

Solid work you mob are doing

Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia

Report to the National Alternative Dispute Resolution Advisory Council
by the Federal Court of Australia's Indigenous Dispute Resolution
& Conflict Management Case Study Project



Solid Work You Mob Are Doing: Case studies in Indigenous Dispute Resolution & Conflict Management in Australia

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Cover artwork

Photograph of the mural on the wall of the TYDDU (Tiwi Youth Diversion & Development Unit) office taken by Rhiân Williams.

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² Ms Lynn Stephen was a member of the Reference Group until April 2008.

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Title Tribunal); and Ms Jeanette Vaha'akolo (Training Coordinator, Dispute Settlement Centre Victoria)³ on behalf of the National Alternative Dispute Resolution Network, a collective of community justice centres which operate in various States and Territories.

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Title of the report

The title of this report – *'Solid work you mob are doing'* – owes thanks to a member of the Project's Research Consultative Group (RCG), who used these words in a digital video filmed at a RCG meeting in Melbourne, 19 December 2007. In the video, four Aboriginal mediators who are members of the RCG sent a message to the Tiwi Youth Diversion and Development Unit in Nguiu, Bathurst Island, Northern Territory, expressing support for the work of the Unit. The video was subsequently shown to research participants at the Tiwi Youth Diversion and Development Unit, as part of researcher consultations on a draft of the Tiwi case study report (Chapter 5).

Language used in this report

This report is intended to be used by the National Alternative Dispute Resolution Advisory Council and is therefore written in language which is considered appropriate for a government/policy setting. Other products proposed to be produced as part of the Project address the need to reach other specific audiences, including practitioners and Indigenous communities.

³ Ms Jeanette Vaha'akolo was a member of the Reference Group until December 2007.

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Abbreviations used in this report

ADR	Alternative dispute resolution
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AJC	Aboriginal Justice Council (WA)
ALJS	Aboriginal Law and Justice Strategy (NT)
ALS	Aboriginal Legal Service
CALD	Culturally and Linguistically Diverse
CDEP	Community Development Employment Program
CJC	Community Justice Centre (NSW)
CJG	Community Justice Group (Queensland)
DAA	Department of Aboriginal Affairs (WA) ⁴
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FRC	Family Relationships Centre
IFaMP	Indigenous Facilitation and Mediation Project
L&J Committee	Law and Justice Committee (Ali-Curung, NT)
NADRAC	National Alternative Dispute Resolution Advisory Council
NSW	New South Wales
NT	Northern Territory
NTER	Northern Territory Emergency Response
SCAG	Standing Committee of Attorneys-General
The Project	Indigenous Dispute Resolution & Conflict Management Case Study Project
TYDDU	Tiwi Youth Diversion and Development Unit
WA	Western Australia

⁴ Now the Department of Indigenous Affairs.

Summary of the report



Chapter 1 introduces the Project.

Chapter 2 describes the Project's case study approach and addresses issues encountered in negotiating the research which have shaped the direction and scope of the Project.

Chapters 3, 4 and 5 contain the three main case studies conducted as part of the Project.

Chapter 6 contains a series of 'snapshots' or 'mini' case studies.

Chapter 7 presents a comparative analysis of practice issues which emerge from the case studies and snapshots. It identifies *critical factors for effective practice*.

Chapter 8 continues the comparative analysis by exploring what is needed in order for effective practices to occur. It identifies *strategies for implementing effective practice*.

Chapter 9 identifies potential further research.

Chapter 10 concludes the report.

Preamble



The Indigenous Dispute Resolution and Conflict Management Case Study Project aims to provide evidence-based research and resources to support the development of more effective approaches to managing conflict involving Indigenous Australians.

Indigenous perspectives on conflict management often differ markedly from mainstream understandings of 'dispute resolution.' Some Indigenous practitioners identify their practice as 'peacemaking' or use other terms in describing what they do which embrace a deeper level of healing and renewal of relationships.

Increased interest in Indigenous approaches to dispute resolution and conflict management is both welcomed and regarded with a degree of apprehension by Indigenous communities and practitioners who have worked for years to develop meaningful and effective processes. There is concern that Indigenous ownership of dispute management or 'peacemaking' processes could be inadvertently lost if research findings are taken out of context from the cultural and community dimensions of effective practice.

The objective of the Project is to deliver recognition and support for the *solid work* that is being carried out and to enable current practices to be refined and extended. Its conclusions are intended to support, consolidate and build on Indigenous knowledge and experience. They are not intended as a substitute for that knowledge and experience.

Executive summary

1. This report presents the research findings of an in-depth investigation into effective practices for managing conflict involving Indigenous people as part of the Indigenous Dispute Resolution and Conflict Management Case Study Project (the Project).
2. The research was commissioned by the National Alternative Dispute Resolution Advisory Council (NADRAC) and conducted by the Federal Court of Australia in collaboration with the Australian Institute of Aboriginal and Torres Strait Islander Studies.
3. The Project has conducted three main case studies and a range of shorter ‘snapshot’ studies.
4. The three case studies concern:
 - a mediation at Halls Creek, Western Australia which resolved a long-running ‘feud’ involving three generations of women, and was conducted by three Indigenous practitioners (**Halls Creek case study**);
 - a mediation carried out by a NSW Community Justice Centre in a NSW south coast town, involving a dispute between Aboriginal and non-Aboriginal neighbours (**NSW case study**); and
 - the work of the Tiwi Youth Diversion and Development Unit in managing family and community conflicts on Bathurst Island, Northern Territory (**Tiwi case study**).
5. The snapshots include the Ali-Curung Law and Justice Committee; an entrenched feud in a remote community of ‘Thetown’; Indigenous experience within a Family Relationships Centre; Community Justice Group mediations at ‘Gintji’ in Northern Queensland; and the Nguiu Jealousy Program in the Tiwi Islands.
6. Throughout Australia, there is a need to design and deliver timely, responsive and meaningful dispute management processes in the Indigenous context. Effective processes are crucial not only for disputes among Indigenous people, but also for disputes involving non-Indigenous parties and in broader areas of Indigenous engagement, including whole-of-community approaches and agreement-making. However, in many areas, the necessary services to offer timely, responsive and effective dispute management processes are non-existent. Where these services exist, they often face uncertain funding and inflexible institutional arrangements which impede their ability to deliver reliable and competent services.
7. The findings of the Project have relevance to all who do business with Indigenous communities. This includes those working in a broad range of areas including health, housing, education; natural resource management; native title; social and emotional wellbeing; Northern Territory Emergency Response (NTER) initiatives; income support; taxation; child support; employment; consumer advocacy; business development; Indigenous governance; corporate social responsibility; agreement-making; microfinance; family relationships and community cohesion; youth and children’s services; social and emotional wellbeing; welfare reforms; criminal and restorative justice; cultural heritage protection and repatriation of cultural materials; and reconciliation.
8. Specific responsibilities for resourcing Indigenous dispute management services are located at Federal, State and Territory levels. Properly fulfilling these responsibilities requires successful partnerships between governments and high levels of interagency cooperation and collaboration to address insufficiencies and inconsistencies in policy and service provision.
9. In particular, the Attorney–General’s Department has responsibilities in relation to native title; family law and family dispute resolution; reducing Indigenous peoples’ adverse contact with the criminal justice system (including restorative justice programs); legal aid; community legal services; family violence prevention services and Indigenous women’s outreach projects; law

- reform and policy development; and development through the Standing Committee of Attorneys-General of the National Indigenous Law and Justice Framework.
10. The Department of Family and Housing Community Services and Indigenous Affairs (FaHCSIA) has responsibilities for programs relating to Indigenous leadership, governance, service coordination and community engagement. It also has responsibility for administering the Family Relationships Services Program, which it jointly funds with the Attorney-General's Department, and for implementation of initiatives under the NTER.
 11. The Department of Education, Employment and Workplace Relations has responsibilities for a range of Indigenous education and training initiatives and the development of policies and programs to support Indigenous employment.
 12. Responsibilities for service delivery, policy development and program evaluation also lie at the State and Territory government level, particularly in key areas such as: policing; crime prevention and corrections; land and water management; cultural heritage; courts administration; vocational training programs; and the provision of housing, health, community and children's services.
 13. This report identifies a number of *critical factors for effective practice* which are designed to assist practitioners and others involved in the design and delivery of a dispute management process. They highlight the importance of parties' ownership of processes, of careful preparation, and of working with the parties to design processes which can meet their procedural, substantive and emotional needs. Critical factors also relate to the implementation and sustainability of agreements, and the attributes and skills of effective practitioners in the Indigenous context.
 14. The report also examines the need for various kinds of support, without which effective practices cannot be realised, and presents a series of *strategies for implementing effective practice* to assist those with responsibilities for the development and delivery of dispute management services. Identified strategies relate to:
 - education and awareness initiatives for communities and those who work with or provide services to Indigenous people;
 - a range of training initiatives which recognise prior learning and are designed and delivered in culturally competent ways;
 - professional support, appropriate remuneration and career opportunities for practitioners working in the Indigenous context;
 - whole-of-community approaches that are facilitated by community engagement facilitators to ensure that agencies work together to deliver effective services; and
 - dispute management service infrastructure at national, state/territory, regional and local levels.
 15. The critical factors for effective practice and strategies for implementing effective practice are set out in the next section of this report.
 16. Properly realising these critical factors and strategies points to the need for a national Indigenous dispute management service. Such a service could develop regional panels of expert Indigenous and non-Indigenous dispute management practitioners and provide consistency in standards and training approaches. A national dispute management service could build on and integrate with existing networks, such as community mediation centres and justice groups, to provide timely, responsive, culturally and physically safe services that Indigenous people can feel they genuinely 'own.'
 17. A national investment in an effective Indigenous dispute management service would ultimately create significant social and economic benefits. It would enhance the potential for sustainable partnerships with Indigenous peoples, avoid the costs of Indigenous contact with the criminal justice system, and strengthen governance and social cohesion in Indigenous communities. The functions of a national Indigenous dispute management service are therefore integral to 'closing the gap' on Indigenous disadvantage and to the building of safer, self-sustaining Indigenous communities.

18. It is hoped that agencies with responsibilities for dispute resolution and conflict management involving Indigenous peoples will implement the findings of the Project in the spirit of genuine commitment to achieving improved outcomes in Indigenous dispute management.

Summary of key research findings

Critical factors for effective practice

The role of 'culture' in Indigenous dispute management

- Recognise that cultural issues are inseparable from other issues affecting Indigenous peoples' lives, including historical and contemporary issues.
- Ensure that local services include staff members from each relevant cultural group in the community to enable greater local ownership of the service.
- Manage conflicts in negotiation with parties in ways that are congruent with the parties' cultural values, priorities and governance structures – including kinship protocols, respect for Elders and traditional owners, use of ceremony, and approaches to gender.
- Assist the community to develop processes that are owned by the community.
- Evolve processes and services in response to local needs and issues.
- Adapt and modify approaches according to the context in which they are employed.

The importance of preparation

- Design the preparation phase thoroughly, allowing sufficient time and resources to implement specialised intake procedures as appropriate.
- Ensure that people who conduct intake and pre-mediation are trained in preparation techniques which are complementary to dispute management.
- Map relationships to identify whose dispute it is and appropriate support people. The dispute may be 'owned' by individuals, or small or large groups, depending on the nature of families and communities involved.
- Build the parties' willingness to participate by fostering goodwill, instilling confidence and trust, and explaining the process to them in clear language.
- Support local people to take responsibility for fixing their own problems, by initiating dispute management processes themselves.
- Prepare thoroughly for court ordered or annexed processes, ensuring that timeframes are appropriate for the parties as well as the court and practitioners.

Process design

- Build on work carried out in preparation to design effective processes.
- Engage with, and respond to, the parties' preferred ways of doing things and confirm the appropriateness and acceptability of the approach with the parties.
- Use team, co-mediation or panel approaches to:
 - better account for the broad range of interests and needs in multi-party disputes;
 - offer parties a choice of mediators including Indigenous practitioners that allows for matching their gender, cultural background, and other relevant factors such as localness; and
 - provide practitioners with mutual support and debriefing and offer opportunities for developing the skills of emerging practitioners.
- Establish local and regional infrastructure to facilitate access to services and to enable quick responses to referrals or requests for assistance to avoid disputes escalating to the point of intractability.
- Work cooperatively with other agencies to deliver complementary interventions in cases where parties are experiencing a range of problems.
- Consider who should be invited to attend any events or meetings after extensive discussion with parties. Bringing everybody together in 'big meetings' without adequate preparation will be ineffective.
- Ensure that all parties agree to the venue.
- Create physically safe places in which people feel comfortable to express their feelings, including the venting of strong emotions.

Process design (cont.)

- Create culturally safe places which:
 - use language and communication styles that are understood;
 - involve appropriate support people for Indigenous parties, including interpreters; and
 - are located in casual environments, and childcare facilities and playgrounds.
- Promote and model effective non-violent ways of managing conflict.
- Respect the importance and complexity of relationships in the Indigenous context and design processes to build positive relationships between the parties.
- Allocate sufficient time to reduce the risk of repeated interventions which increase the overall cost of processes.
- Negotiate confidentiality and witnessing protocols with the parties.

Implementation and sustainability of agreements

- Assist the parties to reach an agreement that is made voluntarily and genuinely, thereby ensuring that agreements will be more likely to 'stick'.
- Check whether the parties wish to have their agreement formally documented.
- Assist the parties to consider how they wish to implement and monitor their agreements and manage changes and contingencies, including whether they wish to meet to review how their agreements are progressing.
- Establish local services staffed with local people to offer the greatest opportunity for independent monitoring and prompt response in the instance of agreement breakdown.

What makes an effective dispute management practitioners?

- Respect for those participating in the process and confidence in their ability and right to manage their own disputes.
- Ability to:
 - build rapport with and gain the trust, confidence and respect of parties;
 - examine one's own cultural assumptions;
 - communicate with a range of people and facilitate conversations between those with diverse communication styles and approaches;
 - recognise personal limitations of one's own understanding and experience, including of local and regional socio-cultural contexts and protocols; and
 - acquire information and understanding as required.
- Being acceptable to parties, including being known to the parties if this is important to them.
- Personal qualities such as fairness, non-judgementality, compassion, empathy, humility, flexibility, impartiality, even-handedness, patience and a sense of humour.
- Focussing on relationships, including kinship, and being able to balance the parties' substantive, procedural and emotional interests.
- Strong ethics, and commitment to:
 - work effectively with co-mediators and debrief;
 - work in partnership with other services in an interagency approach;
 - recognise the limits of a process, including when it is inappropriate;
 - identify and allocate appropriate timeframes rather than focussing on personal needs;
 - apply a range of techniques in comprehensive planning, preparation, relationship building, and process design;
 - evolve the process as determined by the needs of parties; and
 - listen.

Summary of key research findings

Strategies for building effective practice

Awareness raising and education

- Build knowledge and awareness about dispute management processes within both Indigenous and non-Indigenous communities and government and industry sectors as a means of asserting Indigenous independence and strength in resolving conflict by:
 - establishing community education programs;
 - producing resources which show how effective services operate, and include feedback from community members to assist other communities in reviewing services, with a view to developing their own;
 - supporting knowledge-exchanges and story-telling sessions among Indigenous peoples who have participated in dispute management; and
 - developing awareness raising and educational tools using creative media, audio-visual materials, ceremony, art and performance for Indigenous communities.
- Promote the roles of community and government workers, including police officers and lawyers, as 'champions' and 'advocates' in:
 - raising awareness of and utilising dispute management processes;
 - assisting in the early identification of problems;
 - identifying appropriate referral pathways; and
 - policy development.
- Build the capacity of staff of government agencies and community organisations by developing:
 - training resources for government agencies about Indigenous dispute management processes;
 - a series of pilots identifying key elements of relationship issues between government agencies including the police, evaluating them and rolling them out as appropriate; and
 - 'cultural competency' and 'community education' criteria in recruitment policies, induction programs and performance measures.
- Campaign for positive media reporting of Indigenous communities and how they are managing disputes.
- Establish a national award system (or 'peace prize') which recognises achievement in Indigenous dispute management.

Appropriate training, support and recognition of prior learning

- Develop a 'brief to tender' to call for expressions of interest nationally from individuals and/or organisations in the development of a training curriculum and training packages in a range of Indigenous service delivery contexts which focus on:
 - the balance between building and managing relationship techniques and outcome-focussed processes;
 - micro skills such as 'reality testing' and 'agent of responsibility' skills;
 - 'intake' and pre-mediation processes;
 - process design;
 - communication skills in a variety of cultural contexts including the Indigenous context;
 - large scale multi-party dispute resolution processes;
 - managing episodes of violence or crisis situations and working with survivors of violence and abuse;
 - co-mediation and team approaches;
 - supervision and debriefing skills and tools; and
 - identifying the appropriate intervention.
- Conduct and independently evaluate a series of training pilots across Australia including the responsiveness of the training to Indigenous learning and communication styles, develop relevant training packages and roll out as appropriate.
- Develop specific competencies for practitioners and trainers working in the Indigenous context.
- Provide easy access to formal recognition of prior learning and competencies for Indigenous mediators to increase access to VET sector training, tertiary education and accreditation schemes.
- Encourage partnering between Indigenous and non-Indigenous RTOs to deliver mediation and dispute management courses.

Professional support and appropriate remuneration

- Recognise the contributions which Indigenous practitioners and others working voluntarily in the community make to the integrity and social cohesion of their communities.
- Ensure appropriate remuneration for Indigenous dispute management practitioners.
- Develop standards for remuneration, professional recognition and support needs.
- Understand the possible need for departures from 'standard' policies and procedures to meet the needs of Indigenous clients, and reflect this in performance assessments and duty statements.
- Consider the feasibility of the scope of tasks to be performed by Indigenous staff and possible inconsistencies between them.

Cooperation between agencies and whole-of-community approaches

- Develop intake and referral pathways between agencies, to ensure that Indigenous people receive the appropriate service/s and do not fall 'through the cracks'.
- Implement accountability measures within government and non-government agencies to ensure quick responses to requests from Indigenous people for assistance in managing conflict.
- Promote dialogue around more coordinated interagency whole-of-community approaches, involving, in the first instance, individuals, interest groups and services within the community, and then extending to include regional, State, Territory and national service deliverers and policy makers.
- Use community engagement facilitators, including local facilitators, to develop more effective interagency whole-of-community approaches, dialogue and relationships between local and regional communities, government services, non-government organisations and industry.
- Develop the facilitative and engagement skills of government employees to prevent government-driven consultation processes or negotiations from exacerbating existing community conflict.
- Conduct pilots in urban and remote communities, which are aimed at identifying the elements of effective interagency cooperation and community engagement in a range of sectoral contexts, and which are independently evaluated and rolled out as appropriate. Examples of pilot contexts include:
 - the NTER intervention;
 - the establishment of locally based Indigenous dispute management initiatives; and
 - the architectural design of housing and the allocation of housing as a source of conflict.
- Encourage research partnership with Indigenous communities which are orientated to their needs.

Supporting Indigenous dispute management at national, state/territory, regional and local levels

- Engage with local Indigenous communities to find out their dispute management needs and whether they wish to develop their own processes or services.
- Support local and regional experimentation and trialling of processes, and build flexibility into policies and practices of services to support the development and delivery of effective processes for Indigenous people.
- Develop regional panels of dispute management practitioners, supported by accessible regional service infrastructure, and which build on existing services where possible in partnerships in regional, State/Territory and national governance structures.
- Employ committed coordinators for Indigenous dispute management services who are based locally or regionally, and are dedicated to developing locally 'owned' processes.
- Use regional panels in a range of contexts, including Indigenous community engagement with governments, broader community disputes and native title.
- Establish a national service to develop consistency in standards, coordinate and build the capacity of regionally based services, provide resources, disseminate information, and develop training and accreditation procedures.
- Hold a national practice exchange conference.
- Conduct a 'scoping project' to map existing services, infrastructure and networks at local, regional State/Territory and national levels, upon which a national Indigenous dispute management service could build.

Chapter 1

Introduction to the Project



1.1. Project and responsibilities for its findings

The Indigenous Dispute Resolution and Conflict Management Case Study Project (the Project) was developed to provide the Federal Government, National Alternative Dispute Resolution Advisory Committee (NADRAC) and others with sound research evidence of effective practices and approaches for managing disputes involving Indigenous⁵ Australians. NADRAC is an independent body established to advise the Attorney-General on high quality, economic and efficient ways of resolving disputes without the need for a judicial determination.

The findings of this report have relevance to all who do business with Indigenous communities in a wide range of areas. However particular responsibilities for supporting Indigenous dispute resolution and conflict management processes lie with Commonwealth, State and Territory governments.

The main Federal Government departments with responsibilities for issues identified in this report are:

Commonwealth Attorney-General's Department

The Attorney-General's Department has responsibilities for native title; family dispute resolution; the reduction of Indigenous peoples' adverse contact with the criminal justice system including restorative justice programs; development of the National Indigenous Law and Justice Framework through the Standing Committee of Attorneys-General (SCAG); legal aid; community legal services, family violence prevention services and Indigenous women's outreach projects; night patrols; and federal law reform and policy development. The Minister for Home Affairs is responsible for Indigenous law and justice programs within the Attorney-General's Department, while the native title division reports to the Attorney-General.

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)

FaHCSIA jointly funds, with the Attorney-General's Department, the Family Relationships Services Program and administers a range of other programs and initiatives of relevance to Indigenous disputes and conflict management, including those relating to community decision making, governance and Indigenous engagement. FaHCSIA administers regionally based Indigenous Coordinating Centres which have responsibilities for the coordination of programs at local and regional levels to Indigenous peoples. FaHCSIA has particular responsibilities in relation to the Federal Government's 'closing the gap' agenda and for implementation of programs in Indigenous communities affected by the Northern Territory Emergency Response (NTER).

⁵ The terms 'Indigenous' and 'Indigenous peoples' acknowledges the particular relationship of people who are indigenous to a territory from which they originate: see Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2007*, Report No 1, Human Rights and Equal Opportunity Commission, Sydney, 2008. In this research report, the term 'Indigenous' is used to refer to the Aboriginal peoples of mainland Australia and the Indigenous inhabitants of the Torres Strait Islands (and their descendants on the mainland). This report uses the word 'Aboriginal' when referring to specific case studies, which were carried out with mainland communities. It is acknowledged that the Project has not conducted a case study involving a Torres Strait Islander community, despite efforts to identify a suitable research site. However it is considered that many of the conclusions reached have potential application to both Aboriginal and Torres Strait Islander peoples (and potentially to non-Indigenous people as well). The term 'Indigenous' is used when discussing policy and practice issues that affect or may affect all of Australia's Indigenous peoples.

The Department of Education, Employment and Workplace Relations (DWEER)

DEEWR has responsibilities for Indigenous education and training programs as well as for working with State/Territory governments and other stakeholders to develop a national training program within the vocational education and training (VET) sector. It also develops policy and programs to support Indigenous employment including the Community Development Employment Project (CDEP).

The research also has obvious relevance to State and Territory governments and agencies, with most of the Project's case studies receiving funding or having received funding from them. The research findings may therefore assist State and Territory governments to evaluate current approaches and to develop improved policy, practice and service delivery in key areas including:

- policing;
- natural resource management;
- cultural heritage;
- crime prevention and corrections;
- state/territory courts administration;
- education and training;
- housing, health and community services; and
- children's services.

This research is also a resource for non-government organisations, industry, practitioners, courts, training institutions and educators seeking to improve processes for managing conflict involving Indigenous peoples. The research findings may assist, in particular, organisations who wish to enter into partnerships and/or negotiate agreements with Indigenous communities.

1.2. Historical overview of the Project

The Project follows investigations and consultations carried out between 2003 and 2006 by NADRAC and the Indigenous Facilitation and Mediation Project (IFaMP) in the Native Title Research Unit at AIATSIS.

NADRAC and IFaMP published separate reports in 2006 which set out their respective findings and made recommendations in relation to alternative dispute resolution (ADR)⁶ in the Indigenous context. NADRAC's report entitled *Indigenous Dispute Resolution and Conflict Management*⁷ concluded that Indigenous peoples face a range of barriers in using mainstream ADR services and that mainstream services are under-utilised by, and often ineffective with, Indigenous peoples.⁸ IFaMP's final report similarly recognised deficiencies and difficulties in Indigenous peoples' access and use of ADR. Although IFaMP arose out of the native title context, its numerous papers and reports include lists of recommended practices and other reflections of relevance for practitioners, policy-makers, non-government organisations, industry stakeholders and the corporate sector in a wide range of contexts.⁹

Significantly, both NADRAC and IFaMP identified the need for case study research to support the development of 'best practice' approaches to ADR in the Indigenous context.¹⁰ The need for case studies has also been identified internationally as a priority area for research.¹¹

⁶ ADR is an umbrella term for processes, other than judicial determinations, in which an impartial person assists those in dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution: National Alternative Dispute Resolution Advisory Council. *Dispute Resolution Terms: The use of terms in (alternative) dispute resolution*, National Alternative Dispute Resolution Advisory Council Secretariat, Canberra, 2003, 4.

⁷ National Alternative Dispute Resolution Advisory Council. *Indigenous Dispute Resolution and Conflict Management*, National Alternative Dispute Resolution Advisory Council Secretariat, Canberra, 2006.

⁸ *ibid.*, 9.

⁹ See Bauman, T. *Final Report of the Indigenous Facilitation and Mediation Project July 2003 - June 2006: Research Findings, recommendations and implementation*, Report No 6, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2006; Kingham, F. & Bauman, T. *Native title mediation: issues identified, lessons learnt: proceedings and findings of IFaMP workshops with native title Indigenous and non-Indigenous mediators, February and March 2005*, Report No 5, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2006. See also <http://ntru.aiatsis.gov.au/ifamp/>

¹⁰ See Recommendation 5 of NADRAC, above n 7, 24; Bauman, above n 9, 6. The need for case studies was also identified in IFaMP's surveys of native title mediators: see Williams, R. *Native Title Mediation Practice: The Commonalities, the*

1.2.1. The Scoping Study

In late 2005 the Federal Court of Australia (Federal Court) commissioned a scoping study in collaboration with NADRAC and IFaMP to explore issues associated with case study research on ADR practices involving Indigenous peoples (the Scoping Study).¹² The Scoping Study, prepared by Resolve Advisors, recommended carrying out in-depth focused case studies to supplement existing research on dispute resolution and conflict management with Indigenous communities. The Scoping Study provided a literature review, guidance on project design, and detailed information on a number of potential case studies for future research.¹³

1.2.2. The Project Team

In early 2007 the Federal Court in collaboration with NADRAC commenced this case study project, engaging Ms Toni Bauman of AIATSIS to advise Federal Court staff. Federal Court staff included Project Coordinator and Deputy Registrar / National Native Title Registrar, Ms Louise Anderson, and Project Manager and Deputy Registrar - Native Title, Ms Juanita Pope. These individuals constituted the core Project team for the duration of the Project. In late 2008 Deputy District Registrar – Native Title (Vic), Mr Ian Irving, joined the Project team.

1.2.3. Aims and objectives

The Project aimed to carry out a series of case studies on Indigenous dispute resolution and conflict management and to distil from them some lessons for effective practice, including in relation to training.

The Project intends to also produce a set of 'toolkit' style documents which provide practical guidance and information for the following audiences:

- governments, policy makers and program managers;
- practitioners who work with Indigenous people; and
- Indigenous peoples and communities accessing dispute management services.

The Project also participated in various conferences and forums.¹⁴

1.2.4. Researchers and governance

The three main case studies for the Project were carried out by male/female co-researcher teams, with one Indigenous and one non-Indigenous person. The principal researcher for each case study was responsible for authoring the case study report. Researchers were selected for their experience in dispute resolution involving Indigenous peoples, their skills in research and writing, and their knowledge of the local context and/or Aboriginal community involved in the case study. The composition of researcher teams was designed to achieve the range of desired skills and experience.

A Research Consultative Group (RCG), consisting of the principal case study researchers and other Indigenous and non-Indigenous ADR practitioners,¹⁵ assisted the Project team to identify potential case studies and provided guidance and feedback on the research as it progressed.¹⁶ A Reference

Challenges, the Contradictions: A Survey of Native Title Mediators, Report No 3, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2005, 37-8 and 77.

¹¹ See Food and Agricultural Organisation of the United Nations (FAO). *Land and Natural Resources Conflict Management Survey Final Report*, Rome, Italy, 2002; *Manila Declaration of the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples*, 2000, <<http://www.twinside.org.sg/title/manila.htm>>.

¹² Resolve Advisors. *Report on Scoping Study Project: Case studies for identifying best practice in facilitative processes for managing conflict involving Indigenous people*, report prepared for the Federal Court of Australia (unpublished, 2006).

¹³ Resolve Advisors project team members were Ms Shirli Kirshner, Mr Roger West, Ms Teya Dusseldorp, Mr Shawn Whelan, Professor Hilary Astor and Professor Marcia Langton.

¹⁴ The Project was represented at the Indigenous Mediation Forum hosted by the Family Pathways Network, Darwin, April 2007. Presentations on the Project were made at the Australasian Institute of Judicial Administration (AIJA) Indigenous Courts Conference, Mildura, September 2007; and the National Mediation Conference, Perth, September 2008.

¹⁵ See Acknowledgements for members of the RCG.

¹⁶ The RCG participated in a methodology workshop in March 2007 and a two-day meeting and evaluation session in December 2007. In addition the RCG provided comments on various draft documents and contributed to the Project at various stages via teleconferences and email correspondence.

Group, comprising a number of experienced individuals in various fields relevant to the Project,¹⁷ provided strategic direction and editorial comment.¹⁸ Periodic updates and briefings on the Project were provided by Chief Executive Officer and Registrar of the Federal Court, Mr Warwick Soden, to key stakeholders, including NADRAC, the Australian Council of Court Administrators (ACAG) and Justice CEOs.

1.3. The case studies and snapshots

While a range of ADR processes – including Elder arbitration, agreement-making and various forms of consensus building and engagement with Indigenous people – are often referred to as 'Indigenous dispute resolution',¹⁹ the case studies in this Project were chosen to generally reflect the principles and approaches of facilitative mediation. This kind of mediation involves a mediator assisting the parties to identify the issues in a dispute, develop options, consider alternatives and negotiate an agreed strategy or outcome for dealing with the conflict.²⁰ The approach is different from processes which contain elements of arbitration or conciliation where a third party or parties make decisions for or impose solutions or sentences on parties, such as in Koori, Murri, Nunga and other Indigenous Courts, and restorative justice projects.²¹

The Project conducted three main studies ('case studies') as well as a series of 'mini' case studies ('snapshots').²² The three main case studies concerned:

- a mediation at Halls Creek (researched by Mr David Allen with Ms Bonnie Deegan);
- a mediation carried out by the NSW Community Justice Centres (CJCs) (researched by Ms Margaret O'Donnell with Mr John Westbury); and
- the work of the Tiwi Youth Diversion Development Unit in managing family and community conflicts on Bathurst Island (researched by Ms Rhiân Williams with Mr Ian Castillon).

