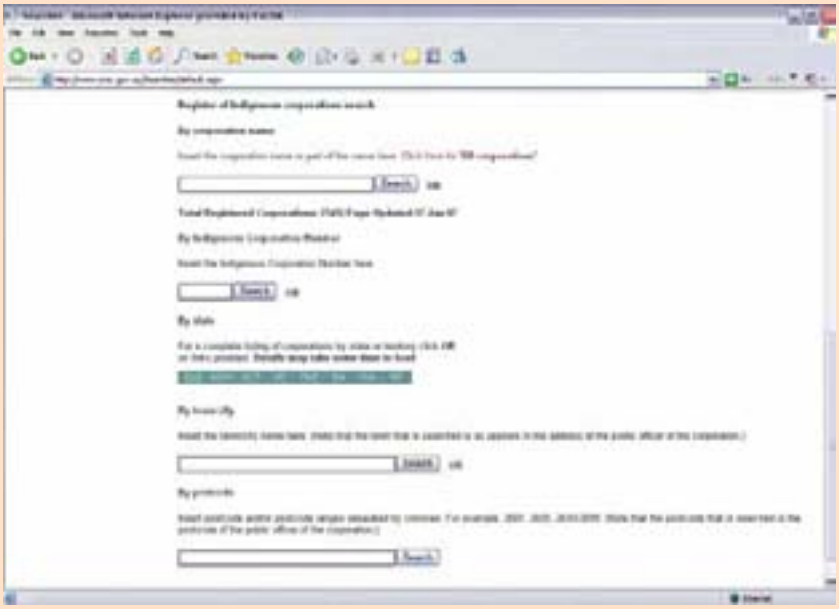
ORAC is in the process of developing online training and constitution design tools that will help corporations move to the new CATSI Act, while building the platform for some online lodgment of documents.

HOW to search our corporations

www.orac.gov.au (home page)



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



Relationships with agencies

Relationship to Office of Indigenous Policy Coordination (OIPC)

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

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

Relationship to other agencies

ORAC's primary clients are individuals, groups and corporations linked to the ACA Act and also users of the Public Register maintained by ORAC on Indigenous corporations incorporated under the ACA Act. ORAC builds close working relations with agencies that have an interest in the funds and/or assets held by corporations. ORAC also works with state and territory government agencies to improve outcomes for Indigenous people across Australia (see Figure 3).

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

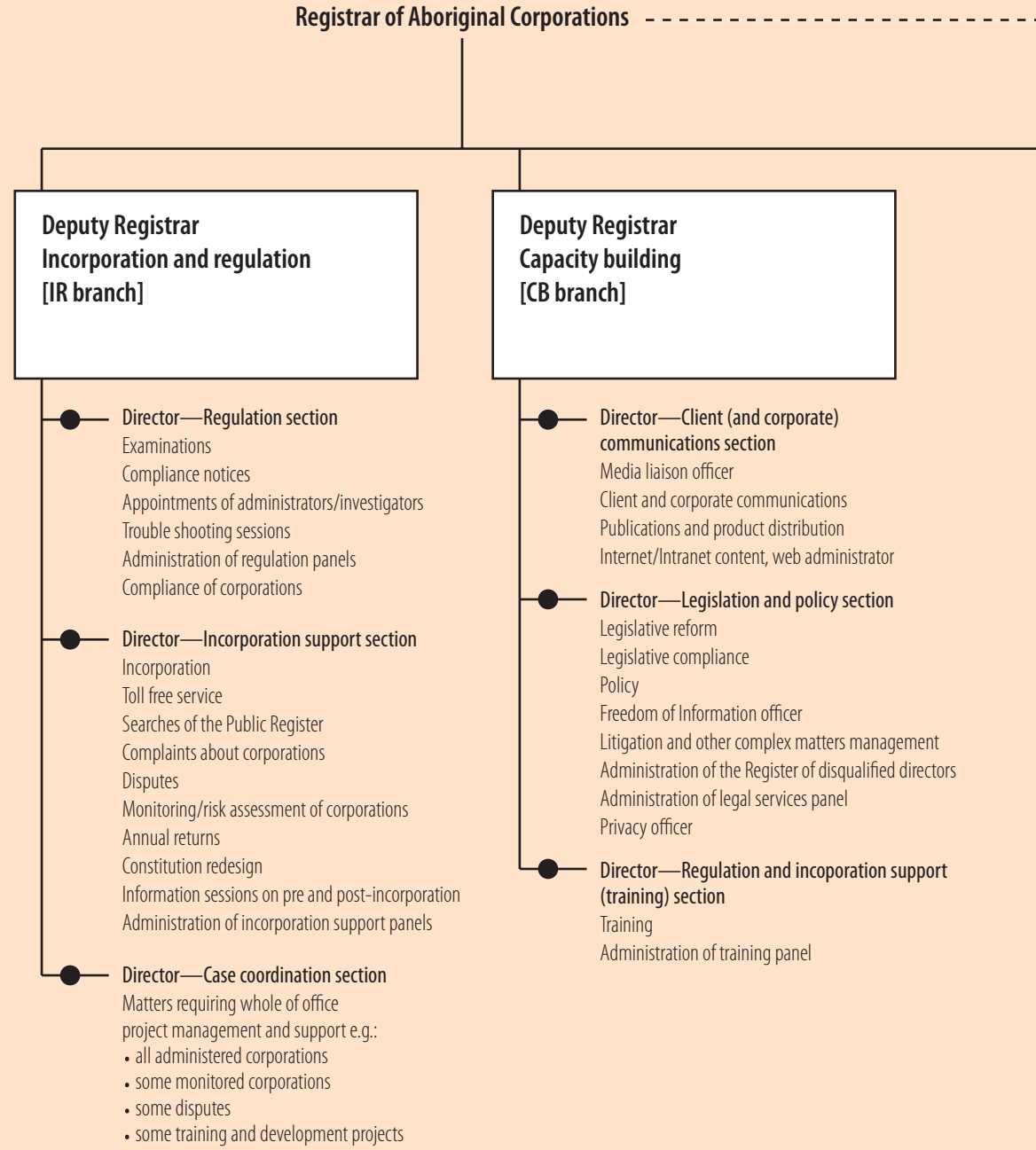
In recent years ORAC has developed a relationship with the Australian Securities and Investments Commission (ASIC) and the state/territory incorporation and regulation agencies to foster better coordination nationally of incorporation and regulation services and responses. ORAC and ASIC agreed in principle to a memorandum of understanding (MOU) during the year, which will be finalised once the Corporations (Aboriginal and Torres Strait Islander) Act has commenced.