The five snapshots draw largely on investigations and research conducted by the Project team in the course of identifying potential case studies.²³ They cover a range of examples of Indigenous dispute management processes and provide additional insights into areas of policy and practice. The snapshots are:

- Ali-Curung Law and Justice Committee;
- Attempts to resolve an entrenched feud in the remote community of 'Thetown';
- Indigenous experiences within a Family Relationships Centre;
- Community Justice Group mediation at 'Gintji' in Northern Queensland; and
- Nguiu Jealousy Program in the Tiwi Islands.

1.4. Why case studies?

Case studies can give us valuable insights into 'what worked, what didn't, and why.' They are particularly appropriate when research is seeking, as this Project is, to identify and distil lessons from what happened 'on the ground' in particular situations and contexts.²⁴

¹⁷ See Acknowledgements for members of the Reference Group.

¹⁸ The Reference Group convened by teleconference in September 2007. Members of the Reference Group provided comment on summaries of key issues and preliminary findings from the case studies and on a draft of the final report.

¹⁹ NADRAC, above n 6, 8. For a detailed listing of uses of ADR in the Indigenous context, see NADRAC, above n 7.

²⁰ NADRAC, above n 6, 9.

²¹ The three case studies explore facilitative mediation processes, however it should be noted that the Ali Curung 'snapshot' in Chapter 6 describes a local dispute resolution process which may involve elements of arbitration or conciliation.

²² Drawing of the concept of a 'vignette' in literary theory, these 'snapshot' studies are intended as short accounts which provide an insight about a circumstance or a setting.

²³ The snapshots, which comprise Chapter 6, are based on information gathered from documents and papers that were available to the Project team through its inquiries into potential case studies and which was supplemented and elaborated in further phone interviews. One snapshot (Nguiu Jealousy Program) was identified by researchers for the Tiwi case study in the process of conducting fieldwork in the Tiwi Islands.

²⁴ Case study researchers were advised that the Project was seeking 'thick descriptions' of the micro details of the processes they were studying. A case study reporting and analysis framework (Appendix A), intended as a guide for researchers, sought descriptions of the micro details of the processes; as well as information on various aspects of the process, including how the process was planned and the parties were prepared, and how the process impacted upon the outcomes reached. The case study reporting framework also included a series of theoretical and conceptual topics to guide researchers' analysis of the effectiveness of the process and its location within the broader Indigenous ADR context, and sought their comments on training which would be relevant to the case study. Members of the RCG were involved in developing the research questions for the case studies.

In undertaking case study research into effective dispute management practices and processes, the Project adopts the view that managing conflict – whether in an Indigenous or non-Indigenous context – is at the heart of building robust societies and a normal part of community life.

1.4.1. How the Project uses case studies

The case studies and snapshots are drawn from a range of socio-geographical contexts, from remote communities of the Kimberley and Cape York, to relatively isolated communities such as the Tiwi Islands, to urban residential situations in NSW. The processes they explore have varying levels of access to institutional support and resources. The case studies and snapshots invoke the interpersonal (as they involve relationships between individuals); the situational (as they vary according to context); and the systemic (as dispute management practices are located in systems and structures which can determine their effectiveness and ongoing resources).

Through a comparative analysis of these studies, significant commonalities emerge, even though the substantive content of the process, the actors, locations and contexts differs from dispute to dispute. The commonalities and nuances amongst the case studies and snapshots provide the evidence base for broader conclusions about what contributes to – and what is needed to support – effective practices.²⁵

Drawing conclusions from collections of case studies must be carefully done.²⁶ Obviously every dispute is different; and what worked on the ground in one situation will not always work on the ground in another. But the business of process, in whatever context, involves some fundamental principles and skills which inform the development and implementation of processes to produce successful outcomes. These principles and skills, which are discussed in detail in other reports and publications,²⁷ inform the analysis of the case studies and the findings of the research.

Effective practice happens when the approaches taken meet the needs and interests of those involved in the process. As Aboriginal academic and mediator Dr Loretta Kelly has stated:

*'Aboriginal dispute resolution' is appropriate dispute resolution; appropriate to the needs of Aboriginal communities.*²⁸

Effective practice is not merely a function of how the process plays out between particular actors in a specific dispute. Broader factors affecting the provision of dispute management services – such as policies and procedures, the understandings of service deliverers, funding and infrastructure – also impact on the effectiveness of dispute management processes.

NADRAC's report on Indigenous dispute resolution and conflict management uses the term 'effectiveness' to mean how well a service addresses Indigenous needs, including its accessibility, fairness, impact and sustainability. In its report NADRAC states:

*'[E]ffectiveness' requires dispute resolution and conflict management services to look at all aspects of their services including cultural practices, physical facilities and the selection and training of both Indigenous and non-Indigenous practitioners.*²⁹

²⁵ We have chosen to use the expression, 'effective practice' rather than 'best practice', as the latter appears to presuppose that a definitive practice (or set of practices) is 'best' in a particular field of endeavour. In discussing a number of case studies on approaches to dealing with family violence in Indigenous communities, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has chosen to use the term 'promising practice' because it provides opportunities to learn from existing knowledge and expertise, and highlights the need to extend, or if possible, replicate, what is already achieving successful results: Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 5, 21. The Social Justice Commissioner points out that the term 'best practice' has its origins in the business world and that in that context 'best practice' approaches need to be replicable, transferable and adaptable: see Aboriginal Healing Foundation. *Final Report of the Aboriginal Healing Foundation, Vol 3, Promising Healing Practices in Aboriginal Communities*, prepared by Linda Archibald for the Aboriginal Healing Foundation, Ottawa, Canada, 2006, 5. The Social Justice Commissioner emphasises the need to recognise alternative forms of practice and to avoid the danger of 'proclaiming best practice, transplanting it to another community and then just expecting to work': *ibid*, 21.

²⁶ For a discussion of case study research methodology see Yin, R. 2003. *Case Study Research: Design and Methods* (3rd ed), Sage Publications, Thousand Oaks, California, 28.

²⁷ See, eg, the 'best practice' principles in Bauman, above n 9; the 'statements of principle' in NADRAC, above n 7.

²⁸ Kelly, L. *Stumbling Block to Stepping Stone: Learning from our experience of native title mediation in the development of a process of Aboriginal dispute resolution*, PhD thesis submitted to the School of Law and Justice, Southern Cross University, 2007.

1.4.2. The case studies and snapshots are not evaluations

The case studies and snapshots are not 'evaluations' of the processes or services examined.³⁰ Evaluations employ a specific methodological framework which involves examination and assessment of a program or system with reference to pre-determined indicators and performance measures.³¹ By contrast, the Project's research involved:

- gathering information and perspectives from the people who were involved in the process;
- describing the process and the particular context in which it was used;
- using this description as the basis for a comparative analysis of processes used in the various case studies and snapshots; and
- from this comparative analysis, identifying 'critical factors for effective practice' and 'strategies for implementing effective practice' in the Indigenous dispute management context.

The research should not be construed as endorsement by the Project of any particular model, process or service. There may well be factors and strategies which contribute to effective practice which are not addressed in this research. It is hoped, however, that the breadth of the case studies, as well as the number of people who have contributed to the research process, provide a solid basis for the identification of conceptual, policy and practice issues which extend beyond the particular case and which have broader import for the effective management of conflict in the Indigenous context.

1.4.3. Terminology

A range of terminology is employed in this research report to discuss Indigenous dispute resolution and conflict management, including 'dispute management', 'mediation', 'peacemaking' and other terms which emerge specifically from local contexts. Tiwi Islanders, for example, employ the term 'intervention' to describe the process examined in the Tiwi case study. Many Indigenous practitioners prefer to emphasise 'management' of disputes, rather than 'resolution'.

While there are some distinctions between terms such as 'dispute resolution', 'conflict management', 'mediation', 'facilitation' and 'peacemaking', there is also considerable overlap. The terms are used more or less interchangeably in this report. The critical point is that, whatever the terminology, it should not overshadow or distort the underlying character and scope of effective practice in the Indigenous context.

²⁹ NADRAC, above n 7, 5.

³⁰ This is not to say that the case studies are not 'evaluative' in the sense that the processes that are the subject of the case studies are described, analysed and commented upon.

³¹ See IFaMP & Social Compass. *Evaluation Toolkit: Training and Service Delivery in Decision-Making and Dispute Management Processes in Native Title*, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2006.

Chapter 2

Negotiating research: issues encountered in case studying Indigenous dispute resolution and conflict management



2.1. Introduction

Dispute management processes are a highly sensitive area of research. Being asked to reflect and speak about experiences of conflict can be stressful for the people involved, and may have broader adverse impacts on the community. Identifying appropriate case studies and obtaining the necessary permissions to proceed was a complex process for this Project. This chapter is, in a sense, a 'self-reflexive' case study, which, like the case studies themselves, highlights the importance of effective and ethical processes of engagement and planning with Indigenous peoples.

This chapter discusses issues encountered in negotiating the research for the Project. It begins with a discussion of the approach taken to the research, the challenges faced in identifying appropriate case studies, and the negotiations that took place around the case study research. An overview of the selected case studies and the Project's research partnerships is then provided. The chapter concludes by considering the constraints on the research and by explaining the decision to extend the Project's research with the 'snapshot' studies.

2.2. Negotiating the case study research

Locating appropriate case studies and negotiating relevant permissions was a challenging and time-consuming task. The Project team negotiated (and renegotiated) the scope and content of the case studies to be pursued with a range of participants including researchers, disputants, representatives of relevant institutions, practitioners, advocates, and other stakeholders.

Careful consideration was given to the likely effects of the research on individual participants and communities. The Project team took seriously its ethical obligation to ensure that the research did not harm. The AIATSIS *Guidelines for Ethical Research in Indigenous Studies*³² provided a basis for the Project's research protocol (Appendix B), which covered a range of matters including the obtaining of free and informed consent, consultations on draft case study reports, confidentiality provisions and the use and storage of information.

2.3. Challenges for securing case studies involving Indigenous disputes

A significant number of the 30 potential case studies which were investigated by the Project (Appendix C) were not pursued for a range of pragmatic and ethical considerations. Various categories of which were identified by the Project as desirable to explore did not ultimately provide the basis for detailed case studies, including, for example:

- community conflicts;
- conflict between Indigenous communities and agencies around governance issues;
- Torres Strait Islander processes for resolving disputes;
- disputes about access to power within organisations;
- land and native title disputes;
- public service disputes / educational institutions (ie. workers or students); and
- a current process which could be observed in train.

³² Australian Institute of Aboriginal and Torres Strait Islander Studies. *Guidelines for Ethical Research In Indigenous Studies*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2000.

Particular efforts were made to identify an appropriate and viable case study in a Torres Strait Islander community, however it was beyond the resources of the Project to carry out such a case study given the time available. Nevertheless, conclusions of this report may inform practice in the Torres Strait Islander context. Indeed many of the principles underlying the conclusions may also be relevant to the non-Indigenous context.

2.3.1. Reasons for not pursuing some case studies

Reasons for not pursuing case studies included the following:

- *Fuelling conflict.* It was apparent in some cases that carrying out the research would run the risk of re-igniting old conflicts and rifts within the community. Some disputes were perceived as 'ongoing' and the parties were not amenable to participating in research because they perceived that it might influence the dispute resolution process itself. People who had been in dispute with each other in the past expressed concern about the potential for research to adversely affect their still fragile relationships.
- *'Finished business.'* Many people felt that once a dispute had been dealt with, it was 'finished business' – in some cases, not speaking about the dispute was seen as a mark of respect for the success of the dispute management process. This presented a difficulty for in-depth research, however, as some participants were unwilling to discuss the dispute with researchers.
- *Identity disclosure.* Some individuals were concerned that, despite assurances of the confidentiality of interviews, they might be identified by the context of the case study. Especially where the dispute was high profile or occurred in a small/remote community and had unique characteristics, it was difficult to assure a sufficient level of anonymity, despite the use of pseudonyms.
- *Lack of availability of interpreters.* In one instance, a lack of suitable interpreters had the potential to hinder the research. One person within the community expressed concern about using a locally based interpreter to interpret people's statements regarding matters of local conflict, for reasons including confidentiality, conflicts of interest, and the potential for the information to negatively affect relationships with others in the community. Interpreters who were proficient in the local language, and who were based outside the community, were scarce.
- *Unwillingness of practitioners to discuss processes.* Practitioners, from whom permissions to carry out case study research were also sought, were at times unwilling to discuss their own practice, possibly given the potential for such a discussion to expose deficiencies in their approaches.

2.3.2. Reasons for not pursuing a case study in a Land / native title context

The Project team investigated a range of potential case studies involving land and native title issues, however none were deemed suitable for in-depth research within the timeframe and parameters of the Project. In the first instance, challenges arose from the Federal Court's jurisdiction in relation to native title matters and ethical issues with regard to researching cases which are or may come before the Federal Court. Many potential land and/or native title case studies involved processes that were being conducted concurrently with litigation in the Federal Court, or raised issues which were directly relevant to Federal Court proceedings. Other issues relating to the Project's inability to pursue a land or native title related case study included:

- difficulties in obtaining consent to conduct research with large Indigenous groups;
- ongoing nature of many disputes;
- fragility of any agreement or 'peace' made between the parties;
- lack of continuity of funding, resulting in delays to the progression of a potential process or in some cases, its abandonment.

2.4. Selected case studies

In many ways, the case studies 'self-selected', due to challenges in negotiating and obtaining permissions for the research. In the final analysis, the three case studies fell within the following parameters:

- they were processes with which the practitioners and parties were generally satisfied;
- they had a level of 'process complexity';
- they were linked into the mainstream justice system;
- there was one or more Indigenous practitioners involved in the process;
- they were located in a mixture of regional and remote areas;
- permission to conduct research was relatively easily obtained involving most, if not all, the key players in the process, including parties, practitioners, service providers, police officers, community workers and people who supported the process in other ways; and
- participants were willing to be interviewed and to engage with the research.

2.5. Establishing partnerships and working with local organisations

In the NSW and Tiwi case studies, the Project established collaborative partnerships with locally-based organisations which had an interest in the research. The involvement of these partner organisations, with local knowledge, significantly enhanced the Project's ability to design a research process which responded to the needs and priorities of the community involved, including in relation to timeframes, location of interviews, and methods for providing comment on drafts of the case studies.

Case study partner organisations contributed to the research process by:

- assisting in the development of resources for the case studies;
- assisting in the identification of local issues relevant to the case studies and advising on appropriate strategies to deal with these issues;
- relationship-building between researchers and case study participants;
- obtaining permissions; and
- contributing in-kind to the costs of the case study.

Engaging these stakeholders in the research was extremely beneficial for the Project. Nevertheless, the establishment and maintenance of these collaborative relationships took time and required negotiation of various (sometimes competing) interests and priorities for the research.

Unlike the NSW and Tiwi case studies, there was no local partner organisation for the Halls Creek case study.³³ A key reason for this was the lack of local ADR service providers operating in Halls Creek (and therefore the absence of local organisations to engage in a partnership).³⁴ This made it difficult for the Project to 'promote' the research to the community and resulted in increased costs and timeframes.³⁵

2.6. Constraints on the research

One of the constraints on research was the enormous pressure that communities are under in coping with the debilitating health and social problems and the corresponding time and resource demands on community service providers. Debilitating 'wellbeing' statistics include low life expectancy, mental health issues including grief, substance abuse and a litany of other commonly referred to social problems. In addition, many of the organisations which were contacted by the Project team were experiencing significant pressure due to funding shortages. In these

³³ The Project gratefully acknowledges, however, the support of the Kimberley Language Resource Centre in liaising with the local researcher on an *ad hoc* basis and offering to provide researchers with access to its office facilities in Halls Creek if required.

³⁴ A strategic decision was made not to approach the local police to act as a local partner, due to perception issues associated with police officers liaising with or seeking permission from local Indigenous people on the Project's behalf.

³⁵ Arguably this may also have impacted upon the participants' willingness to participate in the research: it is interesting to note that fewer people who were parties in the dispute were willing to participate in the Halls Creek case study research, compared to the NSW case study where invitations to participate were made by the mediator who was known to and trusted by them. On the other hand, there may have been other reasons why fewer people participated in this research. It may have been associated with the parties having concluded the mediation and reached a mutually agreed solution. It is not uncommon in some remote semi-traditional/remote communities for parties not to speak willingly about a dispute which has been dealt with because it is 'finished business.'

circumstances, participating in research could be seen as a 'luxury' which these organisations could not afford. Research in Indigenous communities can also create an additional pressure on communities, given the number of researchers visiting and, often, the lack of coordination of their projects.

Throughout the Project it was necessary to revise timeframes and proposals to accommodate or negotiate the concerns and challenges of the people and organisations that have participated in the research. Instances of these concerns and challenges included:

- concern and lack of information within a community in the Northern Territory about the impacts of the NTER;
- special police taskforce investigations in a community in response to allegations of child sexual abuse;
- death of senior people in a community and funeral/sorry business;
- violence in a community, which led to the temporary relocation of some research participants to emergency accommodation in another town; and
- key community figures being unavailable to participate in research due to intensive schedule of meetings with government agencies, Indigenous bodies and interest groups.

Delays to the progress of research were thus due to a variety of issues, many of which are common among Indigenous communities facing a range of challenges, some of which are identified above, that can limit their capacity to participate in projects. However, delays and timing issues were also influenced by other factors, including constraints on researchers and commissioning institutions.

2.6.1. Research in retrospect – Halls Creek case study

The Halls Creek case study mediation was carried out in 1998; 10 years before the research. Clearly such an elapse of time has implications for the research and has an impact on the memories of events and their meanings.

The recall of past events, no matter how recent, is always highly subjective and often contested. Memory of past events involves a synthesis of personal observations and impressions, which are shaped not only by the perspective of the observer, but also by the context in which memories are being recalled, the recall of others, and by subsequent events and understandings.

Descriptions of dispute management processes, whether in the Halls Creek case study or elsewhere, are reconstructions of events based on the recollections of participants. Even when individuals are interviewed immediately after an event, their memories and descriptions of that event inevitably vary and reflect their subjective experiences of a situation. As time passes, different perspectives emerge as individuals have time to consider issues and reflect upon the meanings of statements and actions.

In the retrospective consideration of events, participants tell the story backwards – that is, each narrative is told in the knowledge of the outcomes that were eventually achieved. To some degree this results in an artificially smooth account, which explains how each step in the process led inevitably to the end-point. If participants in these case studies had been interviewed in 'real time' it is unclear whether greater doubt and concern about the process would have been expressed.

2.7. The decision to broaden the research with 'snapshots'

In December 2007 the Project team and RCG met to discuss the three draft case studies and evaluate the progress of the research. The case studies conducted up to that point revealed a number of key issues and policy implications, many of which were consistent among the three sites of research. The Project team had also obtained a significant amount of additional information through its investigations of potential case studies, as had the Scoping Study.

Consequently, a decision was made to use the information gathered to produce a series of smaller studies in the next phase of the Project. These 'snapshots' would extend the Project's body of research by presenting perspectives on a wider range of dispute contexts and harnessing additional insights into Indigenous dispute management processes and services.

2.8. Conclusion

This chapter has set out the Project's approach to case study research and discussed a number of issues involved in negotiating and reporting the case studies in this report. While these issues may be common to much research in Indigenous communities, they have a particular resonance in the context of a project that aims to identify the detail of 'what works, what doesn't, and why' in order to identify effective practice in dispute management or engagement.

The following four chapters provide a number of more or less detailed examples of processes for managing conflict involving Aboriginal people. Each study offers insights and guidance on policy and practice issues for dispute management in Indigenous communities in Australia.

Chapter 3

Case study: 'We're on the right track here' – mediation in Halls Creek



By David Allen ³⁶

co-researched by Bonnie Deegan ³⁷

3.1. Introduction

Halls Creek is a small town situated in the East Kimberley region of Western Australia. It is a predominantly Aboriginal community.

In June 1998 mediation was employed to successfully resolve a feud that had escalated to persistent physical fighting between the women of two Aboriginal families resident in Halls Creek. The process involved co-mediation by three Indigenous people – one woman and two men. It was supported, in various ways, by the WA Police, the Aboriginal Legal Service (ALS), the East Kimberley Aboriginal Justice Council (AJC) ³⁸ and the local Magistrate.

Peace between the families was restored and sustained. Criminal charges pending against the members of both families were withdrawn. The positive impact of the mediated resolution rippled through the entire Halls Creek community.

3.1.1. The research process

A local Indigenous woman, Bonnie Deegan, was approached by the Project team to locate potential participants in the case study research, and to liaise with them to seek permission to meet with the principal researcher, a non-Indigenous man. She also worked with the principal researcher to assist in conducting interviews and consultations with case study participants in Halls Creek.

Preliminary planning and logistical arrangements for the research were made via a series of teleconferences involving the principal researcher in Sydney; the co-researcher in Halls Creek; and the project manager in Melbourne. Primary research for the Halls Creek case study was conducted during the period 4 to 14 November 2007 in Halls Creek, Wyndham, Broome and Perth. Further consultations were undertaken with participants to review and amend a draft of the case study over the period 24 to 31 March 2008. The researchers spent a total of 18 days in the field. ³⁹

It is useful to divide the 11 interviewees for this case study into two categories. The first category of interviewees was comprised of Indigenous family members who were parties to the mediation process. Only three were willing to be interviewed. There was a general feeling that the feud was

³⁶ See Notes on Authors.

³⁷ Bonnie Deegan is a Jaru woman, a highly respected member of the Halls Creek community. She was the longstanding chairperson of the Kimberley Language Resource Centre, and is also an artist and mother of eleven children. She is currently also attending TAFE in Halls Creek. She enjoys life with all people, Indigenous and non-Indigenous, and holds various positions in local organisations in Halls Creek, including as chairperson of PRK Radio.

³⁸ The East Kimberley Aboriginal Justice Council was variously referred to by research participants as a Council, Committee and Group. It appears to have been one of six regional councils established to provide advice to the Western Australian Aboriginal Justice Council (WA AJC) on matters of local and regional importance. The WA AJC was an advisory body established in 1994 to provide advice to the WA Government on Aboriginal perspectives on criminal justice matters, in response to recommendations for the establishment of independent Aboriginal Justice Advisory Committees in each State and Territory in Johnston, E. *Royal Commission into Aboriginal Deaths in Custody: National Report* (Vol 3), AGPS, Canberra, 1991, 30. The WA AJC was funded by State and Commonwealth Governments and was further assisted by grants from the Aboriginal and Torres Strait Islander Commission. The WA AJC was disbanded in 2002. See further Fryer-Smith, S. *Aboriginal Benchbook for Western Australian Court (AIJA Model Indigenous Benchbook Project)*, Australian Institute of Judicial Administration Incorporated, Carlton, 2002, 4:13-4:14.

³⁹ Personal interviews were conducted with 11 people who had direct knowledge of the events leading up to the intervention: 9 were Indigenous; 2 non-Indigenous. Of those interviewed, 8 were present at the mediation process: 7 of these 8 were Indigenous. Several participants were further interviewed by telephone.

finished business. No point to go back to that. The grandmother of one of the families had passed on. The grandmother of the other family was too frail and ill to participate.

The second category of interviewees was comprised of representatives of various organisations involved in the mediation, either as direct participants or peripherally to the process.

Each person participating in the case study was interviewed separately.

3.2. Physical and social context of the dispute

Halls Creek is named after Charles Hall, who found gold in the area in 1885, stimulating the brief, flash-in-the pan, Kimberley gold rush. The growth of the pastoral industry had a more substantial impact on the region's Aboriginal population. Conflict between East Kimberley Aboriginal people, gold prospectors and pastoralists was marked by sporadic brutality and violence continuing into the 1920s. The Catholic Church had a very active missionary presence throughout the Kimberley. The first European missionaries arrived in 1884.

In 1998 Halls Creek had a core town population of about 1500 residents, with another 1000 or so people in outlying areas who periodically visited the town, particularly during the wet season. There were many transient residents. The population profile and dynamics of Halls Creek remains very similar today. In effect the town breathes in and out. Aboriginal people comprise a substantial majority of the population - in the order of 80% - living in several areas that are almost exclusively Indigenous.

The standard of housing varies considerably. There is an acute and chronic housing need within the Aboriginal community. Many houses are in poor repair and inadequate to house the number of occupants. School attendance is patchy and the majority of Aboriginal children leave school without completing secondary education. There is a limited local employment with a corresponding high rate of unemployment and dependence on social security benefits. The Aboriginal health profile is exceptionally poor.

Rates of criminal offending, mainly for minor public order offences and assaults, are very high. Aboriginal people are disproportionately represented in appearances before the Magistrates Court. According to the ALS: *nine times out of ten the court list only has Aboriginal people in it.*

As part of an exercise in mapping crime and offenders in Western Australia for the period 1997-99, Morgan and Fernandez (2002: A29-31) derived rates of police-offender contacts for urban centres within the Kimberley and comparison of these offers some insight into the relative level of reported crime in Halls Creek, Kununurra and Wyndham urban centres vis-à-vis other towns in the Kimberley, and the region as a whole. One clear finding is that the Halls Creek area stands out as having by far the highest rate of Aboriginal offender contacts, with 35% of the population over 10 years apprehended... Compared to non-Aboriginal offender rates in these areas, these levels of Aboriginal police contact are astronomical—around 58 times higher in Halls Creek... As for the nature of offences reported, Halls Creek again stands out with relatively high rates of offences against the person, property offences, and good order offences – in each case far above the regional average and the levels reported in Kununurra and Wyndham.⁴⁰

...[T]raditional law is in many places still strong, but for some it has broken down in the milieu of the intermesh of Aboriginal culture and gadia culture. For these people there is poverty and alcoholism, a lack of opportunity and direction – a situation not confined to the East Kimberley. In Halls Creek it has been estimated that over half the population collect social security payments. In this town there is a high proportion of juveniles and a high juvenile crime rate, which is not surprising given the degree of

⁴⁰ Taylor, J. *Aboriginal Population Profiles for Developing Planning in the North East Kimberley*, CAEPR Research Monograph No 23, ANU Press, Canberra, 2004, 8. Regional Involvement with the Western Australian Criminal Justice System, Reported offences in the East Kimberley.

*poverty and the lack of adequate facilities, opportunities and training programs available for the people of the area.*⁴¹

The Halls Creek locality was a meeting place for various Aboriginal clans. It is located on the border of the traditional country of the Kija people, to the north, and the Jaru people, to the south west. Other groups shared traditional connections to the land and visited at various times for ceremony and business. Traditional ownership of the land on which Halls Creek stands is not agreed. Disputes over ownership are not regarded as a significant source of fighting within the community.

The make-up of the Aboriginal population of Halls Creek is strongly affected by the history of the removal of Aboriginal children from their parents. Moola Bulla Mission Station, to the north of Halls Creek, was established in 1910 and closed in 1955. It received children taken from across the entire Kimberley region, as well as from the west of the Northern Territory. Many Halls Creek families are descended from children who grew up in Moola Bulla. There has been a great deal of intermarriage and blending of the Aboriginal population.

The social dynamics within the Halls Creek Aboriginal community are affected by the pressures and volatility that come from poor housing, poor health, depressed educational and economic circumstances, aggravated by heavy, episodic drinking.

As is common in small townships, everyone knows everyone else's business – or believes they do. Rumours outrun facts. It is difficult - some participants say, impossible - to keep things private. Friction, *high talk* and physical clashes between individuals frequently draw in other family members as a matter of loyalty.

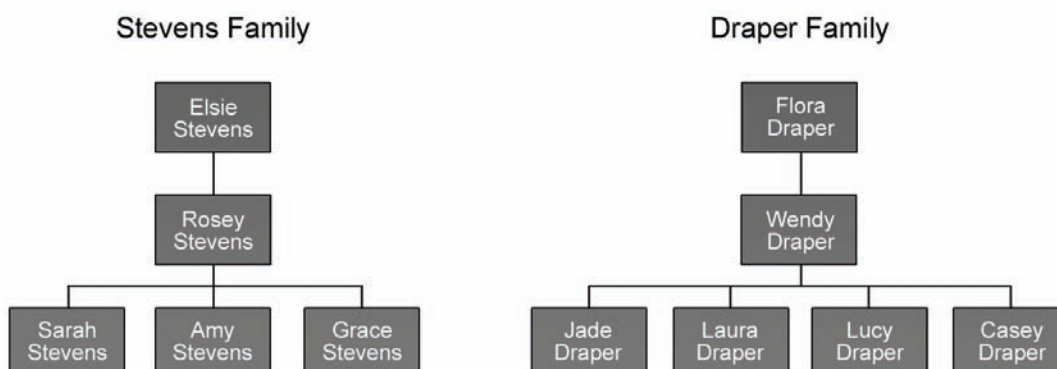
Looking out for relatives, backing them up, is a central obligation of kinship. Families feuding can roll on for years. The original cause may be clouded by the passing of time and subsequent events. Feuds can escalate in intensity, plateau out, subside, become dormant and subsequently flare up again. When in town, there is little opportunity for antagonists to simply avoid each other. Local points of gathering are limited. There is a swimming pool, football ground and basketball court. It was on the basketball court that the flash point for the dispute under study occurred.

3.2.1. Parties to the dispute

The feud had a distinct characteristic. It was confined to abuse and fighting between the daughters, mothers and grandmothers of two families. It is common ground that no males were involved.

One family will be called the 'Stevens'; the other the 'Drapers'.⁴²

In order of descent, the main actors were:



⁴¹ King, M. 'Law East Kimberley Style' (1989) 2(41) *Aboriginal Law Bulletin* 62.

⁴² Pseudonyms have been used in this case study to refer to all participants.

3.2.2. Other actors in the mediation process

The other actors involved in the mediation process and the positions they held at the time of the mediation, were as follows:

- Senior Sergeant 'Joe Banks', Officer-in-Charge, Halls Creek Police.
- 'Gary Strong', Aboriginal Liaison Officer, Halls Creek Police.
- 'Chips Carmichael', Field Officer, Halls Creek ALS and Chairperson of the East Kimberley AJC.
- 'Hannah Bright', Team Leader, Kununurra Office, (then) Department of Aboriginal Affairs (DAA) and co-mediator.
- 'Jenny Boscoe', Teacher, Halls Creek School, member of the East Kimberley AJC.
- 'William Nelson', member of the East Kimberley AJC and co-mediator
- 'Frank Patterson', member of the WA and East Kimberley AJCs and co-mediator.

3.2.3. Origins of the dispute

Hostility between the Stevens and the Drapers was sparked by an argument on the basketball court. It involved Jade Draper and Sarah Stevens. The precise subject of the argument is lost in time. Various accounts were given by different interviewees. Rivalry about who was the best player; who was the best looking; disloyalty in changing basketball teams; stealing players from one team to play on another team – all were given as the reason for the argument. Sarah Stevens, the only person available for interview who was actually present, said that she now had ... *no idea what it was about, something to do with basketball.*

The girls were enthusiastic fighters: *proud girls, not shy of a fight.* They wouldn't take a backward step, they were willing to fight. There was a certain pride in one of the mothers saying that her girls were *short-fused.* Sarah Stevens' proposal to make a reconciliation – even through a controlled fight – was met with the reply: *We're not afraid.* It was as though acceptance of the proposal might be taken as some kind of indication of fear, betraying a need to make peace.

For the girls, there were issues of public honour and personal pride involved. There was potential shame in being seen to put your hands down first. In William's experience, people are *sometimes ashamed to run to the policeman, also shamed to sit down and talk.* *They think they might be seen as a coward. It takes a lot of strength to do it.*

At the time both Sarah and Jade were quite young women. Their ages have been estimated by different people to have been from 13 to 17 years. Sarah's mother, Rosey, said that *when the kids were small they would fight at school.* She estimated that Sarah was about 14 or 15 years old at the time of the basketball incident: certainly *she was still at school.* Sarah recalls she was about 15 or 16, which accords with her current age.

These differences of opinion, not so much regarding the age of the girls, but more particularly regarding the cause of the incident on the basketball court, demonstrates a factor affecting this dispute, and disputes generally within small communities. They are not differences produced by uncertain memory. They are differences flowing from people's differing interpretation of events – which are then repeated to other people as fact.

Most interviewees were either quite certain or very willing to ascribe a precise cause to the fight: *who was the best looking girl about town; who was the best basketball player; one girl left one team and joined another.* The differing accounts demonstrate a factor mentioned by virtually every person interviewed: that is, the way that stories are passed around in Halls Creek, distorting facts and sharpening conflict. Chips Carmichael and William Nelson both noted the effect of what they separately referred to as *Chinese whispers* - stories that are passed on and retold, becoming less accurate and more provocative.

Sarah specifically mentioned the effect of rumours in a small town and their influence, as time passed, in exaggerating the importance of the first 'one on one' confrontation that took place at the basketball court. She recalled the way in which *silly little 13 year olds were running round carrying rumours* – making things worse. There was a lot of *trash talk* on both sides. Soon the other *sisters jumped in.*

From this point the dispute took on the shape of a family feud, escalating up through the generations. The mothers, Rose Stevens and Wendy Draper, *had a go at each other*. It eventually spread to the grandmothers with Flora Draper, as Sarah described it, *throwing words our way*. The grandmothers came to blows. There was physical fighting between the three generations of women from both families.

The confined physical and social circumstances of Halls Creek intensified the problem. *If they just looked at each other sideways, it was on. Any place, any time*. There was no way to avoid each other. The potential for a fight - going down the street shopping, playing sport or just hanging out - was always present. Sarah and her sisters fought with Jade and all her sisters. Both sides attacked and were attacked, backing each other up. Sometimes one on one; sometimes three on three: sometimes *double banking*. *You could get jumped anytime*.

Weapons were involved: baseball bats and star pickets. Grace Stevens broke Casey Draper's arm with a baseball bat, was charged by the police, and went to court. Numerous complaints were made to the police by both families. Both families thought the police biased in favour of the other family. No one felt safe.

As Hannah Bright put it: *the families had gone to war on each other*.

3.2.4. Circumstances leading to the offer of mediation

The high point of the fighting and its exact duration are unclear. There are differing accounts. Things would subside then re-ignite. By 1998 Sergeant Joe Banks recalled *car loads of women driving around town looking for the others; assaults in the main street, baseball bats and star pickets. There was about 5 years of persistent fighting. It had a definite effect on the atmosphere within the town. I instructed staff to arrest and charge everyone. Not to try and sort out who had started it. You had to take a firm and even hand, bring them all before the court and let the court deal with it*.

It was agreed that things had got out of hand. Rosey Stevens thought *it was too far gone. Someone was going to get killed*. Jenny Boscoe said *it was just on-going, no one could see the end*. Chips Carmichael knew that the police *were sick of it and everyone was going to be charged*. Gary Strong recalls brawl after brawl. The police, through the most senior officer in Halls Creek, had made it clear that patience was at an end and that all future fighting would result in charges being laid against all participants, irrespective of who struck the first blow.

Before looking at the first move to intervene by third parties, it is useful to consider the steps taken by the families themselves and their thoughts about the prospects of bringing the conflict to an end.

At an earlier stage the mothers spoke. Rosey Stevens and Wendy Draper both attended the same church. Rosey spoke to Wendy about the way *the kids are fighting* and suggested that they should *let them work it out, but she started going against our kids and I joined in. My husband and I thought at first we might do it another way, sort it out at court*. Rosey thought that something like a restraining order might work. Nothing came of this, and she became drawn in. Eventually she stopped going to church to avoid Wendy Draper.

Sarah Stevens suggested a more direct approach. She recalled that at about the time of the grand final of the football, at the oval, there was some talk about the girls fighting it out at Banjo Bore, out of town. Sarah thought this could finish it: *squash it completely*. The idea was for the girls to fight one on one with the mothers as witnesses. She thought that there was some talk between the mothers, but that the Drapers weren't interested in this *reconciliation*. *They couldn't understand why it was necessary*. They said: *We're not frightened*.

According to Jenny Boscoe, at the time the prospect of mediation was first raised, a substantial number of the family members involved were facing charges of disorderly conduct and assault: *the charges were getting bigger, they were worried about going to gaol, people without previous contact with the court were being charged and were going to clock up a record*.

3.2.5. The decision to try mediation and the form of the process

The original source of the idea to offer mediation is unclear. It is probable that it arose in the minds of several people at about the same time. It was an idea whose time had come.

Gary Strong, Aboriginal Police Liaison Officer, spoke with Sergeant Banks, about the prospect. The Sergeant was immediately supportive; if he did not himself first raise the possibility of trying to mediate the underlying problems behind the charges against the family members.

Chips Carmichael, Field Officer with the ALS, was thinking in the same way. He was formally representing members of one of the families, but could see that whatever happened with the charges in court, it would not restore peace.

A common perception was shared by Sergeant Joe Banks and Chips Carmichael: in Banks' words – *we're dealing with families here, there has got to be a better way than simply charging everyone*. There was discussion and agreement about the value and need to somehow 'interrupt' the feuding, and that Chips, Joe and Gary would work cooperatively on it.

Discussions between these three individuals led them to agree on attempting to set up a mediation process as a way to dig down into the causes of the fighting and give the participants a chance to reach a lasting resolution themselves. Mediation was the only form of intervention discussed. To Chips it seemed *the obvious way to go*.

3.3. Preparation for the mediation

3.3.1. Selection of the practitioners

Hannah Bright, who eventually acted as one of the mediators, was at the time a Team Leader at the DAA in the Kununurra office. Sergeant Banks called her and asked for her assistance. In particular he asked if she had the name of any professional mediators.

Hannah was *happy to help and suggested getting local, well-recognised people*. She suggested the need to engage the local expertise and resources of the East Kimberley AJC, describing its members as being *local, culturally appropriate, fair minded and able to model reasonable behaviour in a constructive way*.

At about the same time, certainly during the same week, Chips Carmichael also called Hannah, outlined the dispute and they discussed particular members of the AJC who might be best able to contribute as practitioners.

The precise timing and sequence of these telephone conversations is unclear. Similarly the link back from the AJC to Sergeant Joe Banks and Gary Strong is unclear. It is probable that Hannah brought the matter before the AJC and liaised with the parties in Halls Creek. However, in this context, it should be noted that Chips was chair of the AJC.

It seems communication between the various agencies was not an issue at the time, as the precise lines of communication are not now well remembered. All the relevant people were talking to each other and had input. The police, ALS, DAA and AJC were acting in concert moving towards the same objective.

Jenny Boscoe, a member of the AJC and Aboriginal resident of Halls Creek, remembers the matter being raised and discussed by the East Kimberley AJC, leading to the selection of two of its members to form, together with Hannah, a panel of three co-mediators.

What is very clear is the care that was taken in considering the number of mediators needed and the precise composition of the practitioner team. Co-mediation by three practitioners was considered necessary to provide the right balance of gender, skills and experience, and to manage what was considered to be a fairly tough task.

Discussion of the right people to do the job was informed by direct local knowledge of the families involved. There appears to have been no consideration of engaging anyone from outside the East Kimberley region or anyone who was not Indigenous. The personal characteristics of the practitioners selected to mediate were considered vital to the prospects of success. William Nelson and Frank Patterson, members of the AJC, were identified as the possessing the qualities needed. Jenny spoke of their qualities as being *known to the parties*; they were *known to be of good standing in their communities; with dignity; honest; trusted and respected; with good qualities as people willing to help people*. The high opinion they were held in came from their *face value... not from traditional standing*.

Hannah described William as being *well known in the East Kimberley*. He knew the families involved. Both he and Frank were *moderate, flexible and like minded in their attitude to building peace*. *They had a good reputation, but of more profound importance to the parties was their character and personality*. Hannah also noted the possession of *gentle and persuasive* qualities. They were *skilled in Indigenous diplomacy*. Sarah Stevens said of William that he was *straight: trusted to be fair*.

In this context it is important to note that William was in fact *related to both families*. *The old girls would nurse my father at Flora Valley*. *They were cousins, close, but not that close*. *I knew the older people, but I didn't know the younger ones*. It is not clear how many people knew of this family connection. It was certainly not raised as a problem regarding William's proposed role as a mediator, nor did it affect his performance of that role.

The fact that the parties to the dispute were all women was not considered a bar to the effective participation of two men. It was not a dispute involving women's business. There was nothing secret in it. Just a fight. In fact the presence of respected men was seen as a potential plus to sorting it out.

Hannah's participation on the team, as a woman, was vital to maintain balance and to ensure an Aboriginal woman's perspective, experience and understanding was available to the parties and the other practitioners.

The personal attributes of the practitioners were the first qualities identified by all the people interviewed. They laid the foundation for a successful process. In fact, they were essential to establish the threshold for any process at all. The parties' personal knowledge of William and Frank was integral to their willingness to participate.

The practitioner team had other significant professional qualities. Hannah was an experienced and professionally trained mediator⁴³ who contributed invaluable process skills, besides being an *Indigenous woman, neutral and from out of town*. William had some training in alcohol counselling, which touched on mediation of disputes. William considered that the alcohol counselling course had been useful, although he noted *you had to adapt it to what happens here, on the ground*. *That Serenity Prayer wouldn't mean much*. *They mightn't know what serenity meant*. *You have to use what you learn and change it to run it back here at home*. *It gives you tools, but it is basically non-Indigenous, you've got to modify and change it*. Frank had had no training, at this time. In interview he endorsed the idea of a *forum where we can talk and workshop*. *We need that right now*. *In the end we need better training courses that really look at our problems*. William agreed that a good start to promoting more effective dispute management processes would be the creation of a place to bring together Aboriginal people – to share their experience and to swap stories.

Ensuring that the practitioners had sufficient distance from the private lives and circumstances of the parties in Halls Creek was important. While it was considered essential that William and Frank came from the East Kimberley and *were part of the East Kimberley mob*, equally, in Jenny Boscoe's view, it was essential that they came (as did Hannah) *from another town*. *Confidentiality is a big issue*. *You are talking about personal things, there is an aspect of shame*. *You don't want those*

⁴³ At the time of the events detailed in this case study, Hannah had completed LEADR mediation training and training in Grief Counselling provided by a government agency, which taught techniques applicable to mediation (interests of client/interest-based questions). She had also undertaken other specific training courses in mediation through Centrecare and Relationships Australia.

'Solid work you mob are doing'

things floating around town. Someone from another town can take it back there, and they can get on with their lives here.

As William said they needed to *take back that business out of town*. Frank saw them as *neutrals from a different town*. *Chips was too close up. Same for others in that place.*

Jenny Boscoe, who assisted in the selection of the practitioners, not only had professional experience of mediation from an objective perspective, she also had an inside view based on her personal participation in mediation as a party. Based on that experience she thought that, if – say, she had been a member of the practitioner team, given that she lives in Halls Creek, the parties might not have opened up. *If it had been me, they might not open up, they might get shame, with William and Frank it was a smooth exercise.*

The significance of the mediators' local knowledge and shared understandings is demonstrated by Chips Carmichael's experience of previous attempts to conduct mediations in Halls Creek, through an established Aboriginal ADR service based in Perth. *There was a Noongar⁴⁴ man they sent up here. People didn't want to talk to him. You have got to have knowledge of the background, information about the families, deep background knowledge. It's easier to get trust if they know you. People didn't want to talk to him.* This view was reinforced by Gary Strong who spoke of the same person: *A nice enough bloke, probably good at his job, but they just said: 'You don't know our family. Go away.'*

It is of particular note that the selection process was not pressured. It was done quietly and effectively by the members of the AJC in discussion with Hannah Bright and the people who initiated the proposal for the mediation. While there is no clear account available of the to-ing and fro-ing between Kununurra and Halls Creek, Gary Strong and Chips Carmichael both contributed to the deliberations. The selection of practitioners was arrived at by a consensus. The composition of the team was not questioned, but fully supported by Sergeant Banks.

From an institutional perspective the composition of the practitioner team integrated input from the East Kimberley AJC, the DAA, the ALS and the WA Police. But to describe the selection process from this formal or institutional perspective would be to completely misconstrue its deft ground-level construction. It was primarily guided by, and responded to, the needs of the parties. It was done by people who knew those needs from direct experience. It was more an empirical, rather than an institutional or policy-driven, exercise.

The proposal for the practitioner team invited participation by the parties. Its composition assured them of a mediation process they might trust. The foundation for trust was in-built by the inclusion of respected Aboriginal people from the same region as the parties; with sound local knowledge; known by the parties to be fair; with a balance of gender and a mix of formal training and informal skills in the mediation of conflict.

3.3.2. Identification of the parties

Identifying the parties was not a difficult exercise. One blunt response to this question was: *You could read them off the court list.*

The nature of the dispute between the women of three generations of two families made identification of the parties a relatively discrete exercise. At a very much earlier stage, when the fighting was confined to the daughters, it may have been relevant to consider the cultural imperative of involving the senior generations as vital actors in any effective mediation process, although they were not direct combatants. Once the fighting actually involved the mothers and grandmothers, their participation was clearly necessary.

A distinctive aspect of this family feud was the lack of involvement by any male members of the families. The dispute was considered to be business between women. The men stood back. Sarah specifically stated that *no men were involved. Their brothers and our brothers didn't fight*. In fact she recalled that the brothers on both sides treated the girls with *mutual respect*.

⁴⁴ Noongar are Aboriginal people whose traditional country is in the south-west of Western Australia.

In these circumstances it was not thought relevant to include any other members of the families other than the protagonists. The families, when approached, did not suggest that any other family members become parties to the process.

3.3.3. Consent by the parties

The initial approach to the families was perhaps as important to the successful outcome of the process as the 'mediation' itself. In one obvious respect it was even more significant. Without the parties' agreement to participate, no mediation would have occurred at all.

Chips Carmichael and Gary Strong approached the families. There was clear institutional relevance to their involvement. Both families were facing charges by the police. The ALS was representing family members charged. Additionally, Chips was the chairperson of the AJC. It had been agreed – by the ALS and the police – that an adjournment of the charges would be sought from the Magistrates Court, in the event that the families agreed to attempt mediation.

Once again, the effectiveness of Chips and Gary to manage the initial approach was more dependent on their personal qualities than their institutional roles. Both were well known to the families and the Aboriginal community of Halls Creek. They were part of their mob. They had established relationships of trust. As William said: *They had first contact with the families on the ground, they knew all the people, brought them in.*

Chips did not consider becoming directly involved as a mediator. He had a conflict of interest through his ALS role in representing the members of one of the families. He was related to both families. He lived in Halls Creek. Altogether these factors made it impossible for him to act as an effective mediator in this case: as Frank said, he was *too close*. These factors did not impede Chips' ability to facilitate entry to the process. He felt that the families would trust him to be fair and he was certain that *it was better to get a local to set it up*.

The first approaches to the families were made through the respective mothers. There were several discussions with the individual families. There was plenty of time for family members to speak about it amongst themselves, in between these discussions. All members of the families were present, at one time or other, during the later discussions. The process took, in total, about two to three weeks.

According to Gary, both he and Chips spoke separately to both families at different times. He thought that Chips spoke to them first. They just had to *keep plugging away, as one then another of the family members agreed*.

Throughout the entire process, as Frank observed, Chips and Gary *kept talking to the families, kept them informed, calmed things down. Communication is very important, all the time, letting them know something definite is happening. Get in straight away, don't leave it*. Mediation was not suggested and then left to languish.

The mediation process was presented in straightforward terms. It was described as an opportunity *to talk it through and finish it*. All parties appeared to have a good understanding of the kind of procedure that was being proposed. Sarah thought that the first approach *was through my mother, probably. They want you girls and the other girls to get together, talk things out in front of the panel [of mediators]*. The members of the practitioner team were identified. There was no discussion of any alternative people, as the proposed practitioners were acceptable to both families.

No promises were made about the end result of the process: *it was up to them*. There were assurances about three core aspects of the procedure. It would be fair; everyone would have an opportunity to have their say; there would be absolute confidentiality in relation to everything spoken of in the mediation process - including the current discussions about the possibility of undertaking the process.

There was no legislative requirement to undertake mediation or any other form of intervention. Mediation was put forward as a way that the parties could get the satisfaction of making peace

themselves, assisted by the mediators. It was contrasted to the court proceedings that might mean that some people were punished, but would not bring things to an end.

The context of the proposal was clearly framed by the impending court prosecutions of members of both families. Chips said that, at this stage, they did not know that the police would withdraw the charges if the mediation was successful. He did not recall any undertaking being given by the police about the charges.

Both families agreed to undertake mediation, with the attendance of all the women directly involved in the fighting. There was no documentation of either the form of the process to be undertaken or of the families' agreement to participate. No individual was identified as a representative spokesperson. All parties were free to state their views and all parties agreed to enter the process.

In relation to the timing of the approach to the families, there was clearly genuine concern amongst the parties that more and more family members were being drawn into the criminal justice system. There was concern about the escalating level of violence. Worry about where it was all going. Deep weariness of the constant threat: not being able to just walk down the street or go to the shops without being on guard. At the same time, the families genuinely wanted to try to deal with it between themselves: *To finish it between ourselves*. Chips was strongly of the view that: *It was the right time. They wanted it to end*.

In interview the practitioners all agreed that, even if the parties had not reached the point of willingness to attempt to find a resolution, what might have been a premature offer could nevertheless have produced positive results. It could have *sown the seed* for agreement to mediate at a later stage.

3.4. Planning

3.4.1. Clearing the ground

At the stage when the parties had agreed to mediation, criminal charges were pending and had been listed for hearing before the Magistrates Court. In 1998 a Magistrate usually visited Halls Creek once a month, on a Thursday or Friday. It was agreed between Chips Carmichael on behalf of the ALS and Sergeant Banks, as police prosecutor, that the police would ask the Court, supported by ALS, to adjourn the matters pending the outcome of the mediation process.

This was done. Magistrate Anatole Flowers heard the application. He emphatically supported the idea. He adjourned the hearing of all matters to allow time for the mediation to proceed. Prior to making the order, he spoke to all the family members present in Court.

Magistrate Flowers congratulated them on their agreement to attempt reconciliation through mediation. He laid out the possible penalties faced by the parties. In interview he thought that the penalties were not likely to have been severe and certainly would not have involved gaol sentences. The Magistrate expressly pointed out to the parties that after any court proceedings, *the families would still have to live with each other. It was far better that they work it out*. He noted that, if a satisfactory resolution was reached, the Court would take that into account at the hearing of the charges and in sentencing. The charges had been laid and would have to be faced at some stage.

The precise terms of the adjournment are unclear. The Court file was sought, but is unavailable. It can be fairly be said that the Magistrate supported the mediation; encouraged the parties to resolve the source of their conflict themselves; was willing to allow such an adjournment as was necessary to undertake the mediation without pressure of time – but that the matter would definitely have to be brought back before the Court for the charges to be resolved.

3.4.2. Planning and preparation by the team of mediators

The intervention was an informal process, responding to a specific setting, with a team of mediators composed to meet the specific needs of the parties. There was no formal, institutional or structural framework surrounding its preliminary stages.

The practitioners were familiar with family disputes and experienced in peacemaking. To a large extent their experience guided them without a great deal of technical planning. Both William and Hannah recall discussing their approach while driving down from Kununurra to Halls Creek, a three or four hour drive.

Hannah was professionally trained and experienced in mediations. She was concerned to ensure that *we were all reading from the same book*, but was entirely confident in the personal qualities and skills that both William and Frank brought to the process. There was a high degree of implicit trust in each other's skills.

Information mapping the dispute and the parties was conveyed through Chips Carmichael and Sergeant Banks while the practitioners were still in Kununurra. The matter was discussed by the team on several occasions. It was broadly agreed that they should open a space for the parties to talk and facilitate them seeing the dispute from the other's perspective.

In Halls Creek, prior to the start of the process, a more definitive strategy meeting was held in the courthouse, where the mediation was to take place. The practitioners met with Chips Carmichael and Sergeant Banks. Chips briefed the team in more detail, based on his close knowledge of the families and their relationship before the fighting started.

The Stevens and Drapers were related to each other through their grandmothers: they were sisters. Hannah Bright recalled that she *discovered that the grandmother's were related – blood sisters – at the strategy meeting*. In contrast, both William and Frank knew of the relationship between the families and considered this a given factor.

The practitioner team agreed that the relationship between the grandmothers should play a pivotal role in their approach. It was decided to encourage the parties to reflect on the nature of their kinship ties and the previous friendship between the grandmothers, particularly when they were young girls growing up together at Moola Bulla. Bringing the grandmothers together was considered the keystone to building a resolution.

The broad thrust of the strategy was to identify commonality in the experience of both families, concentrating on the grandmothers and mothers. They planned to draw out how they related to each other before the fighting started, how they felt about the fighting, how it affected them – to reflect on its emotional impact and implications for their children and grandchildren – and to reflect on how it affected the corresponding members of the other family. As Hannah said: *To step into each other's shoes*. From there they would attempt to salt ideas, encourage the parties to discover how they might bring the fighting to an end.

William's description of the strategy was substantially the same – not to go directly to the cause of the fighting, but *to work on how they feel about it. You sit down and talk to grandmothers, mothers, fathers, how they can help their children, help them not go to goal. How they all feel the same. Underneath. There are added pressures when they are involved in the fighting. But worry for their children, that's what they share. Find what they have in common, how they are related, how things used to be before that fighting started.*

It was decided to suggest separate meetings with each family in a group, then – if agreeable – separate discussions between the grandmothers, followed by a separate meeting with the mothers, followed by the same arrangement with the girls. Time was to be allowed after each set of talks for the families to discuss matters amongst themselves. During these breaks the practitioners would assess how it was going and review their strategy.

3.4.3. Attendance by witnesses

Subject to the agreement of the parties, it was thought useful that Sergeant Banks should attend, in uniform. The police had strongly supported the mediation and, in fact, had been instrumental in setting it up. On a similar basis, Chips Carmichael was closely involved in establishing the process, and ALS had a broad interest in its outcome. Additionally, he was a figure known by the parties; Chips was related to both families and trusted by them.

It was clearly decided that the family feuding was the issue being addressed, not the charges that arose from it. The attendance by Chips and Joe Banks was not to formally represent the legal interests of the families or police. Their proposed role was more akin to that of observers or witnesses. In the event, they were invited to attend and sat quietly in the back of the courthouse throughout the process.

3.4.4. Educative component

The attendance by representatives of the ALS and police also had an educative component. There was a strong interest in the process as an alternative approach to addressing the common problem of family feuding. It carried the opportunity to learn how useful mediation may prove to resolve fighting, rather than the conventional response of laying charges or the use of restraining orders between the parties.

Sergeant Banks also noted that he, as prosecutor, *would certainly have had* a private conversation with the Magistrate prior to the application for an adjournment, urging that mediation be given a chance to address the deeper, causative elements of the fighting which led to the criminal charges. Subject to preserving the privacy of the parties, Sergeant Banks felt that, having requested the adjournment for mediation, he had an obligation to report back to the Magistrate regarding the conduct of the exercise, the soundness of the outcome, and the potential value of mediation to be used in the future.

In this context, it is useful to consider the eventual withdrawal of the charges against the families. It appears that prior to the mediation, Sergeant Banks had decided *to withdraw the charges if the process was successful*, and he was certain he would have communicated this to the Magistrate. From Chips Carmichael's account, this was not known to him or the parties beforehand. Frank recalled that *later the charges were withdrawn. That was all part of the agreement, the charges would be dropped if there was no more fighting.*

It is difficult to determine the precise state of everyone's understanding before the mediation process was entered into. It may well be that no formal undertaking was given to the parties by the police, but it is likely that some expectation – or hope – existed that the charges would be withdrawn. It is highly improbable that no thought would have been given to this prospect, and that subsequently – when the charges were in fact withdrawn – this was simply considered to have been part of a prior agreement. On balance, it is probable that no promise was made. The ultimate dropping of the charges is perhaps best, most accurately, described by Chips as *icing on the cake*.

3.4.5. The venue

The venue for the Halls Creek mediation process was the courthouse.

The selection of the Halls Creek courthouse was deliberate. Chips described it as *a neutral area*. Frank Patterson described it precisely the same way – *a neutral building... a place of respect where you don't behave in a wild manner... a place of peace, not argument*. Sarah Stevens thought that *it was a good place to do it*.

It is useful to note that the use of another 'more Indigenous' venue, such as the premises of one of the several Aboriginal organisations in Halls Creek, was expressly considered and rejected. It was thought that private problems should not be taken into people's workplace or a place where the parties may have to seek services; there were concerns about maintaining the privacy of the process; and some organisations were not considered to be neutral because of the past association of some of the parties with them.

The selection of the courthouse might be thought curious. It is a very formal setting for an informal process, intended to be an alternative to court proceedings. It is frequently observed that Aboriginal people are deeply alienated from the 'whitefella' criminal justice system and that a courthouse is an intimidating place.

Frank Patterson was very explicit about the reasons for the selection of the venue and its significance to the transformative quality of the mediation in Halls Creek. Apart from its *neutrality* he

observed that *some people are scared of courthouses. Here we saw blackfellas running the show.* Frank considered the experience of the parties successfully resolving the dispute, with the assistance of Aboriginal mediators, as being an affirmation of all the Aboriginal people involved. William saw the same up-lift: *They didn't realise they had the ability to do that. They took responsibility.*

Magistrate Flowers strongly supported the use of the courthouse as a venue for Indigenous people to work out their own resolutions: *to use it for themselves. It can not only save the Court's time, it generates more productive outcomes than the range of restraining and punitive measures available to a magistrate.*

It should be noted that in Halls Creek the courthouse is located adjoining the police station. It was used on a day when the Court was not in session. At a more basic level, Frank also thought that the courthouse was well suited for the mediation because it is *a place where no-one is going to hit each other.*

Inside the courthouse, tables were pushed together to approximate a circle, able to accommodate the parties and practitioners. This was done to avoid an oppositional arrangement, with all participants having equal place at the table.

3.4.6. Logistics, funding and costs

As previously noted, Chips and Gary managed the approaches to the parties. Gary did a great deal of the work regarding the organisation of the use of the courthouse and the attendance of the parties. His time and that of Chips were absorbed by the WA Police and ALS, respectively.

Accommodation costs, travel expenses and a daily allowance for the mediators were administered through the DAA office in Kununurra, and appear to have been paid out of funds for the East Kimberley AJC.

It does not appear that the practitioners were paid sitting fees. As previously noted, the exercise appears to have been conducted on a freelance basis, outside any formal legislative or administrative framework.

The cost of the entire process was very modest, particularly when considered in terms of the cost savings to the criminal justice system in resolving a chronic dispute that had already consumed considerable police, ALS and Court resources.

3.5. Progress of the process

3.5.1. Structure and incorporation of Indigenous ways of doing business

The strategy formulated by the practitioner team – meeting with both families separately, a separate meeting with the grandmothers, then a separate meeting with the mothers, followed by a meeting with the principal protagonists amongst the daughters, followed by a full meeting of the parties – was designed for its potential to engage the respect and standing of the senior women to act as potential peacemakers within their extended family group. As Hannah Bright described it: *Starting with the roots and working up to the top of the tree.*

In between each meeting the family groups would have the opportunity to talk privately. At the same time the practitioner team would be able to discuss how things were going and review their strategy.

It was considered that bringing the senior women together, evoking their prior relationship, and shared experiences could provide the key to resolution. Their responsibility to look after the welfare and safety of their families, together with their broader experience of life, might provide the opening to discuss peacemaking.

If this was achieved, then their standing within the family structures would enable them to operate as champions of peace with their children and grandchildren. The dynamics of resolution might be triggered to work through the internal structure of each family group.

The proposed initial meetings with all the members of each family would enable everyone to have their say, up front. Separate meetings with each echelon of the families – grandmothers, mothers and the daughters – would enable each individual family member to have their own autonomy recognised.

The grandmothers were not to be asked to act as exclusive representatives of the families. They would speak to each other, as senior woman to senior woman, and then discuss their thoughts with their family group. The strategy was to enable the status of the grandmothers to work within their kinship group: they were not to be asked to speak on behalf of the group, or make decisions on their behalf.

3.5.2. Initial sessions

The Stevens and Drapers sat in family groups outside the courthouse. It is not entirely clear how it was negotiated with the families, but the proposal for the mediators to meet separately with each family group was agreed, and the Stevens were invited into the courthouse.

The first sessions with each full family group were conducted on the same format. The role of the practitioners in assisting the families to find their own resolution, as William said – *their path to peace* – was explained. It was emphasised that they might help, but it was the families who would have to work it out. The practitioners were not very forward or pressing for ideas about resolution at this stage. They first allowed the parties, in Chips' words, to *get everything off their chest. Let the family open up.*

There was a great deal of anger within each family, a strong sense that wrong had been done to them, that their role had been purely one of self-protection and legitimate retaliation. In Hannah Bright's words: *They were angry and upset and expressed it.* The practitioner team was not fazed by the loud and energetic expression of their grievances. They let it run.

After a while the mediators threw in some questions. William asked: *Where is this going, this fighting?* As Rosey Stevens said: *It started with a little bit of fighting, getting bigger and bigger, backing each other up. She was worried.* In Hannah's view the families were *locked in and couldn't see a way out.*

At this point, where concern about the future - rather than anger about the past - was the focus, the mediators asked how the feud was affecting the family. *How they felt about the fighting. What did it feel like when the others did this to you?* Building on responses that spoke about the hurt and disrespect experienced, the question was turned around, to ask: *How do you think the other family feel about it? Would they feel the same?* It was agreed that they probably felt much the same.