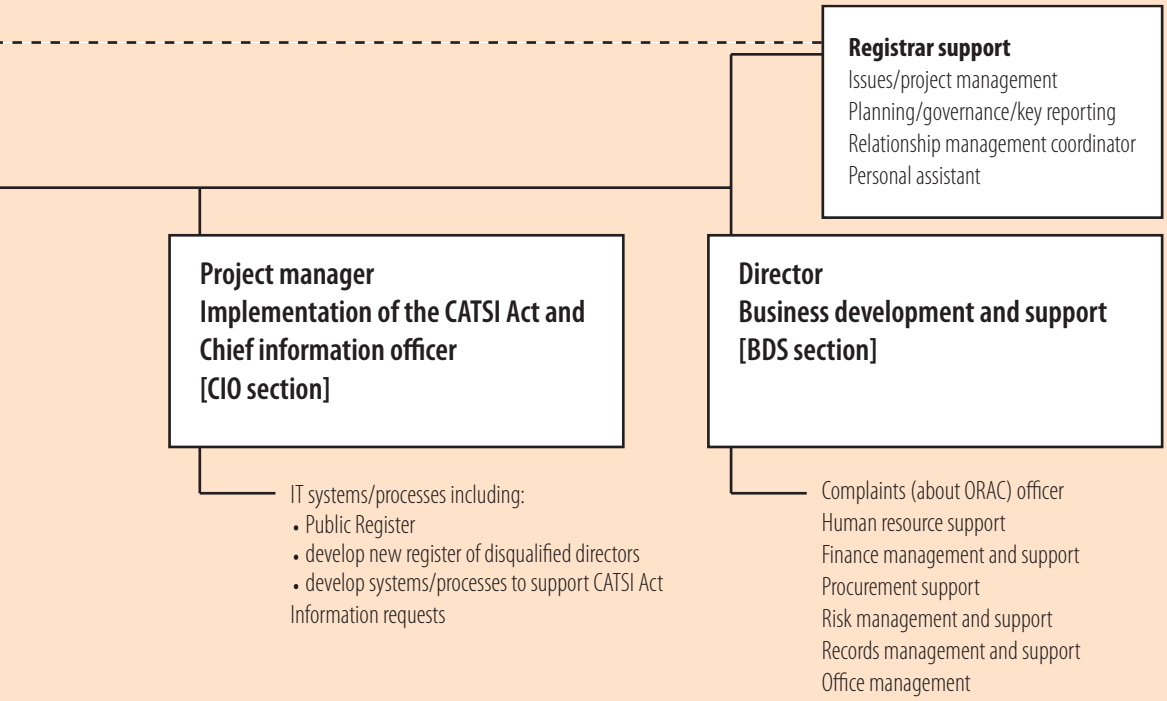
ORAC's focus is on identifying and targeting key systemic issues that undermine the viability of Indigenous corporations and has been building closer relationships with the following agencies for this purpose: the Australian Taxation Office, agencies linked to the Council of Australian Governments (COAG)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

Figure 3: ORAC's key relationships

Figure 4: ORAC's organisation structure

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




Registrar support
Issues/project management
Planning/governance/key reporting
Relationship management coordinator
Personal assistant
Project manager
Implementation of the CATSI Act and
Chief information officer
[CIO section]
Director
Business development and support
[BDS section]
IT systems/processes including:
• Public Register
• develop new register of disqualified directors
• develop systems/processes to support CATSI Act
Information requests
Complaints (about ORAC) officer
Human resource support
Finance management and support
Procurement support
Risk management and support
Records management and support
Office management