The start of the fighting was explored. It was agreed that it had started with the incident between Sarah Stevens and Jade Draper on the basketball court. Most importantly it was agreed that the spark for all that had followed between the families was *trivial*. In Chips' view taking the families back to the beginning was very important: *It had got to the stage where people had almost forgotten where it started from.*

The mediators asked: *What was it like before that? How did you get on?* Both the Draper and Stevens girls said, in their separate family sessions, that they had been good friends. They had grown up together. The mediators asked each: *What did you do together?* The precise recollection of positive memories of the past was encouraged. The previous connection between the families had been very close. The question became: *How could you restore that feeling? What would you need to do? What would the others need to do?* No solution was suggested. The idea of a peaceful future was simply presented as a possibility, as something for thought.

It was suggested that a meeting between the grandmothers might be useful at this stage. It was agreed that *the old girls should sit down together.*

3.5.3. Session with the grandmothers

There was still plenty of anger evident when the grandmothers met. Hannah recalls they were *swearing, accusing*. They let it go for a while, then William laid down some ground rules about process: *that each would hear the other, not talk over the top of each other, take it in turns, show the respect that each expects of the other*. The grandmothers were defensive of their families. Each laid the blame on the other family. It was suggested by the practitioner team that, in the end, it was not about blame. It was about stopping what was happening and how they might live together in the future.

Hannah Bright recalls that the team led them to another focus through *questions around identity. What group they belonged to. Where did you grow up?* The grandmothers were sisters on their grandfather's side. They were closely related and had grown up together at Moola Bulla. In the past they had shared a relationship of love and care for each other. As Frank remembered it, they *opened their eyes, they talked about the good days when people used to live together, camp together, talk, calm it down*.

Hannah asked: *How does it feel when your kids are fighting? They said that they hadn't really known how it had all started, they just knew their kids were fighting and they were just looking after them*. Both were worried about their kids. Their shared relationship in the past and their shared concern about their children and grandchildren was, in Hannah's view: *the trigger to recognition of their commonality*.

William asked: *What would be the best way you could look after those kids?* It was agreed that finding some way to make peace would be best. The way it was going was dangerous to everyone, particularly their kids. Hannah remembers them saying: *We got to help our kids. We know what it is like*. In her judgment the peacemaking began at this point: *It started with those old ladies, when they mended their fences*.

It was suggested that the mothers might like to speak with the practitioner team. The grandmothers said that they would talk with their families about this, and shook hands.

During the break the separate families talked together. The mediators considered that the relationship between the grandmothers was going to be the key to the families finding a resolution.

3.5.4. Session with the mothers

The mothers came in angry, defensive of their daughters, shouting and recalling particular fights where the others were said to have started it. William established the ground rules about hearing each other. The team led them to the relationship between their own mothers. They agreed that they were sisters. They were asked individually: *Is this the right way to be?* Further questions touched on how they felt, as mothers, about their children fighting, about what might happen to the kids. They were both worried about the injuries already suffered, and that it might get worse. People were heading for the hospital and were already going to court.

From this point the practitioners asked them to think of how the other mother might feel, to imagine the other's concerns as a mother. The same question posed to the grandmothers was put: *What would be the best way you could look after those kids?*

They agreed that the fighting should stop. They shook hands and said that they would go back and talk with their families. The mediators suggested that Jade Draper and Sarah Stevens, who had first fought and played a central role in the dispute, might need to talk directly to each other. No peace would last unless they settled things between themselves. The mothers said that was right, the girls needed to sort it out before it could end.

During the break the practitioner team thought their strategy was bearing fruit. William recalled thinking at the time: *We're on the right track here*.

3.5.5. Session with Jade Draper and Sarah Stevens

Essentially the same cycle was followed with the girls. William explained the ground rules of listening to each other, that each would have their say. After initial accusations of blame on each side, the past relationship, friendship, of the girls became the centre of discussion. The practitioners led them to reflect on the impact their fighting had had on the rest of their families, and to consider how it might be to walk through town without the threat of being attacked by each other.

Hannah remembers *some straight shooting*. William interrupted the girls and growled them a bit about allowing each to speak her piece uninterrupted: to actually hear each other. It was pointed out that the mediators *would all go home, but they would have to live together in Halls Creek. We won't have to deal with it, but you've got to see each other tomorrow*. It was made clear that *the ability to make peace lay with them*.

The girls both agreed that it was anger, not hatred, which fuelled the fighting. They wanted it to stop, but there was still a sticking point of who would make the first move. As Frank observed, *they didn't want to be seen as backing down*. Each girl strongly asserted that she was in the right. Each wanted recognition of her right to an apology from the other, before she would consider apologising.

The practitioner team suggested that it was not a matter of working out who was the most at fault, or who should apologise to who, but that they both had the power to heal the dispute for both families. As Sarah recalled that point: *we just had to let it go, to let by-gones be by-gones*. The girls agreed the fighting should stop. It was over. They shook hands and returned to their families.

There was another break. As Frank described it: *it was looking good to go to the final stage. During that spell the families were sitting down outside, fairly relaxed, waving at each other*.

3.5.6. Final Session

The mediation concluded in a session where all family members met with the mediators and were asked to confirm that a peace had been made. This was done.

Hannah gave the agreement a reality check, asking family members: *How they were going to be when they met in the street? How are you going to relate to each other?* The parties agreed to treat each other with respect and avoid situations that might give rise to friction.

There was discussion of what should be happen if there was any disturbance or breach of the peace between the families. It was agreed that there should be tolerance, and a little time allowed for things to settle. The first response to any problem should not be retaliation. The grandmothers or mothers would let Chips Carmichael know if there were any problems. Sergeant Banks said that the police would be understanding *if there were any bubbles* and would work with the parties to sort it out.

There was clear relief on all sides. People started to shake hands. Frank recalled that *the two girls that started it shook hands. It had to come from those two. Then they hugged. Everyone hugged and shook hands. The mothers and the old ladies hugged and cried together. Everyone: no one missed out*. The atmosphere was contagious. Hannah recalled that *it was very emotional, even the Sergeant had a tear in his eye*.

The parties thanked everyone involved in the mediation for what they had done. William replied: *We didn't do anything except help you hear each other*.

3.6. Outcomes and implementation

3.6.1. Return to Court

As soon as possible after agreement was reached between the parties, the criminal charges were listed before Magistrate Flowers. Sergeant Banks informed the Court of the outcome, and advised that he proposed to withdraw all charges. The ALS confirmed the resolution. Magistrate Flowers spoke directly to the parties. He said that he had heard what the prosecutor and ALS had told him,

which was very positive – but he wanted to hear directly from the parties themselves how they felt about their agreement. He wanted them to affirm, directly to the Court, that peace had been made. The parties each confirmed that they had agreed to stop fighting and believed that it was finished.

The charges were formally withdrawn. The Magistrate congratulated everyone concerned. He said that the resolution of the underlying issues that had led to the fighting, through mediation, was *a far better way to proceed than through my Court*.

He particularly congratulated the parties on their willingness to take the responsibility on themselves to sort it out. He expressed the view that a similar approach might help in other matters that so often came before him. In closing he wished the parties well, said he hoped he would not see them in Court again. If there were any future fighting, the Court would be certain to act, but that he could see that there was *a genuine intention to keep the peace*.

In interview, Magistrate Flowers was very definite in his views of the difficulties faced by many Indigenous people in his court.

The language of the court room is formal, alien. I try to speak to people in a clear, straight forward way. But there are still problems with understanding. I would like to have interpreters in court, mainly in krio but in traditional languages too, if that is what is needed. There is an interpreter program: it has virtually no money.

3.6.2. Documentation

The resolution in Halls Creek was not documented. There was no formal agreement between the parties. The resolution was enacted with handshakes, words of reconciliation and the spontaneous, physical release of emotional tension that had accumulated over the years. The evident sincerity of the families' desire to live in peace stood as guarantee of their agreement. A formal document was not considered necessary by either the practitioners or the parties.

The Court file in relation to the charges would, presumably, have recorded the formal withdrawal of the charges and noted the reasons for their withdrawal conveyed by the prosecutor and ALS representative – and, perhaps, the answers given by the parties in response to the Magistrate sounding out the reality of the resolution.⁴⁵

The families simply shook hands and made peace. However, in interview, Jenny Boscoe, member of AJC, raised the general issue of documentation. She suggested the development of a *format for agreements in the East Kimberley, like a menu, where you can choose what you want. Like a Stat. Dec. agreement, that you could have on a computer and adapt it to each case.*

Jenny had personal experience of a mediation culminating in a written agreement signed by all the parties, with a degree of ceremony surrounding the signing. It specified things such as: *We agree not to say anything to provoke an argument or a fight, not to deliberately go near any family members, not to damage any vehicles or do any property damage.*

Rosey Stevens strongly supported this proposal, adding that it *should be registered with the court and, if anyone breaks it, they get pulled back and punished*. In effect, the agreement between the parties would become formally binding and any breach would be punishable by the court it was registered with. This proposal was not generally favoured by other participants. It was seen as distorting the ownership of the process.

A document capable of being adapted to the wishes of the parties was thought by all participants to be a useful resource. Whether or not the parties wanted to record their agreement in precise terms was regarded as a matter purely for the parties to decide. It is an option that could be offered at the conclusion of the process.

As William saw it: *If there is no real peace in their minds, nothing you write down will make any difference.*

⁴⁵ As previously noted, the Court file was sought but is unavailable.

3.6.3. Implementation and monitoring

Keeping the peace relied essentially on the goodwill and sincerity of the parties. It was clear that the resolution brought an extremely welcome end to a chronic feud between the families and they had every intention of standing by it.

The reality that, in the short or longer term, there may be some revival of friction was discussed in reaching agreement. The terms of agreement included the avoidance of retaliation in the event of provocation. The nomination of Chips Carmichael as a person to whom any problems could be brought gave the parties a clear path for the referral of any issues. Sergeant Banks' commitment to take restrained approach to any teething problems presented the police, primarily through the Sergeant and Gary Strong, was another source of sympathetic recourse to work through any future difficulties.

3.6.4. Sustainability

The mediated agreement held the peace between the families for nine years. No person interviewed reported any fighting between the parties throughout this time. The relationship between the families seems to have been stable, if not warm.

The first, single breach of the peace occurred in late 2007. At some time in 2005 Sarah Stevens left Halls Creek with her partner and young family to live in Perth. In late 2007 she returned for a funeral. After the ceremony, as she was about to leave town on the bus, Casey Draper climbed aboard and hit Sarah in the face. Sarah went to chase her *and give her a flogging*. But decided it was not worth it. She reported the assault to the police in Broome. She was not going to get dragged back into a feud: equally *she was not going to get away with it*. Sarah has not decided whether she will return to Halls Creek to give evidence.

Sarah's forbearance in not pursuing Casey seems to have come from a range of factors. She has a young family, a life and ambitions outside the confines of Halls Creek, although she wants her study to help her to *contribute to my community*. She has grown up a lot. None of these factors are attributable to the mediation process. However, it did give her a sense that *you can sort those things out without fighting*.

3.6.5. Ten years on – an absence of services

In April 2008 there was a fight near the basketball court in Halls Creek. As Frank tells it: *Some boys double banked a boy from the Wyndham team. The Wyndham boys came in. It was broken up, but the Wyndham boys are talking about what they will do when the Halls Creek team comes to play them*. Frank has spoken to the fathers of some of the Wyndham boys to see what might be done. But they are angry. And waiting. He sees the potential for the conflict to broaden and escalate, just as it did between the Stevens and Draper families.

The East Kimberley AJC no longer exists. The local ALS office is barely able to adequately deliver its basic service of legal representation, let alone take on additional functions. The police are not yet involved in the matter. While an Aboriginal ADR Service is offered by the WA Department of the Attorney-General, it is based in Perth and there is no immediately available local capacity geared to support a swift intervention.

In Frank's view: *People are able to claim crimes compensation, and know that, but there is no awareness or service for mediation amongst our mob*.

The situation in the East Kimberley seems to have gone backwards. This reveals a fundamental flaw of the Halls Creek mediation as a model of Indigenous conflict management: it was not supported by any specific legislative, institutional or policy structures. It was the product of like minded people, Aboriginal and non-Aboriginal, responding with a high degree of flexibility and creativity. A common perception of the problem and a common understanding that mediation held the best chance to break the cycle of violence, rather than defined roles, gave coherence to the process.

The process left almost no documentary or institutional trace and was only able to be reconstructed through the memory of the participants. In many respects it bears the characteristics of responses – both good and bad – in remote, ill-resourced Aboriginal communities. The people on the ground do what they can, what they think best – with limited resources – to address an immediate problem.

3.7. Conclusion: looking forward

In Fitzroy Crossing, in March 2008, Chips Carmichael attended a briefing by a representative of the WA Department of the Attorney-General regarding the renovated WA Aboriginal Justice Agreement. It envisages the establishment of 56 local justice forums, 10 regional justice forums, headed by a State justice forum. At these various levels, the forums will bring together representatives of all relevant government agencies, non-government organisations and community representatives. They are charged with several objectives, including: enhanced community safety, wellbeing and security; criminal justice; and the coordination of services.

Chips sees this mechanism, as do William and Frank, as holding the potential to re-establish, with sound footings and secure funding, local and regional bodies for Aboriginal conflict management in the Kimberley. They see it as an issue of justice and the Aboriginal Justice Agreement as an appropriate vehicle for the creation of local Aboriginal organisations to deliver the service. They see the potential to re-build and consolidate the capacity and cooperation that brought peace to three generations of women in two Aboriginal families in Halls Creek – after years of fighting from which there seemed to be no escape.

It lifted those families. They saw that they had worked it out. In fact, when they made peace, the news went straight through the whole place. It lifted everyone. They didn't realise they had the ability to do that.

Chapter 4

Case Study: *Neighbours in a south coast town* – mediation by NSW community justice centres

By Margaret O'Donnell⁴⁶
co-researched by John Westbury.⁴⁷

4.1. Introduction

In the early months of 2006, an Aboriginal family and their non-Aboriginal neighbours in a small town (T)⁴⁸ on the south coast of New South Wales participated in a mediation process conducted by a NSW Community Justice Centre (CJC). NSW Community Justice Centres (CJCs) are a division of the NSW Attorney General's Department. The mediation was conducted by two CJC mediators, one of whom was an Aboriginal woman and the other, a non-Aboriginal man.

The dispute was essentially concerned with allegations of noise, damage to property and trespass, and perceived racism. The mediation was attended by the Aboriginal family and residents from two neighbouring houses, and more broadly, the process involved other residents in the street, the police, the Department of Housing and community service workers from local agencies who provided support to the Aboriginal family.

This case study examines the processes involved in mediating this dispute and explores some of the aspects which contributed to its effectiveness. Key issues arising from this case study include pre-mediation strategies, the relevance of cultural identities of mediators, and the role of support workers, police and government agencies in dispute management involving Aboriginal people.

Fieldwork for the case study was carried out over a total period of five days in Southern NSW in June 2007 and in Eastern Victoria in August 2007.

4.1.1. Research process

The participation of the CJCs was crucial in identifying this case study and in planning for and facilitating the research. The project team approached the NSW CJCs Directorate in February 2007, with a view to identifying a possible case study for the Project from within NSW CJCs Aboriginal Mediation Program. The case was chosen as representing a conflict involving both Aboriginal and non-Aboriginal people and which had led to an apparently successful agreement.⁴⁹

The CJCs Directorate engaged a member of its panel of Aboriginal mediators, John Westbury, to assist the principal researcher to conduct the interviews and contribute to the case study report.⁵⁰

⁴⁶ Margaret O'Donnell is a mediator with experience in numerous multi-party neighbourhood disputes and disputes involving Aboriginal people, often working with Aboriginal co-mediators. See Notes on the Authors.

⁴⁷ John Westbury is an Aboriginal mediator with four years experience as a CJC mediator. He also works as a researcher at Link-Up NSW, a service which assists to reunite Aboriginal people removed from their families as children. The Project is grateful to NSW CJCs for engaging John Westbury to assist the principal researcher, a non-Indigenous woman, to conduct the research for this case study.

⁴⁸ To protect the identities of the people involved in the dispute, the name of the town is not disclosed in this case study and pseudonyms have been used to refer to parties and certain others involved in the dispute.

⁴⁹ Initially a case involving a facilitative meeting was identified, however upon further investigation NSW CJCs determined that the brevity and straightforward nature of the process did not lend itself to the kind of in-depth analysis required by the Project. Subsequently the Directorate reviewed a number of files to identify an alternative and this case study was selected in April 2007. Research commenced with a one day meeting at the CJCs Directorate in Sydney on 22 June 2007 to plan the research timetable, establish the focus the case study and commence the interview with one of the mediators, Cherie Buchert.

⁵⁰ The principal researcher and co-researcher shared a similar approach to mediation, based on the model used by community justice centres. They regarded their mutual familiarity with the workings of CJCs, with its intake process, the 12-phase mediation model, and the way in which two mediators are trained by this system to work together (co-mediation), as a distinct advantage in conducting the research.

This enabled knowledge-sharing between CJs and the Federal Court and aimed to build capacity within both organisations to conduct case study research in the future.⁵¹

Preliminary phone discussions about the case study in 2007 involved the Project team, the principal researcher and staff of the CJs Directorate, including the Director of CJs and the Acting Senior Aboriginal Programs Manager. These discussions addressed issues such as:

- identifying potential participants in the research;
- methods of approaching participants;
- process for obtaining permissions;
- maintaining confidentiality and other ethical considerations; and
- considerations relating to the legislative framework within which CJs operate.

Initial permission to conduct the research was given to the Project team by the Director of CJs. She agreed to allow relevant records to be provided, to be interviewed herself, and also offered the services of the Acting Senior Aboriginal Programs Manager, Cherie Buchert, as an advisor and facilitator for the research process.⁵² Cherie was also a subject of the research, as she was the pre-mediator and one of the co-mediators who mediated the dispute.⁵³

4.2. Background to the mediation process

4.2.1. NSW CJs

NSW CJs provide ADR services for NSW. The service is established by and operates under the *Community Justice Centres Act 1983* (NSW). CJs' services are free, confidential, impartial, accessible and voluntary.⁵⁴ The CJs Directorate, located in Parramatta, manages the budget, strategic direction, policy and projects of CJs and administers the mediators. The Directorate is also the centre for coordination of CJs' Aboriginal and Torres Strait Islander Program.

At the time of the mediation which is the subject of this case study, CJs operated a number of regional offices across NSW, including, relevantly, an office at Wollongong. Recently CJs centralised their administrative operations in Parramatta and now coordinates its service provision throughout NSW from that office. It also currently has offices in Campbelltown and Newcastle.

In 2002 CJs commenced the implementation of an Aboriginal-specific mediation service in response to a need identified through community and academic research. An initial pilot recruitment and training program for Aboriginal mediators was undertaken in late 2002 in the Northern CJs region. Two further recruitments were held in the Sydney, Western and Southern CJs regions during 2004 and 2005. An evaluation of the Aboriginal-specific service was undertaken in 2005.⁵⁵ At the time of research there were approximately 42 Indigenous mediators on the CJs panel. All mediators on CJs' panel work on a sessional or casual basis.

⁵¹ From CJs' point of view, this case study provided an opportunity to reflect on their mediation practice, to learn about case study research, and ultimately to assist in the improvement of CJs' services to Aboriginal and Torres Strait Islander people.

⁵² Cherie took responsibility for locating and initiating contact with potential participants in the research. Following an initial phone call to each potential participant, a letter was sent which introduced the case study and proposed a timeframe for the research. Prior to the interviews, Cherie contacted participants and key stakeholders and either visited them or spoke with them over the phone to further explain the proposed research to them, to leave written material with them about the Project and to secure their permission to be contacted by the researcher.

⁵³ Cherie's role in preparing for the research was most effective, particularly as she was known to the parties, and her approach contributed considerably to the readiness of all parties to speak about their experiences. Cherie's roles in both the research process and in the mediation itself was also a potential source of conflict – Cherie was closely involved in preparing for and facilitating the case study research, yet she was also a key subject of the research as she was the Aboriginal mediator of the dispute. Moreover, she was the Acting Senior Aboriginal Programs Manager at the CJs Directorate and a local resident of the district in which the mediation took place. Given her multiple positions, there was potential for Cherie to feel uncomfortable or conflicted in the course of the research. To address these potential difficulties, care was taken in the planning stages of this case study to avoid potential conflicts for Cherie, for example by adopting the procedure that Cherie would introduce researchers to interviewees and then depart before the interview commenced. Participants were aware of Cherie's role in the process when they consented to participate.

⁵⁴ See Community Justice Centres website at

<http://www.cjc.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/pages/CJC_aboutus>

⁵⁵ See the Executive Summary of the Evaluation of the CJC Aboriginal and Torres Strait Islander mediation program at <[http://www.cjc.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/vwFiles/EXECUTIVE%20SUMMAR_Final.pdf/\\$file/EXECUTIVE%20SUMMAR_Final.pdf](http://www.cjc.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/vwFiles/EXECUTIVE%20SUMMAR_Final.pdf/$file/EXECUTIVE%20SUMMAR_Final.pdf)>

4.2.2. Key people in the mediation process

Among the key people involved in the mediation process were the following individuals:

- Cherie Buchert, First Mediator and Acting Senior Aboriginal Programs Officer, CJC's Directorate.
- Nick Summers, Second Mediator and local resident of T.
- 'Bob' and 'Kay', Party A. Bob and Kay and their six children, an Aboriginal family, lived in the street.
- 'Ingrid', Party B, a non-Aboriginal woman who lived in the street.
- 'John' and 'Sue', Party C, a non-Aboriginal couple who lived in the street.
- 'Mary', Community Aged Care Package Coordinator.
- 'Rachel', Client Services Officer, Department of Housing.
- 'Frank', Aboriginal Community Liaison Officer (ACLO), NSW Police.
- 'Ross', Local Police Constable, NSW Police.

All of these individuals participated in the research.⁵⁶ The names in brackets are pseudonyms.

Other residents in the street, who were not directly involved in the mediation, were approached but declined to participate in the research. None of them objected to the case study being conducted without their involvement.

4.3. Background to the dispute

4.3.1. Identification of the dispute

The parties to the dispute and a number of community service agencies, notably the Department of Housing and the local police, recognised that tensions was mounting in the street over a period of some five or six months before the mediation occurred. The dispute appears to have crystallised in early 2006 when a series of complaints were made to the police about the behaviour of the Aboriginal family who lived among non-Aboriginal people in the street. The police were called to the street on a number of occasions to deal with matters associated with the dispute.

In many respects, this case is typical of disputes between neighbours which occur across Australia, whether in urban or regional areas. However at the same time, the dispute revealed a unique set of circumstances which particularly involved issues of race and cultural difference.

4.3.2. Factual background

T is a town with a significant population of Aboriginal people. The town has about 3000 residents, over 100 (or 3.5%) of which are Aboriginal people.⁵⁷

Bob and Kay and their six children (aged between five and 16) lived for about 18 months in the T district after travelling to Southern NSW from Eastern Victoria. Kay's parents lived at an Aboriginal Trust area nearby. After living in a number of different accommodation arrangements, the family was placed by the regional Department of Housing in a three bedroom emergency (short term) housing property reserved for Indigenous families in T. Kay's extended family often visited on the

⁵⁶ On 26 and 27 June, 2007, the researchers interviewed nine people who were involved directly or indirectly in the mediation process, at various locations agreed to by participants in or around 'T'. A further interview with the Director of NSW CJC's was conducted via phone on 14 August 2007. On 21 August 2007, the principal researcher interviewed two Aboriginal people involved in the dispute at their home in Victoria. Mr Westbury was unable to attend this interview however the interviewees agreed to be interviewed by the principal researcher (a non-Aboriginal woman) alone, and there appeared to be no difficulties for the interviewees with this approach. In addition to these interviews, select documents relating to the mediation and its outcomes were provided by parties and extracted from the CJC file.

The researchers had approximately two hours of face to face time with each participant. The timeframe of the research allowed sufficient time on most occasions to gather essential information for the research from participants. There was limited opportunity to discuss a range of peripheral issues which may have held relevance and added depth to the research. For example it would have been beneficial to explore broader and more deep-seated issues with participants over a longer period of time, such as sensitive and personal histories, underlying conditions which contributed to the conflict, and attitudes to and history of Aboriginal people in the area. Exploration of these issues may have provided greater insight into the context of the dispute and the local and policy conditions which influenced the process and its outcomes.

⁵⁷ 2006 Census of Population and Housing, Australian Bureau of Statistics, Canberra, 2007, <www.abs.gov.au>.

weekends. At times there were more than eight people residing in the three bedroom dwelling. There were no other Aboriginal families living nearby.

Ingrid lived in the same street as Bob and Kay, a couple of houses away. She was an elderly woman of Eastern European background and English was not her first language. Sue and John lived next door to Ingrid. They were retirees from an Anglo-Australian background. Most of the other residents in the street were also retirees.

The street was located in a bushy cul-de sac on the edge of T. From the area to the town centre was a significant walk. There were limited public spaces in the local area and the street was near a major road. These aspects of the geography made the environment difficult for children to play outside safely and also generated a sense of seclusion, or remoteness, among the houses in the street.

4.3.3. Circumstances leading to the mediation

In interview all parties agreed that over a period of some months before the mediation, a series of incidents had occurred which led to the deterioration of relationships between Bob, Kay and their children, and other residents in the street. All interviewees who attended the mediation said that in the time leading up to the mediation, they felt abused, threatened and misunderstood.

Many interviewees also noted that, prior to the referral of the dispute to mediation, they had not heard of the concept of mediation and certainly did not know there was an accessible CJC service that was affordable and relevant to their needs.

4.3.4. Ingrid, Sue and John's perspectives

At the time of the dispute, Ingrid, John and Sue and some other neighbours made various complaints about Bob and Kay's children entering their properties, especially taking fruit from their trees, throwing stones, swearing at them and calling them names which they found offensive. Some of these names were perceived as offensive for racial reasons – for example, Ingrid was offended by names which referred to her non-English speaking background and by assertions on the part of the children that this was their country and that she should go home.

The neighbours perceived Kay to be overly defensive and protective of her children and inclined to abuse neighbours if they had spoken severely or chastised her children.

The neighbours also expressed concern about the noise which came from Bob and Kay's place. The police were called to the house on a number of occasions and Bob was alleged to have been taken away from the house in a police van, sprayed in the face with capsicum spray by the police, and after one incident, placed on a good behaviour bond. One neighbour reported to the police that the windows of the house had been broken and was sure that the damage had been done by Bob and Kay's children. Sue and John also had concerns about the number of animals around the house, which they said were neglected.

Ingrid, Sue and John noted in pre-mediation that they had had no problems with any of the previous Aboriginal tenants in the house in which Bob and Kay lived. Sue and John commented that, for example, previous Aboriginal residents had looked after their house while they were away and in return John and Sue had helped them out by providing them with excess furniture. There had been a history of amicable relations between Aboriginal and non-Aboriginal residents in the street which was disrupted by the current conflict.

4.3.5. Bob and Kay's perspectives

Bob and Kay felt they were unwelcome in the area and were living among people with whom they had little in common. They were frustrated at the lack of amenities for their children to play in the nearby area. They said that the children were tempted to take the fruit from the trees. They admitted that the children were noisy at times but said that they were just being kids.

Because of the negative reactions of the neighbours, they felt constrained to keep the children inside the house, which contributed to a sense of claustrophobia in the household. They owned a dog but also felt that they needed to keep it tied up. It became vicious and barked a lot, adding to the tension.

Bob and Kay said that their windows were all broken when they were out and they suspected the neighbours of causing the damage.

In interview, Kay agreed that she had been overly defensive and inclined to shout at the neighbours if they had spoken harshly to members of her family. She said that at the time of the dispute she was suffering from a good deal of stress and felt that her mental state had been deteriorating, due to personal reasons and the external environment in the street. The family was experiencing significant financial hardship. Kay found it difficult to deal with the cramped conditions in the house and the situation was exacerbated by visits from Kay's extended family on weekends. Kay's family periodically asked for money and food which made it hard to feed eight people. Moreover, the children were having difficulties at school, their attendance was poor and Kay had had some altercations with the school principal. As a result of this, the school had taken out an apprehended violence order against Kay. This prohibited her from going to the school grounds and further worsened the relationship between the school and the family. Consequently the children's attendance fell off even further.

Bob believed that a significant element of the atmosphere was caused by racist feeling towards the family from the neighbours and indeed from the local community in T.

4.3.6. Perspectives of community workers

During the months prior to the mediation process, three key community workers were in close contact with Bob and Kay. They were:

- Rachel, the Client Services Officer with the regional office of the Department of Housing;
- Frank, the ACLO at the local police station; and
- Mary, the Community Aged Care Package Coordinator with a Multi-Services Aboriginal Corporation who dealt primarily with Kay's elderly parents and became a trusted support person for the family. Mary provided practical and immediate assistance to the family, for example by dropping off food packages for the family or collecting firewood for the house.

These community workers were well aware of the situation in the street. All three had had extensive contact with Bob and Kay and regarded themselves as providing counselling and support to the family as well as having professional and/or statutory responsibilities in respect to the house and the wellbeing and behaviour of the family. While Mary's professional responsibilities lay primarily with Kay's parents, Mary recognised that in order to provide a meaningful support service for Kay's parents it was necessary and appropriate for her to support Kay and Bob and their children.

4.3.7. How was a decision made to intervene and by whom?

Following a set of complaints to the police in the third six-month tenancy of Bob and Kay's house, Frank had a discussion with Rachel about the apparent escalation of the dispute and recommended to her that the dispute be referred for mediation to the CJC.

Rachel initially felt that the conflict between the neighbours had *gone too far*, and was *too heated* for mediation. She also believed that the Aboriginal family would not welcome an intervention by yet another government agency. She was unaware that CJs had Aboriginal mediators on their panel and said that if she had known this she would have referred more willingly, as she believed that Bob and Kay would be more likely to access a service which was delivered by Aboriginal people.

Frank had been a participant in Youth Conferencing for young local Koori offenders and their victims. He had seen many successes from such conferences and was much more optimistic about the possibilities of a constructive outcome from a mediation process in this case.

After consultation with Frank, Rachel called the Wollongong CJC office and referred the dispute for mediation.

4.4. Permissions to participate

The Wollongong CJC logged the dispute and received a list of potential parties from Rachel, which included the names of residents in the street and Mary as a support person for the Aboriginal family.

The CJC's mediation adviser⁵⁸ contacted the potential parties by phone to seek approval to proceed. Following this initial contact, a letter in standard form was sent to the parties who had expressed willingness to participate in the process. The letter stated that the Department of Housing had advised that CJsCs may be able to assist the parties to resolve their differences. It briefly outlined CJsCs' services and requested that the party contact the CJC to discuss the matter. A brochure about CJsCs was enclosed with the letter.

Bob and Kay and residents of two of the neighbouring houses (Sue and John and Ingrid) were willing to meet. Another neighbour who was away at the time was willing to meet by teleconference. Two other neighbours declined to participate.

4.4.1. Parties' reasons for participating

Ingrid, Sue and John saw mediation as a way to ameliorate their relationships with Bob and Kay and their children, in order to restore peace in their street. For Bob and Kay, the reasons for participating in the mediation process were perhaps more complex. While they too wished to improve relationships with their neighbours, they were also experiencing difficulties in their relationships with the Department of Housing, the police and the children's school. Given that Rachel referred the matter for mediation and that she did so in consultation with Frank, there were obvious reasons for Bob and Kay to participate in the process, even if only to improve their relationships with the Department of Housing and the police. Mary's support for Bob and Kay to participate in the process was an added encouragement. This is not to say that Bob and Kay participated in the mediation against their will, rather that the circumstances surrounding their decision to participate included concern about the future of their tenancy in the house, and other bureaucratic or legal action which they perceived may be taken against them, and which they were obviously keen to avoid.

Other residents in the street declined to participate in the mediation process for fear of retribution from Bob and Kay.⁵⁹

4.5. Planning the process and preparing the parties

The planning stages of the mediation process were carried out within the framework of CJsCs' pre-mediation procedures and policies. It is convenient to set out CJsCs' relevant procedures and policies, with particular reference to disputes involving Indigenous parties, before discussing the specific procedures which were used in this case.

4.5.1. CJsCs' pre-mediation and mediation procedures

Pre-mediation

Pre-mediation involves meeting with the parties to the dispute to explain the mediation process, answer questions, allay fears, discuss suitable venues, dates and times. Pre-mediation is sometimes conducted by a mediation adviser (who are employed on the CJC's staff), but where a situation is complex or there are parties with special needs, a pre-mediator may be selected to conduct pre-mediation. The pre-mediator may or may not become the mediator of the dispute.

⁵⁸ Mediation advisors are responsible for conducting 'intake' at CJsCs.

⁵⁹ This was mentioned by several people interviewed. The issue cannot be explored, however, because the residents who declined to participate in the mediation also declined to participate in the case study research.

Typically pre-mediation involves one meeting with each of the parties. Meetings sometimes take the form of a phone call and other times a face to face meeting. Face to face meetings are held in different venues - parks, cafes etc – but not in people's homes. Face to face meetings are preferred in disputes involving Indigenous parties.

Part of the purpose of pre-mediation is for the mediation adviser or pre-mediator to decide the appropriate method to use in subsequent proceedings (such as mediation meeting/s or a conflict management approach involving a range of strategies, including for example group facilitation).

Another important purpose of pre-mediation is for the mediation adviser or pre-mediator to assess the needs of each party, and if appropriate, to address those needs by encouraging a support person to attend mediation with that party. A support person can assist a party who has little familiarity with mediation to feel comfortable and safe in the process, and can address power imbalances between the parties. If a support person is to attend mediation with a party, that person must be fully informed of his or her role and is not to actively participate in the process as a party to the dispute.

Mediation

Where a dispute is to be managed by way of mediation, two mediators are selected by the CJC to work as 'co-mediators.' Co-mediation is a process in which co-mediators (male/female; Aboriginal/non-Aboriginal, for example) play well-defined and mutually understood complimentary roles as well as providing checks, balances and support for each other, and effective debriefing and planning. Co-mediation approaches also avoid a focus by parties on a sole expert and allow one mediator to observe and identify issues while the other is implementing the process.

It is a policy of CJs to provide an Aboriginal or Torres Strait Islander mediator in disputes involving Aboriginal and Torres Strait Islander parties, if the parties wish to have one. Parties can choose if one, both or neither mediator is an Aboriginal person. If an appropriate Aboriginal mediator cannot be selected locally, a mediator from elsewhere in NSW is identified through CJs' panel. Thus it is not uncommon for Aboriginal mediators to travel across NSW to mediate disputes involving Aboriginal people.

Mediators are not chosen by the parties themselves. (This is the practice across CJs.)

It is not always the case that the person doing the pre-mediation becomes one of the mediators – indeed, at the time of the mediation under study, CJs pre-mediators were generally trained to avoid involvement in a subsequent mediation, where possible. The rationale for this was that a pre-mediator's continued involvement in the process could give rise to perceptions of bias or pre-determined views at the mediation. However, where an Aboriginal pre-mediator was used, it was more likely that the pre-mediator would become a co-mediator, primarily due to the fewer numbers of Aboriginal pre-mediators with requisite qualifications and experience,⁶⁰ but also a reflection of the importance of practitioners establishing rapport with Aboriginal parties and sustaining contact with them throughout the process.⁶¹

Training

CJs conduct a 72 hour assessable mediation training course for potential CJs mediators. After completion of the training and assessment, a person is eligible for accreditation as a CJC mediator. CJs conduct specific training for Aboriginal and Torres Strait Islander people (72 hours) and have developed a training manual which contains role play scenarios and examples involving Aboriginal people. Some examples in the Aboriginal training manual have now also been adopted in the 'mainstream' training manual. CJs also conduct training courses in pre-mediation (one day) and

⁶⁰ Since June 2007 CJs has conducted a series of pre-mediation training sessions across NSW targeting Aboriginal and Torres Strait Islander people. Consequently CJs now has a larger pool of qualified Aboriginal pre-mediators than at the time of the mediation the subject of this case study.

⁶¹ NSW CJs has recently changed its standard procedure in relation to the use of pre-mediators as mediators in the same dispute. CJs now encourage pre-mediator to also act as mediators, for all disputes, provided they have the consent of the parties and feel comfortable to do so.

facilitation (one day) and conflict management (three days). CJs periodically provide cross-cultural and 'understanding racism' training which is voluntary for CJC mediators.

4.5.2. Pre-mediation procedures in the case study

Because there were a number of people involved in this dispute, including an Aboriginal family, a local Aboriginal mediator, Cherie, was tasked with undertaking pre-mediation with the parties who had agreed to meet. Specifically, Cherie met face to face with:

- Ingrid, in a café in T;
- Mary, in town close to T;
- Bob, Kay and Mary, in park in T; and
- Sue and John, in a park in T.

These meetings were conducted within a four day period, with three of the meetings on one day. Venues for these meetings were chosen by Cherie for maximum comfort and accessibility. Cherie had regard to the seclusion of open-air venues, given the confidential nature of the meeting.

The pre-mediation meeting with Bob, Kay and Mary took place in a park, which Cherie noted in her file note was *nice by the water, with a cuppa*. Prior to this meeting, Cherie had met with Mary separately to enlist her support to encourage Bob and Kay to attend pre-mediation and to accompany them to the meeting.

In these pre-mediation meetings, Cherie explained CJs' processes, covering issues such as:

- the fact that mediations by CJs are regulated by an Act of the NSW Parliament;
- the confidentiality of the process, for example, by assuring the parties that the mediators would not discuss anything said in mediation socially or with family etc;
- the voluntary nature of the process;
- the independence and impartiality of the mediators;
- the training and experience of the mediators; and
- the opportunity for all parties to have a say in their own words and time.

After this series of pre-mediation meetings, Cherie made a series of written recommendations to CJs about how the dispute resolution process should proceed.

She recommended that mediation was the most appropriate way to proceed – ie, a mediation meeting, attended by all the parties, in which CJs' 12-phase mediation process (explained below) would be conducted by two mediators. Cherie considered that this form of intervention was appropriate because she felt that she could *have them [safely] all in the room together*. Were this not to have been the case, she may have recommended other strategies, such as a series of small group mediations or 'shuttle mediations' structured to limit or avoid contact between certain parties and where the mediator moves between the parties.

Cherie recommended that one of the mediators should be Aboriginal (male or female). Cherie made this recommendation because she felt that it would be important for Kay in particular to experience the mediation as a safe environment, given her mental state at the time. Cherie also recommended that Mary attend the mediation as a support person for Kay and Bob, noting that Kay felt comfortable with Mary present. She noted that it was important for Mary to be clear about her role and to leave it to the parties to present their stories.

A mediation adviser at the CJC determined that Cherie should be one of the mediators. Aside from practical considerations such as her location and availability, Cherie was considered an appropriate person to mediate this dispute because she was an Aboriginal woman, with local knowledge and experience, and while Cherie had family connections in the area where Kay's family lived she did not personally know Kay or her immediate family or any of the other parties to the dispute.

Cherie said she felt that trust and rapport had been established with all the parties such that the following mediation would be considerably enhanced by her presence. She said that she believed parties were *warmed up* to the process as a result of the pre-mediation meetings.

In this case, having the same person as pre-mediator and mediator was an effective strategy which assisted in establishing trust and building relationships with the parties throughout the process. In these circumstances, CJC was able to support a deviation from the usual practice that a pre-mediator should not become one of the mediators.

A local non-Aboriginal male mediator was chosen by a CJC mediation adviser to work as co-mediator (Mediator 2) with Cherie. This mediator was selected on the basis of his gender and also for pragmatic reasons, such as his locality and availability.

It appears that a decision was made by the CJC mediation adviser not to arrange a teleconference with the party who was willing to join the mediation by phone. The reasons for this decision are not clear, however it is possible that the CJC mediation advisor determined that face to face contact between the parties was imperative in the circumstances and that participation by teleconference would not have been an appropriate strategy.

4.6. The mediation

4.6.1. A first attempt at mediation

The mediation was scheduled to take place about two weeks after the pre-mediation meetings. On that occasion, 20 minutes before starting time, Kay was reported to be ill and all parties went home after some new dates were agreed upon.

It is alleged that at this point Mediator 2 made inappropriate remarks to Cherie, to the effect that Aboriginal people should not be receiving special treatment. Cherie reported these remarks to CJC's office and suggested that an alternative male mediator be found. She nominated a local man with a background of experience in working with Aboriginal people, Nick Summers, as a potential alternative mediator. Cherie felt comfortable with Nick and had confidence in his ability to co-mediate this dispute, as they had worked together before.

Nick Summers was subsequently approached and agreed to be Mediator 2.

4.6.2. The mediation

The mediation took place two weeks after the initial attempt. Both mediators arrived at the venue at the designated time with a short summary of the dispute content and a list of the names of the parties.

The venue for the mediation was a private room in the new library building in T. At the time this appears to have been an unusual selection for a CJC mediation in T, as mediations often took place in a courtroom or in the court offices.⁶² Cherie formed the view that this mediation would be better conducted away from the courthouse and arranged to hire the library room at a discounted price. The room was relatively new, with a light and airy atmosphere and a kitchenette. It had windows which looked out onto the library gardens. Outside the room was a private waiting area, which was appropriate to be used as a break-out room.

Although Bob and Kay were encouraged to bring a support person to the mediation, Mary was not available to attend the mediation on the day, as she was working, and in the event Bob and Kay chose to proceed without her. Bob and Kay felt they were comfortable enough with the process, having discussed it with Cherie at the pre-mediation meeting, that they could participate in the mediation without Mary as a support.

Cherie brought biscuits, tea, coffee and sweets to the mediation, including sugar-free products suitable for diabetics. The food and drink contributed to a sense of informality, comfort and communality among the parties. Kay mentioned to Mary after the mediation that she was delighted that one of the other parties had made her a cup of tea.

⁶² It should be noted that while a number of CJC's mediations are held in courts, it is not unusual for a mediation to be conducted at venues, such as a community centres, resource centres, arts centres or libraries, if those venues are available. It appears however that the local practice in T at the time of the dispute in this case study was to use the courthouse for mediations.

'Solid work you mob are doing'

The set-up of the room was such that all the participants formed a rectangle with Bob and Kay on the mediators' left, and Ingrid and Sue and John on the right, across from the mediators. Specifically, and deliberately, Bob and Kay were placed next to Cherie and closest to the door. This strategy was implemented in case Bob or Kay felt uncomfortable and wanted to leave the room.

The mediators used informal speech in the mediation. Aboriginal colloquial terms, such as references to aunts and uncles, were used by Cherie.

CJCs use a mediation model which involves 12 distinct phases (see Appendix D). Below in italics is a brief explanation of each phase, followed by a discussion of that particular phase of the mediation.

Phase 1: Preparation

In Phase 1, the mediators establish their roles and responsibilities.

Because all CJC mediators are trained in the same way, there is not usually, and was not in this case, a preparatory meeting of mediators before the mediation meeting. However, Cherie and Nick Summers drove together to the mediation and chatted briefly about some of the background issues prior to arriving at the location.

Before the mediation, they identified that Cherie would be Mediator 1 and Nick would be Mediator 2.

Phase 2: Opening statements

In Phase 2, the mediators introduce themselves and the 'ground rules' for the mediation are established.

The mediators introduced themselves and thanked the parties for coming to the mediation. They provided an introduction to the process, outlining their roles in the mediation and their obligations of confidentiality. They explained that if the mediation resulted in an agreement, the agreement would be kept on file at CJCs and all parties would get a copy of it. The mediation agreement would not be shown to a court unless all parties agreed in writing. They noted that they were not able to give advice to the parties.

The mediators highlighted the voluntary nature of mediation and noted that the parties were free to leave at any time. Cherie commented that she probably added a little subtle pressure however, by mentioning to the parties that as they had made the effort to come to mediation, they might as well make the best of it by participating wholeheartedly. The mediators asked if anyone had any commitments which would take them away from the mediation (for example, parking issues or picking up children from school).

The mediators asked the parties to agree to their running of the mediation. This agreement with the parties provided the mediators with authority to lay the ground rules, which included not interrupting other people while they are speaking and turning off mobile phones. All mobile phones, including the mediators' phones, were put on the table and switched off as a group.

Nick then provided a brief explanation of the 12-phases of CJCs mediations.

Phases 3, 4 & 5: Recounting Concerns and Summaries

In Phases 3 and 4, Party A recounts concerns without interruption, then Party B recounts concerns without interruption, then Party C recounts concerns without interruption. In Phase 5, Mediator 2 summarises the main issues of Party A's and B's and C's concerns respectively.

All parties gave their uninterrupted opening statements. The mediators summarised these concerns back to the parties.

All parties were appreciative of this part of the process. They all felt it set a good and fair tone and showed that there would be order in the proceedings.

Phase 6: Listing the Issues

In Phase 6, a list of issues is worked out by Mediator 1 from Mediator 2's summary.

A list of issues was drawn up of matters arising out of the opening statements. The list was:

1. Neighbourly relations
2. Communications
 - a. appropriate language
 - b. talk to each other
3. Children
 - a. behaviour
 - b. rights
4. Animals
5. Health; Safety; Department of Housing; Main Roads.

Phase 7: Exploration

In Phase 7, the parties talk directly to each other with the assistance of the mediators.

An exploration of issues formed the core of the process. This was the point at which the mediators later noted signs of the parties' willingness to listen and engage with each other, and early negotiation became evident.

Ingrid, John and Sue explained the reasons why they were unhappy with the behaviour of the family, and Bob and Kay explained difficulties the family was facing. In particular, Bob and Kay articulated their experiences of social and economic disadvantage and their struggle to be accepted in the T community. Ingrid, Sue and John listened to Bob and Kay's stories and reported in their interviews that they gained a dramatic insight into the lives and perspective of the Aboriginal family through this process. They gained a new understanding of the family's history and the problems flowing from their financial and housing situation. They also gained insights into the way in which Bob and Kay's Aboriginal culture operated as a prism through which they filtered their experiences.

Phase 8: Private Session

In Phase 8, each party has a private session with both mediators (usually whoever went last in their opening statements goes first this time).

Private sessions were held with all parties separately. These were short: 14 minutes for Party A (Bob and Kay), and five minutes each for Parties B (Ingrid) and C (John and Sue). Mediators said that there had been such good quality work and progression in the earlier stages that there seemed to be no need for longer time. Most of the parties did not recall having participated in private sessions as part of the mediation process in their interviews.

Phase 9: Negotiation

In Phase 9, the parties work through options to head towards an agreement.

In the negotiation phase, various possible forms of agreement were aired and tested.

Phase 10: Outcome

In Phase 10, the parties come up with an agreement (statement of resolved issues) and/or they negotiate a statement of unresolved issues.

A two page written agreement was arrived at and signed by all parties. It asserted:

1. the need for good neighbourly relations;
2. the need for respect for privacy and difference (of cultural viewpoints);
3. an agreement to communicate in a polite and civil manner;
4. that Parties B and C would refer problems with the children's behaviour in the future to Party A;
5. that the children would be instructed by Party A to ask permission to enter neighbour's properties;
6. that Party C asked that the children not enter their property when they were not present;
7. that Party A would act to reduce the number of cats in their care, in order to protect local wildlife; and
8. that Party C would draft a letter to relevant authorities, within two weeks, for all to sign concerning safety issues in relation to the nearby main road.

Phase 11: Termination Phase

Phase 11 is the end of the mediation (either with or without an agreement).

The mediation was terminated after five hours and 10 minutes.

Phase 12: Debriefing

Phase 12 is a critical analysis by the mediators of the mediation session.

The final phase involved a debriefing between mediators, without parties present, through completion of CJsCs Feedback and Debriefing Form. The CJsCs Form is kept on the file, and it is also used by CJsCs for the purposes of training and skill development and to monitor and assess the performance of staff.

4.6.3. Mediators' assessment of the process

Below is a summary of the mediators' debriefing, based primarily on their report in the CJsCs Feedback and Debriefing Form.

The Issues

The mediators discussed and recorded the presenting and the underlying issues. One of the underlying issues they identified was *suspicion of racism (Party A)*. They recorded the issues they believed were not suitable for mediation, including Party A's relationship with the Department of Housing. This relationship was determined to be unsuitable for mediation because there was no representative from the Department of Housing to provide a balance of perspectives or rebut assertions made about the Department of Housing by the parties. They also identified any other factors which they believed influenced the dispute, relevantly, in Party A's case, a *long history of dispossession and tragedy*.

The CJC Feedback and Debriefing Form requires mediators to rate the 'seriousness' of disputes from 1 (argument) to 6 (violence). In this instance, Cherie and Nick rated the dispute at 4 (corresponding to 'threats, may include threats of violence or property damage, threats of legal action').

They also rated the dispute 3 out of a possible 5 for 'complexity' (5 being 'very complex'). They rated 'attitudes towards settlement' as being 2 out of 7 (7 being 'totally intransigent and unwilling to settle').

The Parties

The mediators noted that all parties had shown a need to be heard and to experience a more peaceful living environment. They said that parties were suspicious and mistrustful at first but that there had been significant movement by the end of the session. *Parties cooperative and negotiating positive outcomes*, they wrote. *All parties agreed that they understood each other's positions more.*

The mediators reflected on power imbalances among the parties and noted the ways in which parties sought to derive power in the mediation. In their debriefing, the mediators considered that parties asserted power by reference to their age, race, educational status and by presenting themselves as sufferers for a cause. Not all parties were regarded as having obvious sources of power at the time of the mediation, however in retrospect, one of the mediators identified that certain parties derived additional power from displays of empathy and willingness to listen.

Having regard to these understandings of the power dynamics at play in the mediation, the mediators consciously worked to manage discrepancies in the parties' relative power positions. Specifically, the mediators adopted strategies of consciously giving equal weight to all parties' contributions, focussing on the specific issues, and recognising the parties' histories.

The Mediation Process

Each phase of the mediation was rated by each mediator according to the sense of achievement of key objectives for each part of the process. Both rated each phase as being completely achieved.

The Mediators

Finally, the mediators rated themselves and each other regarding the manner in which the session was handled, what they learned about this type of dispute, the process, and each mediator's own performance. Both mediators made strong and repeated reference in this case to the importance of face to face pre-mediation in achieving the successful outcome. Both felt that it had provided a very positive platform from which the mediation could proceed.

In interview Cherie said that the fact that she was an Aboriginal woman had helped significantly both in the pre-mediation and within the mediation itself. Being Aboriginal had enabled her to establish common ground with Bob and Kay and to instil confidence in them about the process. She felt her Aboriginality contributed to the creation of a safe and comfortable environment for Bob and Kay, where they could trust that they would be listened to and their interests would be looked after.

4.6.4. Parties' assessment of the process

In the interviews, all the parties to the mediation rated the mediation session as having been extremely positive.

Bob and Kay said they felt *heard* by their neighbours for the first time. They felt safe and respected throughout the process. They thought that speaking contributions were fair and equitable and that the mediators were competent. Both Bob and Kay said that it made no difference to them whether one of the mediators was an Aboriginal person. They said they were sure that they would have had a fair hearing with a competent non-Aboriginal mediator.

Ingrid, Sue and John similarly were very satisfied with the process. They were pleased to hear Bob and Kay's stories and they too felt *heard* and affirmed. All three commented on the instructiveness of hearing from the Aboriginal family of their issues and concerns and how it had created a new understanding for them. Ingrid also commented that she felt better understood. They all expressed surprise that Bob and Kay had come to the mediation and were appreciative that they had chosen to attend. Ingrid, John and Sue said that it did not matter to them whether one of the mediators was an Aboriginal person, noting that until she told them in the pre-mediation meetings they did not know that Cherie was Aboriginal.

It is clear that the parties had a range of views on the difference an Aboriginal mediator made to the process. It is worth remembering in this context that, during the mediation, the parties were focussed on the issues in dispute and were not engaged in critical reflection on the process itself. In retrospect, the parties may not have appreciated having an Aboriginal mediator as relevant to the process because it did not arise as an issue in the mediation. This does not necessarily mean that having an Aboriginal mediator made no difference to the process. The use of an Aboriginal mediator contributed to the creation of an environment in which all parties – and particularly the Aboriginal parties – trusted the process and also, crucially, the mediators. In effect the mediators' identities were 'backgrounded' as the parties appreciated the process as fair, safe and comfortable – but there may still have been some comfort in Cherie being Aboriginal which made Bob and Kay experience the process as safe.

4.6.5. Views on attendance by community workers

Although none of the three community workers was invited to participate in the mediation, all three said they would have attended, if asked, and would indeed have welcomed the opportunity to be present.⁶³ They considered themselves relevant and potentially helpful stakeholders. All felt that if given an opportunity to participate, they would have added depth to the discussions. They had developed relationships with the Aboriginal family and considered that they had an interest in helping to implement and monitor the agreement and ensuring ongoing compliance. Rachel felt that she could have provided support for Bob and Kay by providing a depth of perspective on their circumstances.

Bob and Kay were divided on the issue of the attendance of the three community workers. Bob felt only the neighbours should have been allowed to attend. Kay was of the view that if the community workers had attended, it would have had benefits in that they would have heard *my side of the problem*. She considered that the stakeholders might have been helpful as silent observers.

Ingrid did not express an opinion on this matter, but may well have seen the issues consequently broadening to matters not of immediate concern to her. Sue and John expressed the view that had the community workers and additional neighbours been involved, the mediation process would have been much less personal and less meaningful. It may have bogged them down.

The mediators did not consider inviting the community workers to participate, as they appreciated their role as CJC mediators was to mediate the specific issues in dispute between the parties identified through the CJC intake process, and they had made a decision not to deal with broader issues such as Bob and Kay's relationship with the Department of Housing or matters associated with their racial history. Cherie commented that she did not think that the community workers needed to be at the mediation – she thought the mediation would have become *too big* had they been involved. She also expressed concern about inferences that may have been drawn by the parties about the community workers participating in the mediation. For example, their participation may have been seen as a suggestion that Bob and Kay could not *speak for themselves*.

4.7. The outcomes

The mediation concluded with a written agreement, as previously described. All parties were pleased to have a written document to take away, and John and Sue produced their copy over 14 months later.

There have been a number of outcomes arising from the process. Some of the key outcomes are discussed below.

On a practical level, in accordance with the written agreement, John drafted a letter two days after the mediation which was signed by all parties and sent to the Roads and Traffic Authority and to the local Shire Council. The letter pointed to the dangerous situation for both children and vehicles posed by the nearby unsealed main road. It expressed safety concerns. The writing of this letter cultivated the sense of shared experience between the parties which had been achieved at the mediation. It provided an opportunity for the neighbours to reaffirm their commitment to positive

⁶³ Mary was invited to attend as a support person, but she was not invited to participate in the mediation as a party.

changes in their neighbourhood. It also demonstrated that the outcomes of mediation needed to address systemic causes of conflict in order to bring about effective and long lasting results. In this case, the dispute involved issues of road safety and public infrastructure which could not be 'resolved' between the parties themselves but which could only be effectively dealt with by the parties agreeing on a strategy to bring the issue to the attention of the Shire Council and seek to have it addressed in that forum.

Outcomes as reported by the parties in the interviews included:

- Cessation of hostilities in the street;
- Great improvement in the behaviour of Bob and Kay's children; and
- Cordial and civil relations between the residents in the street, expressed by greetings, conversations and waves.

Kay said that she felt *a weight had been lifted from my shoulders*. She recalled that she experienced a marked improvement in her mental health after the mediation, which has continued. She strongly emphasised the importance and power of having been *heard* as a contributing factor in this development.

Bob reported that he felt very positive after the mediation, not only because he felt more understood and accepted by his neighbours but also because of the great change in Kay's sense of wellbeing.

Ingrid, Sue and John said they felt *safer in the street*. All parties praised the process and the mediators. All said they saw the value in mediation and would happily participate again in a mediation process, if they were to find themselves in a dispute again.

Bob and Kay have in fact been involved in a subsequent mediation involving their children's school in their community. Bob said that the process was *better than court*, that *you can use other people's ideas*, and that *we are the only ones who can come up with the solutions to the problems*.

Another outcome of the mediation was that Kay was recommended for referral to Legal Aid to obtain advice on a noise fine which she felt was unfair. This issue was stated in the mediators' debriefing to be *unrelated to current dispute*, and while it was perhaps not directly related to the issues in the mediation, the process created a pathway for Kay to access community services which could assist with peripheral or apparently unrelated matters.

The three key community service providers - Rachel, Frank and Mary - reported a notable improvement in attitudes, atmosphere, behaviour and relationships, not only in the street but also particularly in relation to Bob and Kay's interactions with them and the local community. Mary said that *the neighbourhood settled down* after the mediation. Frank said, *things went quiet afterwards*. He said even the sergeant asked him: *What's going on up there?* Things had become so quiet. Rachel said that there was an overall improvement in Bob and Kay's tenancy following the mediation and as a consequence her relationship with the family was ameliorated.

All three community service workers said they would refer to mediation or some form of conflict resolution process in future situations of a similar nature.

The sustainability of outcomes of the mediation in the medium to long term were not able to be fully explored because Bob and Kay and their children moved out of the district back to Bob's country, in Victoria, about six months after the mediation meeting. Having removed themselves from the neighbourhood and the neighbours themselves, there was no real chance of the conflict continuing among the neighbours.

In interview Rachel said that she had some concerns about the potential for the relationship to deteriorate again had the family stayed in T for a longer period. Rachel's comments suggest that while the mediation succeeded in achieving a noticeable improvement in relations in the six months following the event, there may have been latent issues, such as problems relating to their housing situation, which could have potentially caused tensions in the street to flare up again.

4.8. Conclusion

The existence of CJC offices within the regions of NSW, with well trained mediators and staff and sensitive procedures, provided the infrastructure to ensure that when the dispute was first identified, notification to a competent agency was able to be effected quickly.

Several key community service workers who knew the Aboriginal family saw the benefits of mediation to seek resolution of a number of acute neighbour problems. They were able to successfully encourage and support the Aboriginal family in participating in the mediation process.

Face to face pre-mediation by a locally based Aboriginal practitioner was crucial in establishing trust and rapport with the Aboriginal parties and making the process 'safe' for them. The team of two competent and sensitive practitioners, who matched the parties' demographics in age, gender and racial background, assisted participants to feel *heard* and created an environment which was conducive to reconciliation between the parties.

The mediation arrived at a conclusion that was deemed to be very satisfactory to all participants. A written agreement was reached and honoured. All parties said that neighbourhood relations improved markedly and some reported a dramatically increased sense of wellbeing as a result of the mediation.

Chapter 5

Case Study: ‘No stick no stone’ – the work of the Tiwi youth diversion and development unit in managing family and community conflicts

By Rhiân Williams ⁶⁴
co-researched by Ian Castillon ⁶⁵

*When I am preparing people for an intervention I tell them
‘No stick. No stone. You’ve got to listen to one another.’*
Tiwi Youth Diversion and Development Unit Supervisor.

5.1. Introduction

The Tiwi Islands of Melville and Bathurst, with a combined area of 8320 km², are located 80 km north of Darwin, at the junction of the Arafura and Timor Seas. They are separated from mainland Australia by the Dundas Strait. Melville Island is the larger of the two Tiwi Islands and is Australia’s largest island after Tasmania. The Tiwi are a culturally and linguistically distinct people and number around 2500, with approximately 1200 residing in Nguui on Bathurst Island.⁶⁶

All Tiwi people belong to one of the four following Skin Groups: Miyartuwi, Takaringuwi, Warntarringuwi and Lorrula. The Skin Groups are one of the fundamental building blocks of Tiwi society and critical to understanding family and community life. Members of each Skin Group have particular cultural responsibilities and obligations to each other including ‘avoidance relationships’ and ‘right way/wrong way’ ‘marriage’ relationships between certain skins.

Tiwi language is spoken on both Melville and Bathurst Islands. Although English is taught at the local schools and there is a high degree of fluency in both spoken and written English amongst Tiwi people, Tiwi is the principal language spoken.

The Tiwi Youth Diversion and Development Unit (TYDDU) is based in Nguui at the old Manual Arts building of the local Catholic High School. It began in 2003 as a juvenile diversion program under the auspices of the Northern Territory Police. Initially TYDDU was solely focussed on offering a diversionary alternative to the mainstream justice system for young people facing criminal charges. Since then, TYDDU has greatly expanded the range of programs that it offers and, in particular, has initiated and developed a program aimed at managing family and community disputes. It is this program, which is centred on processes described by TYDDU as ‘interventions’, that is the focus of this case study.⁶⁷

⁶⁴ See Notes on Authors.

⁶⁵ Ian Castillon is a Tiwi man with professional experience in alcohol counselling and reintegration of offenders, working in the criminal justice system and legal services. During the time of research on this case study, he was employed by the Northern Territory Legal Aid Commission (NTLAC) and subsequently by the Northern Territory Department of Justice. The Project is grateful to both of NTLAC and the Northern Territory Department of Justice for enabling Mr Castillon to assist the principal researcher, a non-Indigenous woman, in carrying out the research for this case study.

⁶⁶ According to the 2006 census data, 593 Indigenous men and 596 Indigenous women reside in Nguui: see ‘2006 Census – Community Profile Series: Nguui’ in above n 57.

⁶⁷ As previously mentioned in this report, the TYDDU dispute management process is called ‘intervention.’ ‘Intervention’ is a word that Tiwi people are comfortable with and regularly use to describe what they see as being needed. The terms ‘mediation’ or ‘facilitation’ are not used by either the community or those implementing interventions, indicating that these are not terms that have meaning or resonance for Tiwi. The term ‘intervention’ has genuinely evolved from local capacities and understandings.

5.1.1. Research process

In April 2007, the Federal Court approached TYDDU to identify and seek permission to conduct research into an 'intervention' conducted by TYDDU. In the process of negotiating a potential case study, concern was expressed that research which looked in detail at a particular intervention could reignite the dispute or in some way 'stir things up'. Some members of the Tiwi community also had concerns as to how confidentiality could be maintained within the community if the case study reported details of the specifics of a particular dispute. Consequently an agreement was reached between the Federal Court, TYDDU and researchers that the case study would focus on the 'facilitative practices used by TYDDU' and would not describe the specifics of any particular dispute.

This institutional focus on TYDDU enabled consideration of a broad range of issues associated with the use of TYDDU processes by the community. It also enabled the researchers to observe the process 'as it happened' from a distance. This is in contrast to the preceding two case studies in this report, where information about particular disputes was collected.

The participation of TYDDU was essential in this case study. Initial scoping of community interest in participating in the research was achieved via TYDDU, and communication with individual participants and the broader Tiwi community was channelled through it. Permission to conduct the research was obtained from the local government with TYDDU's endorsement and from the Tiwi community via the researchers' attendance at a Community Safety meeting.

Ian Castillon, a local Tiwi man employed by the Northern Territory Legal Aid Commission (NTLAC), was identified by Kevin Doolan, Coordinator of TYDDU, as a suitable Indigenous person to assist the principal researcher, who is a non-Indigenous woman. Subsequently, the Northern Territory Legal Aid Commission agreed to work with the Project as a collaborative partner by allowing Ian Castillon to work as a researcher on the case study and as a liaison between the principal researcher, TYDDU, and the Tiwi community.⁶⁸

The researchers visited the Tiwi Islands from 21 to 23 August 2007 to meet with a range of stakeholders including police, government personnel and staff from TYDDU. They presented a research proposal at a Community Safety meeting and those present indicated their interest in the research and willingness to participate in the case study. The Tiwi provided feedback on the consent forms and information sheets that were to be used in the research, advising that the consent form needed to be as simple as possible and that it would be helpful to develop a poster about the project which could be displayed at various places around the community. The researchers also negotiated appropriate timeframes for the research which ensured flexibility in scheduling interview times that could accommodate both the researchers' and the participants' schedules.

The researchers returned to the Tiwi Islands to conduct the research as negotiated over the course of a week from 4 to 12 October 2007.⁶⁹ They interviewed representatives from a range of organisations including the Strong Women's Group (a group of Tiwi women including senior Tiwi women leaders), police, health workers, Community Corrections staff, the local school principal, and members of the community including staff of TYDDU. In total, 20 formal interviews were conducted and 17 people were spoken to informally. Of the formal interviews, more than half were conducted with staff of TYDDU. Interviewees were given the choice as to how they wished to be identified in this report. Those interviewed were:

From TYDDU⁷⁰

- Kevin Doolan, Coordinator
- Hyacinth Tungutalum, Skin Group Coordinator

⁶⁸ NTLAC, and subsequently the Northern Territory Department of Justice, agreed to make Ian Castillon available to work on the Project on the basis that he would remain an employee throughout his involvement in the Project and as such his salary and related conditions would be met by his employer. Travel, accommodation and related costs directly relevant to Ian Castillon's involvement in the Project were met by the Federal Court.

⁶⁹ The principal researcher remained until 12 October 2007 while the co-researcher remained until 10 October 2007.

⁷⁰ Four TYDDU staff were interviewed who preferred not to be identified by name or position and five were spoken to informally. With the exception of Kevin Doolan, a non-Indigenous man with extensive Tiwi family connections who has lived in Tiwi for many years and who is fluent in the Tiwi language, and Morris Geinbarba, an Indigenous man from the mainland who has married into a Tiwi family, all those interviewed from TYDDU were Tiwi.

- Morris Geinbarba, Education Liaison Officer
- Francisco Babui, Education Liaison Officer
- Salvadore Minniceon, Trainee Youth Worker
- Individual, Night Patrol Coordinator
- Individual, Supervisor

From other agencies and services

- Matthew Ridolfi, Constable, Northern Territory Police (Nguui)
- Tom Holliday, Coordinator, A&OD Remote Area Services, Centacare
- Teresita Puruntatameri, Coordinator, Strong Women's Group
- Leah Keviraiua, Principal, Murrupurtiyanunu Catholic School
- Luke Tipuamantumirri, Northern Territory Department of Justice, Community Corrections (Nguui)
- Fiona Hussin, Policy Lawyer, Northern Territory Legal Aid Commission (Darwin)
- Individual, Community Court Liaison Officer – Darwin Magistrates Court, Northern Territory Department of Justice
- Individual, Strong Women's Group
- Individual, Child Health Nurse, Tiwi Health Services
- Individual, Mental Health Nurse, Mental Health Service

Those spoken to informally included

- representatives from Strong Women Group
- sports and recreation staff
- Tiwi Islands local government staff
- community members

The majority of formal interviews were conducted with individuals, though there were also a number of small group discussions.⁷¹ Interviews typically lasted between half an hour to an hour and a half. Approximately 80% of those interviewed were Tiwi people with the other 20% comprising a mixture of Indigenous but non-Tiwi and non-Indigenous people.

Interventions conducted by TYDDU and a Skin Group meeting were also observed.

The focus of the research was on Tiwi perspectives and experiences of the TYDDU intervention program. The research interviews sought to gain a clear description of TYDDU's intervention process and explore the following areas:

- the role of TYDDU in managing conflict;
- the key elements contributing to the effectiveness of interventions;
- the major sources of conflict in the community;
- the most useful training that had been undertaken by those managing interventions;
- other training that might also be helpful to undertake;
- advice or tips for other communities who might want to implement a similar approach; and
- suggestions for improving or consolidating the work of TYDDU.

Staff from organisations other than TYDDU were asked to describe the relationship between their organisation and TYDDU and to highlight any issues for consideration arising from this relationship.

The researchers returned to Nguui for three days in April 2008 to consult with participants on the draft report.

5.2. Background to TYDDU

As noted, TYDDU was established in 2003 as a youth diversionary program under the auspices of the Northern Territory Police with the intent of offering an alternative to the mainstream justice system for young people facing criminal charges. Between March 2003 and December 2006 there were 17 formal referrals by the police to the diversionary program.

⁷¹ One small group discussion was with a group of three Tiwi people, all of whom agreed to be formally interviewed; and another was with a group of eight Tiwi women, of whom only two wished to be formally interviewed.

It is, however, the extension of the work of TYDDU into managing family and community conflicts through the 'intervention' program – as Tiwi people refer to it – that has engaged the largest number of Tiwi people and is the focus of this report. The first intervention outside of the formal police diversion program took place in May 2004. It involved a young person who wished to relocate from Melville Island to Bathurst Island. The Coordinator of TYDDU, Kevin Doolan, was contacted through his family connections and asked to facilitate a meeting between relevant members of the young person's family. The program has grown from there and interventions can be initiated by TYDDU or by family and community members themselves. Individuals may also be referred by other agencies and services.

The effectiveness of TYDDU has been recognised by a number of agencies and is reflected in the Tiwi Social Wellbeing and Youth Development Shared Responsibility Agreement (SRA)⁷² (see Appendix E(i)). The SRA aims to work towards *a more harmonious community environment, which encourages broad community participation and engagement in activities designed to promote achievement by young community members*. The SRA recognises that TYDDU:

... has a proven track record of successful program delivery and facilitation which has demonstrated positive outcomes in ameliorating some of the causes of ... dysfunction and in promoting positive engagement by young community members in productive personal and community development activities. Available statistical information supports the contention that [TYDDU] program activities have had a very positive impact since the inception of the Unit. This is evidenced by significant and statistically verifiable reductions in court proceedings involving youth on the Tiwi Islands in the 3 years the Unit has been operating. In adopting a holistic approach to youth diversion activities, the [TYDDU] has a pivotal facilitation and delivery role in a broad range of activities for which no financial or service support is currently provided.

5.2.1. How TYDDU operates

Those interviewed repeatedly emphasised that TYDDU is effective because it is a locally-based service that employs local Tiwi people and is able to respond to family and community disputes in timely and sensitive ways. As a Child Health Nurse explained: *Local people need to deal with their own issues and the more quickly they can do it, the better*. Another saw that: *People feel comfortable with local people and local people can respond quickly*.

TYDDU is careful to ensure it employs members of each of the four Skin Groups. This practice has a number of benefits, including:

- ensuring that Tiwi people see the service as belonging to all Tiwi rather than any one particular Skin Group;
- enabling people to speak to a person who is in the appropriate kin relationship;
- avoiding placing people in circumstances where they are forced to deal with those with whom it is culturally inappropriate;
- ensuring that those who manage the interventions are from the appropriate Skin Groups; and
- maintaining Tiwi cultural and social authority and reinforcing the centrality of Tiwi law and social and cultural practices as essential organising principles underpinning effective service delivery.

At the time of the research, TYDDU employed 22 people under CDEP, 12 of whom were full-time.⁷³ It operates from 8.00am to 4.00pm Monday to Friday each week, although as all TYDDU staff are themselves community members, many matters may involve their attention after normal working hours.

⁷² Shared Responsibility Agreements (SRAs) are agreements made between federal and state governments and Indigenous communities to provide discretionary funding in return for community obligations. Such agreements form part of the Council of Australian Governments' (COAG) original commitment to the Framework to Advance Reconciliation and the Commonwealth Government's whole of government initiatives. 'Shared Responsibility' is a key concept in these arrangements. SRAs set out what all partners to the agreement will contribute in order to develop effective and long-term changes for Indigenous communities. SRAs are developed with reference to local community priorities and ideas as to how these might be achieved: see *ATNS Glossary of Terms, Agreements Treaties and Negotiated Settlements Project*, Indigenous Studies Program, The University of Melbourne, Melbourne, 2007, <<http://www.atns.net.au/glossary.asp>>.

⁷³ At the time of writing, there were a number of proposed changes to CDEP which created concerns that a number of positions at TYDDU could be lost.

The average day at TYDDU commences with a brief staff meeting to identify priorities for the day and allocate tasks and responsibilities. During the day a range of other service providers may drop in, such as police or mental health nurses, to discuss issues where it is beneficial to arrange a joint approach with TYDDU. Throughout the day, staff members discuss emerging issues, including potential matters for interventions.

Due to its history as a program initiated to work with juveniles and its location in an old school building, TYDDU enjoys a particularly close and positive relationship with the local primary and high schools. TYDDU staff often provide assistance to children at the school if family members are not available. This includes supporting children in meetings about discipline and behaviour issues and helping out with classroom activities. Given that issues around children, including their behaviour, are seen as one of the common triggers for conflict, this close relationship allows potential problems to be identified very quickly. Several of those interviewed also saw that interventions provide positive role models of Tiwi people dealing with conflict in appropriate ways. As one Tiwi interviewee said: *Kids see and then they do. Interventions can break the cycle of bad behaviour.*

5.2.2. The range of services offered by TYDDU

'Interventions' are by no means the only program delivered by TYDDU. Other programs, including those which reflect the close relationship between TYDDU and the primary and high schools, have emerged as TYDDU has identified and responded to perceived needs in the community. These include:

Attendance Program – Xavier CEC School

A TYDDU Education / Liaison Officer is based at the primary school from 8.30am to 2.00pm. TYDDU Youth Workers liaise with teachers and students on a daily basis. Absent students are collected and brought to school by TYDDU Youth Workers.

Attendance Program – Murrupurtiyanuwu Catholic Primary School

Attendance records are collected each morning for Transition to Year 3 students. Absent students are collected and brought to school by TYDDU Youth Workers.

Good Behaviour Program – Murrupurtiyanuwu Catholic Primary School

The program focuses on maintaining good behaviour with school students. Two TYDDU Education Liaison Officers are based at primary school from 9.00am to 1.30pm. Student behaviour is monitored with interventions and/or counselling provided by TYDDU staff on an 'as needed' basis.

After School Care (ASC) and Vacation Care Program

This program delivers after school care for 9 year olds from 2.00pm to 4.00pm each school day. The program also includes Vacation Care during school holidays. ASC Programs include:

- Nutrition Program;
- After School Football Program;
- Rewarding good behaviour in the School Transition to Year 3; and
- Basketball Program.

Suicide Intervention

TYDDU Youth Workers and staff work with all attempted suicide cases. Networking is done with the relevant family, police and the Tiwi Mental Health team.

Community Safety Plan

Community Safety Plan meetings are held on the Tuesday prior to Wednesday's monthly circuit court sessions at Nguui. Community safety issues and action plan options are discussed and

implemented by the appropriate authority. Circle Sentencing, also known as Community Court, referrals are discussed and Circle Sentencing/Community Court participants are agreed upon.

Circle Sentencing / Community Court

Tiwi leaders, Elders and family members of offenders sit with the Magistrate and assist in the Community Court process, the first session of which was held on 16 March 2006.

Night Patrol ⁷⁴

Daily reports are provided by the Night Patrol to TYDDU and follow-up is undertaken by TYDDU staff. Issues related to domestic violence, attempted suicide, and substance abuse among others are followed up with appropriate agencies, for example Skin Group leaders, police, Community Management Board members and the Tiwi Mental Health team.

Skin Group meetings

TYDDU convenes separate meetings with each of the four Skin Groups to empower Skin Group members and encourage all Tiwi to participate in community issues.

5.3. The TYDDU intervention program

The TYDDU intervention program has evolved in response to a genuine community need for an effective local process to deal with family and community disputes and to restore balance in family and community relationships. The program enjoys an extremely high level of community awareness, acceptance and participation.

TYDDU's records show that 1820 people have been involved in interventions between March 2003 and December 2006 (Table 1). Within that period, it is estimated by the Coordinator that approximately 250 to 300 interventions were conducted.⁷⁵ In every age group more women than men are involved in interventions, with the ratio being almost 2:1.

Table 1: People involved in interventions managed by TYDDU (March 2003 – December 2006)

Age Group (Years)	Numbers of people participating in interventions	Issues likely to be involved	People likely to be involved
5-8	25	Behaviour at school Truancy	Children, teachers, family members
9-12	45	Behaviour at school Truancy	Children, teachers, family members
13-16	55	Behaviour at school Truancy	Children, teachers, family members
17-25	620	Relationship Issues Jealousy	Family members, boyfriend/girlfriend
Over 25	1075	Relationships Jealousy	Family members, boyfriend/girlfriend
TOTAL	1820		

Given that approximately 1200 people reside in Nguiu, the numbers of people involved in interventions demonstrates an enormous level of participation by residents of the Nguiu community in the TYDDU intervention program.

⁷⁴ The Night Patrol predates TYDDU, having commenced operation in 2002, however it currently operates as one of TYDDU's programs. Since the research visit in October 2007, it has been proposed that Night Patrol become a service in its own right, separate from TYDDU. At the time of writing it was unclear where the service will operate from in future and how it will coordinate arrangements with TYDDU.

⁷⁵ Figures based on information provided by Kevin Doolan, Coordinator, TYDDU. Statistical records provided by Kevin Doolan dated 2 June 2008 showed that there had been 76 interventions conducted in the year to date. This represents an average of slightly more than three interventions per week.

5.4. Common sources of conflict in Nguiu

Interventions are used to deal with a range of community and family conflicts. Many of those interviewed repeatedly emphasised the 3Gs – grog, ganja (marijuana) and gambling – as the source of many community problems. Grog was specifically singled out for its role in inappropriate behaviour and in triggering fights and violence. Many interviewees were careful to highlight that violence is not a source of conflict but rather that it is an inappropriate response to conflict. The most common sources of conflict were seen to include:

- relationship issues, including jealousy, rumours, gossip and unfaithfulness;
- alcohol and other drug abuse, including problems arising at the Nguiu Club;
- financial issues, including gambling and debts;
- teasing and staring;
- children;
- housing; and
- things that happened a long time ago.

These are discussed in more detail below.

5.4.1. Relationship issues

Jealousy was repeatedly emphasised as the primary source of conflict. Tiwi interviewees saw that jealousy underpinned much of the conflict attributed to alcohol, including problems that arise at the Nguiu Club. They saw jealousy as not only linked to relationships but also to people's material circumstances. For instance, jealousy can arise within a family when a family member who has a car or a boat does not share these resources with other family members by offering lifts or taking people fishing.

Rumours and gossip were also seen as potentially extremely destructive and as needing to be stopped quickly to minimise conflict within the community. Much rumour and gossip concerns allegations that people are involved in 'wrong way' relationships. Some interviewees stated that there are more women than men in Nguiu. This imbalance can cause rumours or allegations of unfaithfulness, which, in turn, is one of the major triggers for conflict.

5.4.2. Alcohol and other drugs

Problems associated with the use of alcohol are inter-woven with many of the other sources of conflict and ripple throughout the community. Breaking the cycles of alcohol misuse is regularly identified as important, not only for those who are misusing alcohol, but also for those who are affected by inappropriate alcohol-related behaviour. As anthropologist Dr Maggie Brady has commented:

[A]lcohol misuse is associated with so many other problems: road accidents, violence, injuries, child neglect, low birth weight babies.... let alone the kind of stress and disorder it can cause, such as lack of sleep for those who are kept awake by rowdy drunks.⁷⁶

Alcohol use and associated problems arising at the Nguiu Club are seen as a significant source of conflict. The Tiwi community, particularly through the work of the Community Safety Forum, has initiated various local rules and programs aimed at reducing alcohol-related conflict. The introduction of mid-strength beer at the Nguiu Club, the removal of take-away alcohol sales, and implementation of the banning protocols in the Nguiu Good Behaviour policy (see Appendix E(ii)) have had a positive impact.⁷⁷ Interviewees indicated that the community is much more peaceful on Sunday and Monday evenings when the Club is closed. Just after the second research visit, in August 2007, the Club also ceased operating on Thursdays which is payday. Tiwi interviewees explained that this made it easier for people to spend their money on groceries, instead of alcohol, which in turn, reduces fights over money.

⁷⁶ Cooper, S. (ed) 'Out of the Grog' (2007) 38 *ANU Reporter* 1, 25.

⁷⁷ The Good Behaviour Policy is discussed below at [5.10.4].

Many interviewees recognised the absence of non-alcohol related activities in Ngiuu as a problem. They saw that people's need to socialise, to laugh and sing, to tell jokes and 'carry on' is currently best accommodated by the Club. The absence of alternative 'fun' activities means that the Club is the focus of much community life and also of many disputes.

5.4.3. Financial issues

Many people in the Tiwi community are highly impoverished. While there are some employment opportunities, these are insufficient. There is a significant imbalance between the material circumstances of those who are employed and those who are not. Gambling and the accumulation of other debts often exacerbate financial hardships. This can trigger or exacerbate relationship difficulties both between partners where one is gambling, or more broadly among family members who are repeatedly 'humbled' by those with gambling problems or debts.

5.4.4. Teasing and staring

Teasing and staring often give rise to conflict amongst Tiwi. Teasing is a form of behaviour which can be relentless and hurtful. Staring can make people feel nervous and threatened. Teasing and staring can be understood in a range of ways and have cultural, social, and psychological elements and impacts. They are often learned behaviours and used as mechanisms for controlling others.⁷⁸

5.4.5. Children

Children are often at the centre of conflict. Fights amongst children sometimes escalate to involve the parents of the children fighting with each other. Children can also trigger conflict between their parents and schoolteachers, when they report or complain about teachers to their parents. This may result in parents attending the school to intercede on their child's behalf. Teachers can become frightened or intimidated by parents and police can be involved.

Another issue of concern to those interviewed was the number of children who experience bullying, particularly at school, and the lack of resources to support them. If left unmanaged, conflict can escalate as family members of the 'bullied' child, in an attempt to stop the bullying, fight with family members of the child who they think is doing the bullying.

Bullying can also be a cause of truancy, which attracts disciplining action and behavioural intervention, and which, in turn, can give rise to conflict. Francisco Babui, a TYDDU Education Liaison Officer and Coordinator of local Army Cadets, also explained that children attending school hungry can be a cause of both truancy and problem behaviour. Where children are absent from school and their behaviour is a matter of concern, the only option available to TYDDU to 'punish' non-attendance is to ban them from the after-school nutrition program. Francisco saw that further denying them food is both harsh and likely to exacerbate the problem. He stated, however, that this was symptomatic of a lack of resources available to TYDDU to develop positive alternative activities for children, which might be denied them as a form of punishment.

5.4.6. Housing

Poor housing is another major trigger for conflict. It is not uncommon for houses to be overcrowded with multiple families living together. As a Child Health Nurse explained:

If you have two families living in one small badly designed house with one bathroom and one fridge, you have to expect fights. People might buy separate groceries but kids don't care about that if they are hungry.

While TYDDU is able to play a role in providing interventions to families who are experiencing housing related conflict, it does not have a role in facilitating discussions between the community and those responsible for designing and building houses. Such a role could assist in the design of housing that is genuinely responsive to family and community needs, including, for example, allowing for the spatial separation of those who may be placed in avoidance relationships.

⁷⁸ See Horton, D. (ed) *The Encyclopaedia of Aboriginal Australia* (Vol 2), Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994, 978-9.

5.4.7. Things that happened a long time ago

Interventions can provide opportunities for young people to hear older people talking about families and family relationships. This can serve to clarify family connections and histories of which younger members of the community may not be aware. These types of deep-seated, entrenched conflicts, which have been played out over a number of generations, can be difficult for TYDDU to respond to effectively.

5.5. The TYDDU intervention process

The following section explores the practice of interventions at TYDDU including:

- who initiates interventions;
- planning and preparation for an intervention;
- where interventions are held;
- who attends interventions;
- who conducts interventions;
- how interventions are conducted; and
- post intervention follow-up.

The subsequent sections explore key aspects of the intervention process, including relevance to Tiwi people and culture, and coordination with other services and interagency cooperation. Training issues for those managing interventions are also canvassed.

5.5.1. Who initiates interventions

There are a number of ways in which interventions are initiated including:

- by Tiwi people themselves;
- by TYDDU staff;
- at Skin Group meetings; and
- by the Night Patrol.

Other services and agencies also refer matters to TYDDU for interventions. However the most common circumstance is that Tiwi people themselves initiate interventions. The two programs offered by TYDDU which generate the most number of referrals for interventions are the Night Patrol and Skin Group meetings. TYDDU Attendance and Good Behaviour programs also provide referrals for interventions; however, as Table 1 shows, fewer numbers of people participate in school related interventions than in interventions related to jealousy and relationship issues.

Tiwi people themselves

The Tiwi people initiate interventions in a number of ways. For example, during a Skin Group meeting, Skin Group members may suggest issues that could benefit from an intervention which are then followed up by TYDDU staff. However the most common practice of initiating interventions occurs when a problem arises at the Nguui Club, or in a family home, and members of the family involved approach TYDDU to organise an intervention the following morning.

TYDDU staff

As community members themselves, TYDDU staff are often aware of conflicts that are simmering and suggest an intervention by TYDDU. Staff members bring matters to the attention of TYDDU's Coordinator, Kevin Doolan, or the Skin Group Coordinator, Hyacinth Tungatulum, or other senior staff, and discuss whether an intervention would be appropriate. Where it is agreed that an intervention would be helpful, they discuss how to approach those involved and any other issues to be considered in arranging the intervention.

Skin Group meetings

Each Skin Group meets separately four times a year and follows an agenda that has been developed in collaboration with its members. All members of the relevant Skin Group may attend. The meetings are an important mechanism for reinforcing Tiwi cultural and social authority. They are attended by a mixture of young and old, male and female, but overall women generally attend in significantly larger numbers. The need for an intervention may be discussed at a Skin Group meeting and then followed up by TYDDU staff.

The Night Patrol

The Night Patrol is one of the two programs offered by TYDDU which generate the most number of referrals for interventions. It predates TYDDU, having commenced operation in 2002, but now operates as one of TYDDU's programs from 6pm to 10pm Tuesday to Saturday each week when the Club is open. As the Night Patrol Coordinator explained: *The (Nguiu) Club is not open on Sunday and Monday nights and there is a big difference in our work when they are open.* The Night Patrol Coordinator follows up any incidents from the previous evening and, as required, refers matters such as domestic violence to the police. Where the Night Patrol assesses that an intervention would be helpful, they discuss this with staff at TYDDU. Appropriate arrangements, including preparation strategies, are then agreed and implemented. Night Patrol staff often collect the relevant people and bring them to the intervention. This approach means that issues are frequently dealt with soon after they arise, rather than continuing to escalate, or *fester*, as the Night Patrol Coordinator described it.

Critical to Tiwi people's authority to manage and deal with their own issues is their right to say 'no' to interventions and their genuine right to voluntarily choose to participate. As Constable Matthew Ridolfi pointed out, Tiwi people do not attend an intervention if they do not want to be involved. TYDDU staff also emphasised that those who initially refuse to participate in an intervention should be able to change their minds and initiate the process if they subsequently wish to resolve things.

5.5.2. Planning and preparation for an intervention

Senior TYDDU staff members who regularly conduct interventions emphasised that good preparation is at the heart of an effective intervention. As one staff member explained: *Preparation is the way we prime people to participate.* Because TYDDU staff cannot assume or enforce participation they undertake careful preparation, particularly in interventions they initiate, as a means of building a climate of goodwill and a desire to participate.

Interviewees described a range of planning strategies and activities for interventions. They vary considerably in their scope, timeframes and approaches, including in the ways in which they are undertaken by individual TYDDU staff members. At a practical level, TYDDU staff often collect people who need to be involved in an intervention and bring them to the location, put out chairs for those who may wish to attend, and provide assistance to those managing the intervention, including monitoring the discussions.

Interventions that are initiated by the Tiwi themselves often happen very quickly. People regularly arrive at TYDDU and request an intervention immediately. Although such spontaneous interventions allow the least time for formal preparation, TYDDU staff members may have already been involved in considerable informal discussions outside of normal working hours leading up to the request.

Preparation activities relate to both the process of the intervention and the content of the dispute. One TYDDU Supervisor explained procedural aspects of his preparation: *I talk to the different clans involved. I get them ready to start listening to one another.* When describing how his preparation is linked with the content or issues, he went on to say: *I feed in information about why the problem came about to help them think about things a bit.*

The Night Patrol Coordinator also explained the need for preparation to be linked not only to how people are to behave (procedural ground rules) but also to what they are to discuss (substantive

issues): *We tell them not to get angry, just to listen. We encourage them to say sorry and get them to see we are all one family and one culture.*

TYDDU staff reassure people that they will have an opportunity to have their say. They explain and discuss the process with those involved, getting people to agree to 'ground rules'. Ground rules include:

- No weapons including no sticks or stones.
- Important to listen to one another.
- Raise your hand to speak.
- Respect and listen to the people running the intervention.

These rules are important in helping to establish interventions as safe and non-violent processes, something that was highlighted by the TYDDU Supervisor: *Old ways were fighting with sticks and spears. We don't want that any more. We want to live in peace.*

TYDDU staff saw that preparation enabled them to:

- clarify the issues involved;
- ensure that people are in the right frame of mind to attend;
- make sure people are likely to comply with the necessary ground rules;
- assess the need for additional support services such as counselling for those involved; and
- plan for any potential risks associated with the intervention.

Since Tiwi people may have previously participated in and observed interventions, and the intervention process is a common part of Tiwi life, they bring a clear understanding of behaviours appropriate to any intervention. Participants themselves often act to reinforce the ground rules or call for inappropriate behaviours to stop. This reinforces Tiwi cultural and social authority and serves to make the intervention process one which is 'owned' by Tiwi people.

During the research visit, the researchers heard a number of TYDDU staff say *they need an intervention on this* and then observed the staff discussing how to approach all involved with a view to setting up an intervention. At no stage was coercion to attend considered; rather encouragement and securing consent to participate was seen as the priority.

5.5.3. Where interventions are held

At the time of research, interventions were most commonly held outside of and next door to the premises of TYDDU. TYDDU is located adjacent to the school in a central area of Nguuu. Tiwi who directly initiate an intervention often indicate where they wish the intervention to be held; most often on the opposite side of the road from TYDDU. As one Tiwi interviewee observed:

People want the Diversion Unit's [TYDDU's] help but they also see it as more low key and that they're in control if it's over the road. But then if it gets really heated or people run amuck then they can come over to the Diversion Unit and it shows everyone things are now a bit more serious.

The location of TYDDU in a central location opposite the childcare, next door to the school, and near the local store can inadvertently provide a general community audience for an intervention. The sound of voices and the presence of numbers of people can act as a magnet that draws the school students in to watch. It can, however, be important that interventions are public. Where a dispute is caused by rumours or gossip, the community often benefits from observing or 'witnessing' matters being aired and settled in an intervention, as they are seen to be disproved or put to rest. It can be powerful for the community to witness key players agreeing that rumours or gossip are not true. This can act to stop their further dissemination throughout the community.

There are also circumstances where it may be important for an intervention to be held at a more private location. As Matthew Ridolfi, one of the local police constables, explained: *Location is a big issue. Two blokes won't hit each other without an audience.*

A number of people interviewed raised concerns about the appropriateness of the TYDDU 'public' venue, including TYDDU staff, Luke Tipuamantumirri from the Northern Territory Department of Justice, Community Corrections, police and community health workers. They saw that while the venue may be appropriate for matters involving juveniles, given it is near the school which helps to keep it low-key, some interventions would benefit from a more private location. In some circumstances, the TYDDU venue meant that in the event of escalation of a dispute, the intervention could easily spill into the community to involve, as one interviewee described, *people who aren't really part of it*.

Problems associated with the venue for interventions were recognised within TYDDU and consideration given to potential new venues, including the use of the other side of the building in which TYDDU is located. In early 2008 TYDDU instigated a major change with interventions now being held at either Four Mile, a small settlement about four miles to the west of Nguuu, or in the grounds of the Tiwi Land Council office in Nguuu. Both these locations offer more privacy.

5.5.4. Who attends interventions

Interventions are attended by the relevant family and community members of any of the four Skin Groups involved. Depending on the nature of the dispute, extended family members may also be involved. Given that members of the Skin Groups have particular cultural responsibilities and obligations to each other, and to those in other Skin Groups, many interventions involve people from a range of Skin Groups. Participation can range from members of a single Skin Group to those which involve members of all four Skin Groups.

These large interventions are not, however, the same as 'big meetings' which are seen as inappropriate. TYDDU staff saw interventions as being an appropriate mechanism, as they are carefully planned and reflect the need to resolve issues between those who are involved, rather than an imposed 'big meeting' that may bring everyone together – even those who do not have a genuine part in the 'business'. Hyacinth Tungutalum explained:

Interventions are much better than big meetings. Interventions have strong ground rules and are limited to those involved and people have to listen. In big meetings, people are much more argumentative and over talk each other and don't listen. Also anyone can come to a big meeting.

Identifying and inviting the appropriate people to the intervention is the task of TYDDU staff as part of the preparation for an intervention. Tiwi people may also attend an intervention as a result of hearing about it or observing it in progress. However, it would be unusual for people to attend an intervention if it did not include members of their Skin Group.

At the interventions observed by the researchers, attendance was fluid with people coming and going, but with a core group remaining throughout the process. TYDDU staff indicated that this is a common pattern. In general interventions can involve anywhere from 20 to 80 people with an average of between 50 and 60 people.

With the recent change in the location for most interventions, there has also been a change in attendance. Where interventions are held at Four Mile or at the Tiwi Land Council office, attendance is more likely to be limited to the individuals most directly involved – in some cases, only two or three people and staff from TYDDU. While TYDDU still conducts interventions where it is important that the community 'witnesses' or 'observes' the dispute being settled, TYDDU staff explained that many participants benefit from the more private locations.

Representatives from other agencies such as Centacare and the Mental Health service are sometimes invited to attend interventions as support persons, usually by participants themselves. The Tiwi Aboriginal Community Police Officers often attend or maintain a presence by driving past interventions while they are taking place. As Kevin Doolan explained, their presence can be very helpful in maintaining a calm environment. Non-Indigenous police officers, however, do not attend interventions as a matter of course, as Constable Matthew Ridolfi explained:

We have found that people try and pretend to run amuck if we are there. It means they look brave but really they are expecting us to step in and stop any trouble. We find if people are at the intervention by themselves without the police present they will talk it out a lot more.

5.5.5. Who conducts interventions

Interventions can be conducted by any of the TYDDU staff. Depending on the scale of the intervention, several staff from TYDDU may be involved. The interventions observed by the researchers were mostly conducted by Hyacinth Tungutalum, the Skin Group Coordinator and by Kevin Doolan, the Coordinator, assisted by other senior Tiwi TYDDU male staff and younger Tiwi TYDDU female staff as required. This is a common approach.

There is no specific position within TYDDU with responsibility for managing interventions. All members of staff are involved to varying degrees with all programs offered by TYDDU. The absence of a dedicated person or position with responsibility for the intervention program reflects a lack of funding for such a role, but is also a reflection of the versatility of TYDDU staff and TYDDU's commitment to developing and utilising the range of skills of its employees.

5.5.6. How interventions are conducted

Most interventions are conducted in Tiwi language. The interventions observed commenced with people forming a circle and holding hands to recite the following Serenity Prayer:

*Lord grant me the strength to change the things I can
The courage to accept the things I cannot
And the wisdom to know the difference.*

Not all interventions start in this way, however; some commence with the Lord's Prayer and others simply with opening remarks and a welcome from the TYDDU staff members managing the intervention. People are then invited to speak about the issues that have brought them to the intervention and to listen to each other's feelings and concerns. Processes can last on average anywhere from 15 minutes to three or more hours. People normally sit in a large circle, with others sitting outside the circle and behind the family members they are there to support.

As is common, in one of the interventions observed by the researchers several of the TYDDU staff stood in the centre of the circle and moved around reinforcing the ground rules. The staff managing the intervention asked people questions and gave feedback throughout the process. As the discussion became heated, TYDDU staff moved to stand close to those who were becoming upset and encouraged them to calm down. They were careful not to silence people but rather to encourage them to manage their anger so that the intervention remained a positive experience for all involved. As Kevin Doolan explained: *Interventions start with anger and resentment. There is lots of blame and we need to read that and defuse it.*

Throughout the intervention, TYDDU staff demonstrated a keen attentiveness to those participating and seemed to know, quite instinctively, how to position themselves next to those who were in need of support or who were on the verge of an outburst. Those managing the intervention explained that they look for verbal and non-verbal cues from participants. As Kevin Doolan noted: *Body language is in lots of cases more important than what people say.*

A senior Tiwi man involved in managing an intervention explained that it is sometimes necessary to stop interventions, as parties may not be ready, or they may be too angry for the intervention to be conducted safely:

Really angry people need other help – interventions are not always the best place for them. However, people can't deal with problems by themselves and the intervention might start them on the right track.

He explained that in some circumstances, it may only become obvious during the intervention that a participant needs counselling rather than the kind of intervention currently offered by TYDDU.

Where that is the case, the intervention is ceased by TYDDU staff and the participants are encouraged to use other, more appropriate, services.

Interventions can involve smaller family discussions where parents go bush with their children to try to work issues through in more private circumstances away from the influence of other children. The senior Tiwi man observed that children sometimes listen to their friends rather than their parents. An opportunity to talk things through, away from the distractions of life in Nguiu, is also often seen as a good 'time out' or circuit breaker for family members.

Venting of emotion by people involved in the dispute is a normal part of most interventions and is recognised as a very important aspect of the process. The ability of TYDDU staff to be comfortable with high levels of emotion, including loud and seemingly overly aggressive behaviour, is enormously beneficial. The effectiveness of TYDDU staff in striking a balance between standing back and intervening is a crucial component of the success of the intervention process. As Constable Matthew Ridolfi explained: *lots of public venting is important here. Often things can look like they are about to get out of hand – lots of yelling, really loud and then it resolves. It's really important not to step in too quickly!*

A distinction was drawn by TYDDU staff between high levels of 'venting' – which may include lots of yelling and posturing with strong gestures - and actual physical violence. While allowing people to vent, and permitting the associated 'theatrics' of venting, are important parts of the intervention process, acts of physical violence are seen as unacceptable. Much has been made of the 'normality' of violence in Indigenous communities⁷⁹ and it is often assumed that Indigenous people are comfortable with high levels of physical violence. While Tiwi people speak of old ways of dealing with disputes which involved physical violence as part of the 'punishment' or sanction imposed, those interviewed said that violence against children, including physical chastisement and domestic violence, or any physical violence between men and women were never culturally sanctioned. TYDDU staff also explained that domestic violence is a police matter and not suitable for interventions. Where violence occurs in the context of an intervention, they cease the intervention and call the police.

Interviewees saw that an invaluable aspect of the TYDDU intervention program is that it offers Tiwi people the opportunity to *move beyond the old ways* to come together in a peaceful, non-violent forum, with specific ground rules that emphasise and reinforce the safety of the forum, to deal with their conflicts. They saw that, without such a forum, Tiwi people would lack what has become a primary mechanism for resolving their conflicts in peaceful and non-violent ways, and that this would exacerbate conflicts and probably lead to higher levels of violence.

In managing the interventions, TYDDU staff work to ensure that they are even-handed and fair to all involved. During an intervention observed by the researchers, a younger TYDDU staff member who was convening the intervention was drawn into a yelling match with participants. Other staff members were quick to step forward assist the staff member to exit the intervention and refocus the process on discussions between the participants themselves. That is, the approach of TYDDU staff is to remain neutral and impartial: they do not take sides and they do not give advice.

At the same time, as community members themselves, they remind participants of the 'bigger picture' of responsibilities to family and community and encourage and support them to focus on this, to apologise and to move on. They see that they have a key responsibility to reflect to individual disputants that they are part of a community and that dealing with their issues is an important part of maintaining the fabric of the community. They do not force those involved in the process to adopt this position. Rather, they recognise that for solutions to be genuinely accepted, those involved must have a sense of ownership over what is said and agreed. TYDDU staff managing interventions are careful to check how others see apologies or explanations and that expressions of regret are acceptable to those to whom they are offered. They understand that if they push people to 'settle' or 'agree', and the agreement is not genuine, the problem will continue.

⁷⁹ Burbank, V. *Fighting Women: Anger and Aggression in Aboriginal Australia*, University of California Press, Berkeley, USA, 1994; Macdonald, G. 'Where words harm and blows heal' (1990) 1(3) *Australian Dispute Resolution Journal* 125; Langton, M. 'Medicine Square' in Keen I. (ed), *Being Black: Aboriginal Cultures in 'Settled' Australia*, Aboriginal Studies Press, Canberra, 2004, 201-225.

They do not operate interventions with an expectation that people will be locked into agreements or settlements. Rather, as issues arise, they attempt to respond quickly and respectfully, to encourage and enable people to air their grievances and to then move towards being able to live together in as harmonious a way as possible.

TYDDU staff are unable to 'walk way' from the community and recognise the importance of responding in interventions in an impartial, fair and even-handed way. They work to ensure that the intervention process takes the time that those involved feel is necessary to have a reasonable and meaningful discussions of the issues involved. They do not censor the issues that people bring to the process and sit in particular places and direct the intervention. Instead, they move around responding to the emotions, issues and personalities of those involved. The process recognises and incorporates people's feelings and its focus is on repairing and maintaining family and community life.

Interventions do not normally conclude with written agreements, although Kevin Doolan records for reporting purposes a brief description of each intervention, including the issues, the number of people involved, and the details of any resolutions or agreements reached. Interventions normally conclude with all involved forming a circle, holding hands and reciting the Serenity Prayer.

5.5.7. Post intervention follow-up

Informal follow-up processes

TYDDU follows up on interventions in a number of informal ways. TYDDU staff members are in a position to observe in the community whether interventions have genuinely settled the dispute or whether issues continue to flare. Where issues are not settled following an intervention, they bring the matter to the attention of others including senior TYDDU staff, to discuss whether a further intervention or other assistance is necessary.

The Night Patrol's awareness of and involvement in the intervention process also enables the results of an intervention to be tracked and observed after hours, including whether issues require further intervention. The Night Patrol relays any outstanding issues or relevant information to TYDDU staff for action on the next working day.

A TYDDU Supervisor highlighted the need to keep an eye out for individuals who may have been strongly affected by an intervention, as interventions can get very heated and emotionally charged, and can be traumatic for those involved. He emphasised the importance of coaching and the need for people to take things slowly after an intervention: *I tell them. Go home have a rest and don't think about this. Cool yourself down and just have a rest.*

Interventions do not always resolve the matters in dispute in one session and there is often a need to 'bed down' arrangements and agreements between those involved. Although there is no formal follow-up process, community networks operate to check up on people who have participated in intervention and to inform referring agencies of intervention outcomes.

Skin Group meetings

The researchers observed a Skin Group meeting which was convened by Hyacinth Tungutalum and chaired by a senior woman. Prior to the meeting, staff from TYDDU collected members of the relevant Skin Group (about 25 in total) and brought them to TYDDU. The agenda which had been developed prior to the meeting, and which included issues such as 'kids not going to school' and 'house rules: looking after your house', was distributed (see sample agenda at Appendix E(iii)). The meeting commenced with people forming a circle, joining hands and reciting the Serenity Prayer. Hyacinth then spoke and encouraged people not to be afraid and to speak out, to remember that Tiwi culture is strong and that there is a need to love one another.

Throughout the discussions, Hyacinth and others asked questions which sought to elicit causal or underlying factors to particular problems, such as reasons for children not attending school. The Principal of the local Primary School, also attended the meeting, and gave further information about particular issues. Members of the Skin Group contributed suggestions as to possible causes of

problems and potential solutions. The degree of community participation indicated a high sense of involvement, engagement and trust in the process.

5.6. Relevance to Tiwi people and culture

As previously noted, the majority of interventions are directly initiated by Tiwi people themselves and an exceptionally high percentage of people within the community participate in them. These are clear indications that Tiwi people see TYDDU as offering a useful, relevant and accessible service. They approach TYDDU to arrange an intervention with the full confidence that the 'right' Skin Group people will be provided to convene such an intervention and that the intervention will enable them to deal with their issues. As Hyacinth Tungutalum noted: *I think there is no other way we can come together and solve problems.*

The senior Skin Group members involved in managing interventions are people who are held in high regard in the community. The Night Patrol Coordinator explained: *People respect the people running the interventions and this respect is very important to the community.*

The nature of discussions and priorities during interventions are determined by the people themselves. Issues are not censored nor is there any attempt by those convening interventions to artificially exclude issues that the parties see as relevant. TYDDU interventions are a way in which Tiwi people want to take responsibility for themselves and their issues.

Conducting interventions in the Tiwi language means that Tiwi, and others, see Tiwi managing and taking control of their own business. This reinforces not only Tiwi authority, but also that Tiwi people are not dependent on non-Indigenous people to 'fix them' or 'fix things for them.' As Morris Geinbarba explained: *Interventions being conducted in the Tiwi language means people feel no shame in the conflict. They are fixing their own problems themselves.*

One interviewee from an external agency commented that a factor contributing to the success of TYDDU interventions is that the Nguiu community is comprised of one language and cultural group where the predominant non-Indigenous influence has been the Catholic Church:

This contrasts markedly with places like Tennant Creek where there are six language groups and the pastoral industry has been the dominant non-Indigenous influence or Arnhem Land where there are a number of language groups and up to six quite different non-Indigenous churches.

Constable Matthew Ridolfi also saw that aspects of Tiwi culture support the effectiveness of interventions, including that: *Payback is not as bad in Tiwi as in other communities like Port Keats. Also here is a strong traditionally connected community with one language group.*

Interviewees also emphasised the important role of Kevin Doolan, the TYDDU Coordinator. His ability to speak the Tiwi language and his understandings of the local dynamics built up over many years, combined with his skills in administration and understandings of government machinations, serve a key function in ensuring that TYDDU operates effectively within both Tiwi and non-Tiwi worlds.

Tiwi people see their community as strong in language, culture and traditions. A number of interviewees emphasised that while communities need local responses tailored to their particular circumstances, the principles that underpin the TYDDU intervention process apply across communities. They thought that other communities may find it useful to visit Tiwi to observe the intervention process and TYDDU in order to make their own assessments as to what is adaptable to and useful for their own circumstances.

Inherent in the intervention program is recognition that the manner in which families and communities regularly experience difficulties and conflicts with one another is a normal part of family and community life. Interventions allow people the opportunity to move through issues in fair, effective and non-violent ways. Sometimes the management and resolution of issues require long-term, on-going, practical strategies. The intervention program is available for people to return to as required. Interventions have become normalised as part of life in Nguiu; they are a part of the fabric

of the community and of the local culture, as they build on existing local practices, kinship structures and religious traditions.

5.7. Focus on building relationships

One of the most critical elements of the Tiwi intervention process is its focus on, or 'prioritisation' of, relationships. TYDDU staff and others see that interventions are not about hasty solutions, but are offering Tiwi people the chance to deal with their issues effectively, efficiently and respectfully. They also recognise that while people in dispute may not always be ready for an intervention, it is essential that TYDDU staff members continue to model the need for a peaceful and harmonious community and to promote and encourage individuals to consider options.

The TYDDU intervention program is seen in many ways not as a conflict resolution program, but as a process which continually supports, encourages and maintains Tiwi authority in managing family and community issues. The nature of this is ongoing and cyclical rather than focussed on any single or particular outcome, and it highlights relationships.

A number of interviewees emphasised that the act of coming together in an intervention is as important as, if not more important than, reaching resolution or an outcome. As one non-Indigenous interviewee explained:

Interventions don't always resolve things but they are a sign that the community is taking control and that concerns are being aired. This is so important because if there isn't a way for concerns to be aired this can kill a community

Some saw that the interventions help to build respect throughout the community:

People see their issues and concerns being taken seriously and by senior Skin Group members. This then translates into feeling respected and this respect then helps people become respectful of others.

Another Tiwi interviewee saw it in these terms: *People can't do things alone. Interventions help Tiwi to see that there are lots of arms in the community – lots of helping hands.*

5.8. Maintaining the authority of Tiwi people in dispute management practices

The TYDDU intervention process maintains the authority of the Tiwi people and incorporates it in a variety of ways. It embodies Tiwi values and law in that it is focussed on healing and repairing family and community relationships. It offers the opportunity for those involved to negotiate tensions according to rules governing kin behaviour and local ways of managing relationship. As representatives of the Strong Women's Group explained: *Culture comes into interventions because the rules about who can't fight are observed.*

An integral part of the evolution of the TYDDU intervention process is the growing inclusion of Tiwi traditional social and cultural practices. Members of the Strong Women's Group suggested, for example, that there should be more 'ceremonial-like aspects' in the intervention process, and in the community more broadly, including:

- bush camps;
- healing ceremonies after big fights;
- sorry day ceremonies; and
- smoking ceremonies.

They also emphasised the importance of the opening and closing prayers and of having children at ceremonies, including at ceremonies conducted as part of interventions. They saw this as providing an opportunity for children to see positive and strong cultural practices and to witness Tiwi adults taking responsibility for managing conflicts in non-violent ways – which they saw as critical to building and strengthening Tiwi culture across the generations.

The Skin Group meetings are another mechanism that assists in reinforcing Tiwi authority. While not strictly part of the intervention program, they are a vital and interconnected part of TYDDU's activities and enable people to engage with 'bigger picture' issues. By offering opportunities for Tiwi to initiate discussions and consider options and solutions pro-actively rather than their merely responding or reacting to issues as they arise, they are an integral part of dispute prevention.

TYDDU staff did not see the intervention program as the 'be all and end all' of services that were needed. Rather, they saw it as a central component of supporting and enabling Tiwi people to manage their own business and issues.

5.9. Involvement of men and women as appropriate

A number of interviewees saw that it was important that interventions are attended and managed by senior Tiwi staff of TYDDU, as the involvement of senior people establishes the authority or seriousness of the process. While men and women from all four of the Skin Groups participate in and provide interventions, the majority of senior people associated with TYDDU are Tiwi men in their fifties.

There is thus a need for greater gender balance in the provision of TYDDU services as Teresita Puruntatameri, the Coordinator of the Strong Women's Group and senior Tiwi woman explained: *TYDDU is seen as a men's area. There need to be senior women there as well and they could support the younger women.*

Francisco Babui agreed: *It is good that we have both men and women working at TYDDU and it is important that we get the older women more involved.*

The Strong Women's Group saw that employment of more women at TYDDU is important for two reasons: firstly, it would provide support to the senior men who work at TYDDU; secondly, senior women could act as mentors to the younger women, particularly when they are called upon to manage or assist with interventions. The Strong Women's Group also felt that greater numbers of older men should be encouraged to come to Skin Group meetings to assist them in becoming re-engaged with community life. Currently, the Skin Group meetings are mainly attended by women, and the majority of men who do attend are young. Kevin Doolan explained: *Women are really working hard at convincing people to come together. Men often cause the problem – women work to resolve them.*

5.10. Coordination with other services and interagency cooperation

Coordination of services and cooperation among agencies is central to the success of TYDDU's work on dispute resolution in the community. Undoubtedly, one of the reasons that TYDDU places an emphasis on the need for this is the general lack of coordinated whole-of-government and whole-of-community approaches in the community. A clear example, which the researchers observed, was the confusion surrounding the NTER and the lack of information that was provided to those on the ground about timeframes and what to expect.

There is a need for coordination not only of the range of services offered by TYDDU itself, but also between TYDDU services and those of other agencies in the community. TYDDU already functions as a 'drop-in' centre and could coordinate a range of community activities, as could Skin Group meetings. One suggestion was that TYDDU could coordinate a program of guest speakers.

Given its central role as a community service provider and its high degree of use by Tiwi people, TYDDU was seen by Luke Tipuamantumirri, from Community Corrections, as being in an excellent position to *connect the dots for people.*

5.10.1. Coordination between TYDDU and other agencies and follow-up

Many of those using the TYDDU intervention program experience a range of problems including drug and alcohol issues, mental health issues and debt and gambling problems. Without access to other services, critical components of genuine and sustainable agreement-making and problem-solving may be missing. As people in conflict are often experiencing a range of problems, they may

need other services in addition to interventions – both before and after interventions. TYDDU's preparation processes are critical to identifying whether services other than those of TYDDU are required and that appropriate referrals are arranged.

Greater interagency cooperation could also result in people being offered one on one counselling, as appropriate, prior to an intervention. This could help in managing the very strong emotions, particularly anger, that people bring to interventions. As one interviewee explained: *Really angry people are very hard to manage in interventions*. Several of the health and counselling professionals interviewed explained that they share numerous clients with TYDDU. Their relationships with these clients can mean that they are the first point of call when they are experiencing difficulties that may benefit from an intervention. As a Mental Health Nurse explained: *If people come to Mental Health and talk about conflicts we refer them to Kevin [Doolan]*.

Strong coordinated relationships with other services are needed to support the provision of coordinated and targeted service delivery and minimise the likelihood that individuals will 'fall between the cracks'. This involves negotiating shared therapeutic paradigms and approaches, agreeing on referral mechanisms and protocols for monitoring the outcomes of referrals, and developing processes for monitoring and meeting ongoing needs that may be identified through, or emerge from, any dispute management processes.

Interventions do not always resolve things in one session and there is often a need to 'bed down' arrangements and agreements between people. Greater coordination between services could also ensure appropriate and more formalised follow-up processes to interventions, as the Mental Health Nurse commented:

There is no follow-up to let us know what's happened and no ongoing coordination between our two services about how we can work together on supporting the person [involved in the intervention].

Two types of follow-up are required: one with the people involved in interventions and the other with agencies who may have referred people for interventions or acted as support persons for people participating in the intervention. An interviewee from an external agency explained: *It might be good if people came back to TYDDU after a week just to check with them how they see things have settled since the intervention*. Another stated:

Our service refers things for interventions so it would be good if there was some formal way of informing us of the intervention outcomes. We often find this out informally but that takes time. Also that sort of formal feedback would only help to strengthen relationships with TYDDU and other services.

Greater coordination between TYDDU and other services could provide greater professional support to TYDDU staff. As one non-Indigenous interviewee explained: *the Unit [TYDDU] is right in the frontline and the staff there need all out support because they are dealing with everything*.

5.10.2. Community Safety Forum

The Community Safety Forum, coordinated by the Nguiu Community Safety Committee, provides a forum for cross-sectoral engagement and participation on community safety issues by relevant stakeholders including representatives from Northern Territory government agencies, local government and community organisations.⁸⁰ One of the functions of the Nguiu Community Safety Committee is to monitor the implementation of the Tiwi Social Wellbeing and Youth Development SRA by TYDDU. It meets monthly on the day prior to the Magistrate's Court's visit.

During their first visit in August 2007, the researchers observed a Community Safety Forum, which lasted for one and a half hours and covered almost 16 items of business. Two research projects were introduced and discussed (including this case study). Brief reports relating to current community issues were provided from a number of agencies including reports about safety issues such as accommodation for single people, street lighting and the screening of the Nguiu Club area.

⁸⁰ See Tiwi Social Wellbeing and Youth Development SRA, Appendix E(i), 6-7.

'Solid work you mob are doing'

A number of interviewees, including Constable Matthew Ridolfi, identified the Community Safety Forum as an important component of the coordination of many services in Nguiu. Others, while seeing the need for more frequent Community Safety Forum meetings, did not necessarily see the Forum as having a coordination role. As a Child Health Nurse explained: *We need proper interagency meetings as the Community Safety Forum does not quite function in that way.*

In general, the Community Safety Forum seems to operate as a clearing house for 'bigger picture' community issues rather than as a forum for the detailed consideration of particular individual's circumstances.

5.10.3. Consolidation of and coordination between TYDDU programs and other services in Nguiu

TYDDU is conscious of the need for feedback and coordination between the services it offers. Thus, for example, a number of the programs such as Night Patrol, Skin Group meetings and the school programs work together closely and can quickly identify and refer potential matters for interventions. This is only possible when programs are accessed locally.

Interviewees, including Kevin Doolan, saw that resources to support a period of consolidation and review of TYDDU's programs and services would be beneficial since TYDDU has grown very rapidly:

We have grown so much and we don't need any more programs but we keep responding to what the community wants but we need some time to just focus on what we do now and get it as strong as possible.

Luke Tipuamantumirri considered that a stronger focus on younger people up to the age of 25 was important and that TYDDU could offer greater assistance in the form of interventions between children, teachers and parents. In his role with Community Corrections, he was also keen to see TYDDU play a role in offering interventions which explored ways of reintegrating offenders back into the community:

The court says people can come back, but this needs to be managed with the community because sometimes the community doesn't want people back or doesn't know how to handle people coming back.

Greater coordination between TYDDU and Community Corrections could lead to interventions prior to offenders returning to the community which would assist the community in planning for and managing their return. Luke also saw a need for interventions after the offender returns to the community, which might involve the offender and affected family members participating in healing or reconciliation discussions. He also thought that the appointment of senior Elders as co-coordinators of TYDDU to sit alongside Kevin Doolan, would reinforce the authority of Tiwi people in a key service supporting the Tiwi community.

5.10.4. Good Behaviour Policy

The Nguiu Good Behaviour Policy (see Appendix E(ii)) lists the range of offences or issues which can result in the banning of individuals from or the closure of the Nguiu Club. For example, general disturbances such as noise complaints result in a one week ban and the requirement to attend a local Alcohol and Drug Awareness Program; a first offence of family violence results in a three month ban and the requirement to attend and complete the local Family Violence Course; and in instances of suicide, the Club is closed for one week.

Control of banning processes has shifted from TYDDU to the Nguiu Police who take advice from TYDDU as to who should be banned. TYDDU's previous control of the banning of individuals from the Club had been a source of considerable resentment in the community. This resentment is now focussed on the police and less so on TYDDU. The change in management of the banning process has arisen as a result of discussions at the Community Safety Forum and is a reflection of the good relationships between TYDDU and the Nguiu Police.

A primary concern was that the Nguui Good Behaviour Policy was focussed on punishing people. While it was seen to be important to have sanctions for bad behaviour, the need to build in positive rewards for good behaviour, and, in particular, rewards that were not centred on the Club, was also recognised.

As previously noted, the absence of many non-alcohol related social activities in Nguui appears to be a significant reason for the Nguui Club being the focus of much community life. Many wanted to see the introduction of more wholesome alternative activities, such as bush camps, hunting, and fishing. Francisco Babui, a TYDDU Education Liaison Officer and Coordinator of local Army Cadets explained: *It is important to have good things for people and kids to be involved in, like Cadets and hunting.*

5.10.5. Operating hours

Operating hours of TYDDU have been the subject of some discussion in terms of TYDDU's ability to meet sometimes conflicting community needs.

TYDDU is currently open from 8:00am until 4:00pm Mondays to Fridays. Constable Matthew Ridolfi noted that, in an ideal world with unlimited resources, TYDDU would operate 24 hours seven days a week and that its operating hours would coincide with the peak times of need from Wednesday to Sunday when the Nguui Club is open. However he also recognised that, given TYDDU's limited resources, this would mean that TYDDU would be unable to offer school-based programs Monday to Tuesday.

The issue of operating hours was also raised in the Skin Group meeting observed by the researchers where it was suggested that TYDDU staff start work at 7.30am. TYDDU currently collects children from 8.30am to take them to school. This means that they arrive too late for school breakfast which finishes by 8.30am and that many children are attending school without breakfast.

Although there have been some interventions on weekends, it was suggested that it is often better to let people 'cool down' over the weekend and to arrange interventions on Mondays. Teresita Puruntameri, the Coordinator of the Strong Women's Group, also explained that Sunday is a family and culture day.

5.11. Training issues for TYDDU staff who manage interventions

Researchers inquired about relevant training which TYDDU staff had undertaken and the nature of additional training which might be beneficial for them.

5.11.1. Training received by TYDDU staff

In general, training has been undertaken in 'ad hoc' ways as resources and courses have become available. Few staff, and in particular younger TYDDU staff, have received training relevant to managing interventions. Kevin Doolan commented that: *None of the training has hit the spot. People have collected a mixed bag of tips and tools from all over.*

The training most commonly mentioned by TYDDU staff as relevant was drug and alcohol awareness training, including the principles developed by Alcoholics Anonymous (AA). As one TYDDU Supervisor said:

Awareness of AA ideas really helps. People can think they are sober but they're not. The next morning people can still be affected by alcohol and knowing this helps think about the timing for interventions.

Kevin Doolan undertook some training organised by the Northern Territory Police when TYDDU was first established in 2003. This included short courses on mediation and family conferencing and was specifically targeted at the formal diversionary service that TYDDU was established to provide. One or two of the senior TYDDU staff have undertaken a restorative justice training program.

Some staff members have completed short courses in mediation offered by organisations such as Relationships Australia. However they commented that the training was confusing, that it was not delivered in a manner appropriate to Indigenous participants, and that it was not relevant to the Tiwi context. They emphasised that mediation training needs to provide numerous opportunities to participate in practical role plays directly relevant to the participants' own circumstances.⁸¹

One TYDDU Supervisor said: *It would be so good to have training in language with tutors who understand.* Morris Geinbarba, a TYDDU Education Liaison Officer, amongst others, saw that workplace training was the key to developing an ongoing learning culture and formalising mentoring and staff development at TYDDU: *Training alone isn't enough; we also need the opportunity to put the skills we learn into practice on the job.*

An interviewee from an external agency stressed that the TYDDU intervention program is working well and has evolved from existing community capacity and experience. This interviewee expressed concern about the imposition on TYDDU staff of culturally inappropriate 'whitefella' mediation training which is usually focussed on disputes between two individuals. In the Tiwi context, large numbers of people can be involved in interventions and cultural factors and practices shape and direct the intervention process.

5.11.2. Areas of additional training

Much of the training identified by TYDDU staff as being potentially beneficial was not specifically aimed at improving the practice of interventions but rather at enhancing the general operation of TYDDU, including its governance. They saw that benefits from the training would flow into the practice of interventions, as TYDDU staff have proved able to adapt and modify any training received to suit their needs and circumstances. The following areas of additional training, each of which is discussed in further detail below, were perceived to be of benefit and would be a natural extension and development of TYDDU staff:

- developing and extending professional skills;
- developing and extending administrative skills;
- supervision and debriefing;
- balancing different therapeutic approaches;
- dealing with young people;
- offering training to the Tiwi community; and
- exchanges with other Indigenous dispute management services.

A potential pilot training program is also discussed in this section.

The delivery of training is not only a matter of TYDDU resources. There is also a critical need for training to be specifically developed and tailored to the needs of TYDDU and its staff.

Developing and extending professional skills

The kinds of professional skills required by TYDDU staff members relate to the wide range of services they offer. They indicated, for example, that they would like to develop further skills in anger management and grief counselling.

Training in micro facilitative techniques, including 'reality testing' and 'agent of responsibility' skills, could significantly enhance TYDDU practices in managing community meetings including interventions and Skin Group meetings. At the Skin Group meeting observed by the researchers, a number of Tiwi participants commented that suggestions were being made which had already been made at previous meetings. They were keen to explore ways of implementing and monitoring the progress of their suggestions to ensure that they did not continue to, as one person stated, *just go round and round in circles.*

⁸¹ This feedback also compares to data gathered in the 2005 survey of native title mediators undertaken by IFaMP at AIATSIS. This survey found that while approximately 84% of those surveyed had received training in mediation, only 2.7% of respondents were able to highlight any specific aspect of their mediation training as being of use when mediating with Indigenous people: Williams, above n 10, 34.

Training in micro facilitative techniques would assist TYDDU staff to summarise suggestions, ask how others view them, summarise their general views, and then explore what it would take to make the range of suggestions work and who might be responsible for following them up. The development of micro skills requires repeated practice. They are best developed as part of a longer program or through on-the-job mentoring by an experienced practitioner, rather than in short courses.

Developing and extending administrative skills

In order to provide TYDDU's range of services effectively, TYDDU's governance has to be exemplary; the office has to run smoothly, funds have to be accounted for and staff have to be well looked after. Interviewees from TYDDU and other agencies saw it as crucial to continue to develop the administrative skills, including computer skills and the supervisory skills of the staff at TYDDU, and to provide a range of training which would enable them to perform in a variety of roles. This would in turn assist them in mentoring young Tiwi people joining TYDDU and in formalising the mentoring and staff development responsibilities of senior staff. It is also central to the ongoing success of TYDDU that succession plans are in place and that TYDDU staff are being trained to assist Kevin Doolan, the Coordinator, upon whom the service is solely reliant to provide all administrative and supervisory services.

Supervision and debriefing

The need for greater supervision of TYDDU staff including external supervision and debriefing support, especially for the senior staff, was mentioned to the researchers on a number of occasions. The work of TYDDU can be very stressful and demanding. Although nominal hours of work are 8.00am to 4.00pm, the community nature of the service and the working environment means work often spills over into people's personal and family 'after hours' time.

Balancing different therapeutic approaches

A challenge to holistic approaches is the number of different therapeutic paradigms adopted by services in Nguuu, including TYDDU. Interviewees from external agencies suggested that additional training could be helpful for TYDDU and other local service providers, to assist them to develop a shared management approach while balancing their differing therapeutic values.

Dealing with young people

Extending the skills of TYDDU staff in dealing with children and young people was seen by many as being of potential benefit. A number of comments were made about a perceived emphasis within TYDDU on 'growling' young people and that this strategy should be balanced with other more positive techniques. As Francisco Babui explained:

It's better to encourage the kids to do the right thing not to just punish or 'growl' them. It's good to build kids' self respect and self esteem with positive encouragement. Pride in themselves is important.

The Night Patrol Coordinator also emphasised the importance of developing positive frameworks by saying: *We [Night Patrol] prefer to encourage rather than punish.*

Francisco Babui, a TYDDU Education Liaison Officer and senior Tiwi man, saw it as important that staff develop skills in *how to act as an interpreter for kids about the law and its consequences and how to translate difficult words into Tiwi for them.* He particularly stressed that TYDDU staff would also benefit from ongoing training in dealing with juveniles. He saw that his own work in running the Tiwi Islands Army Cadets program had been beneficial, both to the young people involved and in developing and extending his own skills in working with young people. He saw that the Cadets program offered young people opportunities to receive training from the Army and to be part of a program that fostered their pride and self-respect. He identified these as valuable qualities to developing young people and that any training that helped TYDDU staff foster these qualities, both in themselves and in others, would be of positive benefit to all involved.

Luke Tipuamantumirri saw that it could also be helpful for TYDDU staff to have training in:

- how to recognise the warning signs of children at risk;
- how to implement and run anti bullying programs including how to work with victims of bullying; and
- dealing with emotions.

Offering training to the Tiwi community

Several interviewees suggested TYDDU could explore offering a range of training to the general Tiwi community, which would mean TYDDU taking a more proactive role to prevent, rather than merely respond to, disputes as they arise. The types of education sessions that it was suggested that TYDDU could run related to:

- life skills for adults including:
 - budgeting;
 - house cleaning;
 - health care;
 - parenting skills;
- dealing with emotions;
- anger management;
- communication skills; and
- conflict resolution skills.

Exchanges with other Indigenous dispute management services

On a number of occasions, it was suggested that exchanges with other Indigenous mediation or dispute management services and programs would be fruitful learning experiences and a priority for TYDDU staff. Such exchanges could offer a number of benefits including the opportunity to:

- observe and experience how other Indigenous communities manage disputes;
- exchange useful techniques that could then be trialled back in the community;
- learn what training and resources, including funding options, others had found useful;
- learn how services operate including what community education or engagement strategies they have;
- observe how any cultural approaches are integrated with the dispute management process; and
- establish networks with other Indigenous practitioners and services.

Regular exchanges would help to build the confidence and authority of Tiwi and other Indigenous peoples and their dispute management services and approaches, and assist in ongoing evaluation and development of effective processes. They could also promote awareness of Indigenous ways of managing disputes to non-Indigenous service providers and hopefully greater dialogue between both sets of service providers.

While interviewees noted the importance of Indigenous people learning from each other and the lack of opportunities or resources to do so, they also emphasised that services must always reflect local needs and approaches.

Pilot training program

TYDDU may be an ideal community to conduct a pilot training program, which should be independently evaluated and from which training packages in the skills areas should be developed. The information gained might then be used to review the work of training providers who deliver training to Indigenous and non-Indigenous people, where the focus is on dispute resolution. In particular the review of training programs should focus on:

- cultural sensitivity;
- balance of experiential learning;
- cultural awareness of presenters;

- awareness of multi-party large-scale dispute resolution processes; and
- how the training balances relationship building techniques and strategies with standard directive outcome-focussed processes.

Where possible, training packages in conflict resolution, negotiation skills, communication skills and other skills as required or requested by communities should be developed in a range of Indigenous languages and English and in audio-visual mediums.⁸²

5.12. Conclusion

Local people need to deal with their own issues and the more quickly they can do it, the better.

People in dispute, whether they be Indigenous or non-Indigenous, need access to services that can help them manage their disputes quickly, respectfully and in ways that are appropriate to their needs. The TYDDU intervention program case study has shown the powerfulness of a truly local response for dealing with disputes. The Tiwi people interviewed recognised the need to move *beyond the old ways* and work together in peaceful and non-violent ways. They saw that TYDDU, through the intervention program, the Skin Group meetings and other programs, offered them the opportunity to shape the direction of both their own lives and that of their community.

Tiwi people and the staff of TYDDU feel justifiably proud of their work in managing conflict in ways that promote those involved to take responsibility for ensuring the safety and peacefulness of their community. The high level of acceptance and use of TYDDU indicates that the Tiwi community have great confidence in the TYDDU service and that their issues will be treated with respect and consideration. They are confident that those managing the intervention will work hard to ensure that the process is fair to all involved and that all have a chance to have their say and be listened to.

Three critical elements from the Tiwi case study deserve to be highlighted. All three are relevant to improving service delivery and processes of community engagement generally.

- Tiwi and other Indigenous peoples manage disputes at the local level but they also need to be able to influence, shape and change the systemic and structural causes of conflict in communities. The relationships between those 'external' causes of conflict and the ways in which the community can engage with external agencies are particularly important.
- Tiwi and other Indigenous peoples need coordinated and cooperative processes, not only from the agencies located in the community, but also from those located outside the community who work with the community;
- Tiwi and other Indigenous peoples need the opportunity to establish Indigenous dispute management practitioners and services networks to promote ongoing learning and development. This will strengthen their own communities and generate awareness amongst non-Indigenous agencies of the importance and practice of Indigenous dispute management.

⁸² In this context it is notable that the NTLAC has recently produced a cross-cultural educational DVD in Tiwi entitled, 'Family Problems: Your Rights When Things Go Wrong' as part of its Indigenous Families Project.

Chapter 6

Snapshots: short studies in managing indigenous disputes



6.1. Introduction

This chapter presents a series of ‘mini’ case studies or ‘snapshots’ of processes and programs for managing conflict involving Aboriginal people. The snapshots arose out of investigations made by the Project in the course of identifying potential case studies in a wide range of dispute contexts. They are expressed in a variety of voices. Their diversity reflects the breadth of the research and the range of experiences of those who have contributed to the Project.

These snapshots are intended to augment and extend the findings of the main case studies by raising additional insights into effective dispute management policy and practice. They may also function as springboards for further research and policy development. Some serve as warnings of the consequences of failures to provide long term support for dispute management programs and services, as some services are under threat, or no longer exist, despite the fact that they have had considerable success and demonstrate insights and practice innovations for broader Indigenous dispute management.

Of course, the snapshots cannot be ‘representative’ of all dispute contexts or processes involving Indigenous peoples. It is obvious, but worth stating, that there are as many potential case studies as there are disputes, each with its own dynamics, configurations of parties, cultural factors and content.

6.2. Snapshot: *Ali-Curung Law and Justice Committee (1996 – 2005)*

6.2.1. Introduction

Ali-Curung is located 390 kilometres north of Alice Springs and 170 kilometres south of Tennant Creek, within the Warrabri Aboriginal Land Trust area. The community was established in the mid 1950s as part of the government’s relocation policies and there are now approximately 500 Aboriginal people living in Ali-Curung. Most Aboriginal residents belong to one of four main language groups: Kaiditch (or Kaytej), Alyawarra, Warramungu and Warlpiri. The Kaiditch are the traditional owners of the Ali-Curung area.

In the mid 1990s, a particularly poor relationship had developed between Ali–Curung residents and the local police. As a result of community complaints about the relationship, the Office of Aboriginal Development within the Northern Territory Government undertook a consultative process with the community in an effort to foster a greater level of understanding between the community and the police. These consultations revealed a myriad of cultural and social issues in the Ali-Curung community which it was decided needed a broader approach to law and justice planning – including a range of crisis, preventative and educative measures. The consultative process led to recognition of the need to develop a whole-of-community, whole-of-government response, which in turn led to a more extensive ‘participatory planning’ process between external agencies and the Ali-Curung community. This planning process resulted in the signing of an agreement – the Ali-Curung Law and Order Plan – between the community and 10 government agencies and non-government organisations.

The Ali-Curung Law and Order Plan was formally signed at Ali-Curung in June 1997, some 17 months after the initial consultations commenced, although by that time several initiatives covered the Plan were already operational within the Ali-Curung community.

The Ali-Curung Law and Order Plan had three objectives:

1. to reduce the level of community and family violence and other law and order concerns;

2. to enable greater participation by Aboriginal people in law and justice processes; and
3. to encourage greater responsibility for local law and order matters by Aboriginal people.

The Plan identified a number of formal and informal programs, services and initiatives to be implemented in the community with the aim of achieving these objectives over the three years of the agreement.⁸³

One of the key initiatives of the Ali-Curung Law and Order Plan was the establishment of a Law & Justice Committee (L&J Committee) to coordinate, from the community side, the whole-of-community approach.⁸⁴ A central role of the L&J Committee was to develop and promote the use of local processes of dispute resolution. The L&J Committee also represented the Ali-Curung community on the Kurduju Committee, a combined committee of the law and justice committees from several communities in the region.⁸⁵

More broadly, this community planning and agreement-making process was part of a strategy called the Aboriginal Law and Justice Strategy (ALJS) initiated by the Northern Territory Government in response to recommendations of the Royal Commission into Aboriginal Deaths in Custody.⁸⁶ The ALJS was implemented in Ali-Curung in 1995 and in other Warlpiri communities in the early 2000s.⁸⁷ The ALJS was discontinued in 2005.

6.2.2. Aboriginal dispute resolution in Ali-Curung

While the Ali-Curung community had always had mechanisms for dealing with local conflict, the Ali-Curung Law and Order Plan supported the application of these mechanisms to new contexts, particularly in relation to the delivery of government-funded services in the community. Within the framework of the ALJS, the Ali-Curung community developed, endorsed, implemented and documented a local process of dispute resolution, known locally as the 'three way go' or 'three tier problem solving'.⁸⁸ Because, from experience, the community respected this process and knew it to be effective, the 'three tiered' process was an important aspect of a genuinely community-owned response to addressing community conflict and problems within the framework of the Ali-Curung Law and Order Plan.⁸⁹

The 'three tier' process commences with family and extended family members coming together to discuss a problem. If the issue cannot be resolved, it is progressed to another level involving Elders from each of the four language groups, often at a community meeting. Finally, if other methods of resolving the issue fail, the matter can be referred to the traditional owners, the Kaiditch. A key aspect of the dispute resolution process at Ali-Curung is the deference by the other language groups to the ultimate authority of the Kaiditch as the final arbitrators or decision makers for issues affecting the community.

In this context it is significant that the three tier system of dispute resolution in Ali-Curung is consistent with socio-political protocols negotiated between the four language groups in the 1950s

⁸³ The Ali-Curung Law and Justice Plan identified over 20 programs, services and initiatives to be implemented by various agencies, and a further 20 community initiatives to be undertaken over the three years of the agreement: Northern Territory Department of Community, Development, Sport and Cultural Affairs. *The Northern Territory Aboriginal Law and Justice Strategy*, paper delivered at the Reconciliation Australia Conference, April 2002, 22.

⁸⁴ The L&J Committee comprised mainly of people who were working at the 'coalface' of community violence: Safe House women, the men's and women's night patrol staff, Indigenous community police officers and male and female Elders from various language groups. This group was endorsed (by the community) with 'facilitating' broader dispute resolution processes, if easy solutions to problems could not be found.

⁸⁵ The Kurduju Committee primarily comprised of representatives from Ali-Curung, Lajamanu and Yuendumu law and justice committees.

⁸⁶ Johnston, above n 38.

⁸⁷ The ALJS was implemented in Lajamanu in 2000 and in Yuendumu in 2002.

⁸⁸ The process is also called Aboriginal Dispute Resolution or Community Dispute Resolution: see Kurduju Committee. *The Kurduju Committee Report by the Combined Committees of Ali-Curung, Lajamanu and Yuendumu Law and Justice Committees* (Vol 1), December 2001; Northern Territory Department of Community Development Sport and Cultural Affairs, above n 83; Ryan, P. 'The Evolving Role And Functions of Remote Area Community Night Patrols In Dispute Resolution', discussion paper prepared for the Northern Territory Department of Justice (unpublished, 2004).

⁸⁹ By way of example of the use of local Aboriginal dispute resolution processes in Ali-Curung, staff at the Safe House began to use Aboriginal Dispute Resolution as a preventative measure and in the practice of 'shaming' men who were violent towards their wives. In this context it was considered to be an effective community tool to reduce the incidence of family violence and was also used to address other forms of community violence in Ali-Curung: Northern Territory Department of Community Development Sport and Cultural Affairs, above n 83, 41.

to deal with inter-group conflict resulting from the settlement of the groups in Ali-Curung.⁹⁰ In the following passage, Lionel James, Vice President of the Ali-Curung Community Council, describes how traditional patterns of land use and social organisation were disrupted by the relocation of Aboriginal people from their traditional lands in the 1950s, and how new rules for co-existing in Ali-Curung were negotiated by the Elders of the four groups. These rules continue to have local currency today.

We got four tribes here, Warlpiri, Warumungu, Kaiditch and Alyawarra and when we all got put in together at Warrabri (Ali-Curung, circa 1956) it caused us a lot of problems, you know, blackfellow way, blackfellow business. It might be all right for Kardia [non-Indigenous people] to travel around on someone else's country without telling any body like going to Sydney or Melbourne or something but its different for us mob. Yappa [Indigenous] way is to work out for ceremony way about which mob is looking after things and how we can live together without trouble on that land. One old Warlpiri man for us named Kumantjai Jabaltjari had to go around and call all the tribes together to work out the rules for how we could all live together. We all come from different places. We had to agree how to work out for ceremonies and we had to respect the local custodians and the Kaiditch sacred sites. We had to divide the camp up into four different areas so we could carry out our business in our own way because we don't know the Kaiditch business. We had to work out how the traditional owners could still have the power to make the big decisions about the country. All the old men worked hard to sort out these problems. This is still happens today we still follow the old men's rules.⁹¹

Gwen Brown, the interim chair of the L&J Committee in 2001, explained how the three tier process is used in contemporary situations to resolve disputes relating to alcohol misuse:

...[D]uring the day people go out to drink. They are out all day and come back a bit late. They cause problems on the community. When Night Patrol finally stops them they won't listen because they're all drunk and want to fight. And maybe there can be jealous fights too you know – maybe husband might be drunk, wants to fight his wife but she's not home and all that, but they won't listen.

Then the next day the families come over to the Night Patrol, going to sort this problem out. So they get together in the community meeting, just the family members for that person, the Elders and the Night Patrol.

We use the Elders to come in and support Night Patrol in the community. If it gets worse and the person won't listen to the Elders, well we call in traditional owners then. They come and talk with the Elders and the Night Patrol about this person who's causing too much trouble. They then decide, the Elders and the traditional owners, what to do with the troublemaker. So this is just sorting out problems in this community meeting. It's like that's the highest people (the traditional owners) because we live on other people's land, they're traditional owners. But we never want to use that. (We use it) when trouble keeps going higher and higher.⁹²

This tiered approach to decision making and dispute resolution, based on traditional protocols regarding ownership of land, was recognised by the Kurduju Committee as a good example of a local decision-making structure which works for the community, with potential application to a range of dispute situations and service provision.⁹³

6.2.3. The importance of local practitioners

The involvement of senior people within the Ali-Curung community is seen as key to effective dispute resolution in the community. This is particularly so because many disputes invoke local

⁹⁰ See Ryan, above n 88, 16.

⁹¹ Ali-Curung Community Association Council. *Jinta marni jaku: Ali-Curung Cultural Protocol*, Northern Territory Government, Darwin, 2001; and referred to in Ryan, above n 88.

⁹² Kurduju Committee, above no 88, 9.

⁹³ *Ibid*, 10.

cultural beliefs and practices which require specialist local knowledge and attention. These include disputes regarding the use of *yarda* (Warlpiri word meaning cursed bone or stick; causing illness); 'payback'; community management issues; the inequitable distribution of scarce community resources based on land ownership or ceremonial customs; customary marriage practice and other issues associated with traditional custom and value/belief system.⁹⁴

Take, for example, disputes about the practice of *yarda*. *Yarda* can manifest as a sudden illness, headache, vomiting, chest pains, illness following a dispute between families or transgression of cultural protocols and is widely believed to be responsible for accidents resulting in injury or death (such as motor accidents).⁹⁵ The Kurduju Committee estimates that as many as 50% of adults are affected by *yarda* at any time.⁹⁶ Violence associated with *yarda* tends to occur as members of one family group accuse other groups who they believe may be responsible for making members of their family ill. Disputes can result in members of the aggrieved group also resorting to the use of *yarda*, contributing to a cycle of violence and payback.

According to the Kurduju Committee, local women from Ali-Curung achieved successful outcomes in disputes involving *yarda* using Aboriginal dispute resolution. In one instance reported by the Kurduju Committee, a group of women from Ali-Curung had instigated a meeting with a group of men some suspected of practicing *yarda* on a very ill woman. At the meeting the women argued that *yarda* was having a disruptive effect on the woman, her family and the community generally, and they were successful in having the illness removed. The woman made a full recovery.⁹⁷

In this example the cultural knowledge and beliefs of local women were essential to the conflict management strategy and its successful results. Such disputes involving *yarda* would be unlikely to be effectively resolved by government agencies, police, or counsellors, unless they are highly skilled and have a detailed knowledge of local cultural practice. Sensitive and highly localised responses are required, as well as an acknowledgement by 'external' organisations of the role of Aboriginal dispute resolution in addressing violence and other local law and justice issues.

6.2.4. Peer modelling and use of visual and narrative communication tools

In addition to its operation at the local level, the Ali-Curung L&J Committee participated in a 'peer modelling' program to educate others about dispute resolution and promote participatory law and justice planning in other Aboriginal communities. 'Peer modelling' uses peer familiarity to promote confidence and goal relevance ("*if they can do it, so can we*") and fosters existing relationships between communities to help provide mutual learning and support.⁹⁸ This 'peer modelling' initiative was part of the ALJS.

As part of the peer modelling program, the women of the Ali Curung L&J Committee developed a series of paintings which they used to explain to other communities how family violence and community law and justice issues are dealt with at Ali-Curung. An example is below:

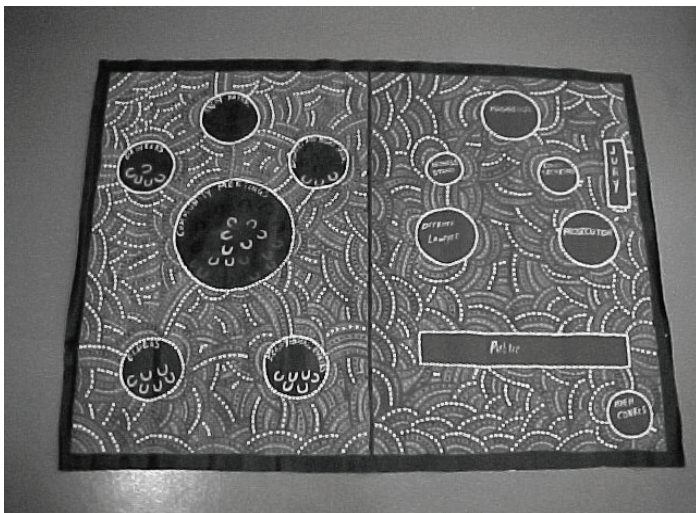
⁹⁴ *ibid*, 27.

⁹⁵ Ryan, P. 'The Types of Violence Impacting on Many Centralian Communities', unpublished paper dated 15 March 2005.

⁹⁶ Kurduju Committee, above n 88, 27.

⁹⁷ *Ibid*, 27.

⁹⁸ Morrison Associates, 'Ways Forward: An Evaluation of the Aboriginal Family Violence Strategy' referred to in Ali-Curung, Lajamanu, Yuendumu and Willowra Communities. *Ali-Curung Community Women's Safe House and Family Violence Awareness Workshop Report – October 2002*, report drafted from notes taken by the Department of Community Development Sport and Cultural Affairs, Northern Territory Government, Darwin, 19 September 2003, 2.



The left side of the painting represents the Aboriginal dispute resolution process. Community organisations are represented by three circles arching over the one larger centre circle, representing a community meeting. The two bottom circles represent Elders and Traditional Owners. These two groups act as adjudicators and provide legitimacy to the decision making processes. The right side of the painting describes the Kardia [non-Aboriginal] criminal justice process. The painting depicts a Judge, the Secretary, Jury, Prosecutor, Defence Lawyer, the troublemaker and members of the public.⁹⁹

Ali-Curung women pointed out similarities and differences between local governance systems and non-Indigenous legal institutions by referring to aspects of the artwork. Marjorie Hayes, a member of the Ali Curung L&J Committee, explained some of the differences between the two systems:

... [H]ere you've got Aboriginal community meetings. This is where the paybacks are paid. The community witnesses the payback. Here (in the Courtroom) you only got these people from the public here. Not all the public, but few of the public witnessing the Court. Here (at the community meeting) you got the whole community witnessing.¹⁰⁰

Connections between Indigenous and non-Indigenous systems were also made. For example the role of the Kaiditch – as traditional owners and ultimate decision-makers – was compared to that of the High Court.¹⁰¹

The ALJS peer modelling program was highly successful. By 2001 at least 12 remote communities in the region had contacted either the Ali-Curung and Lajamanu communities, or the Department of Community Development Sport and Cultural Affairs, to request involvement in the program.¹⁰²

The use of visual and narrative-based communication strategies by Ali-Curung community members appears to have been an important factor in the success of the peer modelling program. A report of the Ali-Curung Community Women's Safe House and Family Violence Awareness Workshop in October 2002 noted that Ali-Curung community members had *travelled extensively* to other communities with their dot paintings and stories and that *the technique of utilising presenters from more experienced communities was particularly effective among Aboriginal communities.*¹⁰³

6.2.5. Support for a whole-of-community approach

The Ali-Curung Law and Order Plan was an exemplar of a whole-of-community, whole-of-government approach which involved, fundamentally, detailed planning at the local level.

⁹⁹ Kurduju Committee, above n 88, 9.

¹⁰⁰ Kurduju Committee, above n 88, 12.

¹⁰¹ Ali-Curung, Lajamanu, Thetown and Willowra Communities, above n 98.

¹⁰² Ibid, 8.

¹⁰³ Ali-Curung, Lajamanu, Yuendumu and Willowra Communities, above n 98, 2.

Central to the ALJS (particularly at Ali-Curung) was the employment of two experienced facilitative planners, a male and a female, to facilitate engagement between the community, government and non-government organisations. They were employed by the Northern Territory Government's Office of Aboriginal Development and worked with the community throughout the life of the ALJS – from its initial phases in Ali-Curung in 1995 to implementation and monitoring of the agreed strategies.

They undertook a range of activities¹⁰⁴ including:

- assisting the community to appoint a law and justice committee;
- facilitating regular meetings of the L& J Committee;
- facilitating meetings between the L&J Committee and governments and non-government organisations;
- acting as a resource for the Committee; and
- reporting community concerns to government.

The facilitative planners provided a consistent and strategic focus on the objectives of the Ali-Curung Law and Order Plan and established a system of evaluation and forward planning. This included 3-monthly meetings to monitor and evaluate the Ali-Curung Law and Order Plan, to be attended by all signatories to the agreement.

As mentioned, the ALJS was discontinued by the Northern Territory Government in 2005. According to the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children Are Sacred Report), the reasons why the ALJS was discontinued are unclear.¹⁰⁵ The authors stated that the ALJS was ceased without any notice, any independent evaluation of its success, or any consultation with the communities concerned. They reported that the discontinuance of the ALJS was *still a sore point for many people in the relevant communities* and that *[m]any people were confused as to why the ALJS stopped, particularly when, from their perspective, it was working well and achieving positive outcomes.*¹⁰⁶

The work of community justice groups which operated as part of the ALJS has since received praise in a number of academic publications and reports.¹⁰⁷ The Ali-Curung program was the subject of recent research by the Desert Knowledge Cooperative Research Centre, which identified it as a *past example of successful practice* in remote service provision.¹⁰⁸ In a case study undertaken as part of the Domestic Violence Services Mapping Project for Territory Health Services in 2001, Ms Sallie Cairnduff offered this appraisal of the Ali-Curung Law and Order Plan:

The approach to community violence at Ali-Curung has occurred at both an institutional and a community level. At the institutional level, the Ali-Curung Law and Order Plans has been endorsed by 10 government agencies. At the community level, the plan has facilitated an appropriate representation of the different language groups in the community to negotiate and liaise with agencies on a holistic approach to addressing community violence.

The coordination for the various agencies has also increased interagency communication and effectiveness in reducing community violence at Ali- Curung.

*Embedded in the Law and Order Plan are activities related specifically to family violence. The women's safe house is the most prominent program addressing this. ... Respect for community elders and compliance with traditional law is very strong in this community and elders' involvement and contribution is credited with being critical to the safe house's utilisation. ...Family violence incidents are resolved through mediation meetings with the community elders within 24 hours of the incident occurring, in accordance with the wish of the community.*¹⁰⁹

¹⁰⁴ Wild, R. & Anderson, P. *Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, report prepared by the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse for the Northern Territory Government, Darwin, 2007, 180.

¹⁰⁵ *Ibid.*, 181.

¹⁰⁶ *Ibid.*

¹⁰⁷ Cairnduff S. *Domestic Violence Services Mapping Project*, report prepared for Women's Health Strategy Unit of Territory Health Services, Northern Territory Government, Darwin NT, 2001; Wild et al, above n 104; Wright, A. *Working with people: The improvement of services in Ali Curung*, Annual Research Report, Desert Knowledge CRC Core Project 5 (unpublished, 2007); Blagg, H. *Crime, Aboriginality and the Decolonisation of Justice*, Hawkins Press, Annandale, 2008, 184.

¹⁰⁸ Wright, *ibid.*, 47.

¹⁰⁹ Cairnduff, above n 107.

The Little Children Are Sacred Report found that:

The overwhelming weight of evidence received by the Inquiry is that the ALJS was working well, was embraced by the community, was on target to deliver many positive outcomes and was wanted in many other communities.

The Little Children Are Sacred Report made recommendations relating to the establishment of 'community justice groups' in remote NT communities. In doing so, the authors stated that proposed community justice groups should have *much the same features as the former [ALJS] Law and Justice Committees* and asserted the need for regionally based planners ('cultural brokers' or 'external planners') to facilitate the development of community justice groups, assist the community to identify its strengths and build on them, organise necessary skills training and provide an interface between the group and government departments and non-government organisations.¹¹⁰

6.3. Snapshot: Attempts to resolve a feud in 'Thetown'

6.3.1. Introduction and context

Jealousy fights among Aboriginal women are relatively common in the remote community of 'Thetown'.¹¹¹ The fights often involve only two opposing women and perhaps their sisters, or other immediate family members or close friends, and they are usually resolved fairly quickly. However, jealousy fights have the potential to escalate into larger-scale 'feuds' if other tensions are present between the families of the disputants. This is what happened in the following case.

6.3.2. The feud

In the late 1990s, two teenage girls from Thetown had a jealousy fight about a teenage boy. One of the girls was from the 'Harris' family, the other from the 'Porter' family.¹¹² The jealousy fight took place in a city near Thetown. When news of the fight reached the girls' families in Thetown, their respective sisters, mothers and grandmothers responded by taking up fighting each other. The local Thetown police arrived to break up the fight and told everyone to go home.

Conflict between the two families did not subside after the initial fight. Over the next few weeks, fights between Porter and Harris family members erupted whenever they met. Residents in Thetown who were not involved in the conflict did not seem greatly concerned about it initially. However they became more concerned when, about six months into the fighting, clashes between the Porter and Harris families reached unprecedented heights of violence. Cars were torched and fighting involved potentially lethal weapons, such as machetes and axes. People who were apprehended by the police in relation to these incidents faced serious charges of assault and property damage. More families became drawn into the conflict as the feud dragged on, year after year. The Harris family left Thetown and amalgamated with the Smith family, based in the nearby community of 'Onestead.' Subsequently the sides became called the 'Onestead mob' and the 'Thetown mob' (rather than the Harris and Porter families). Levels of violence and the use of weapons continued to increase.

6.3.3. Power dynamics in Thetown

As the conflict escalated, non-Aboriginal residents in Thetown speculated as to the reasons underlying the feud. A theory developed that the feud had to do with conflict over the families' access to power in Thetown. The Aboriginal population had a different perspective: they maintained that the feud started with the jealousy fight and did not say much about the power dynamics that were perceived by non-Aboriginal people to be the underlying source of the conflict.

A brief history of Thetown is necessary to explain the basis of the theory. Following Thetown's establishment by the government for welfare and rationing purposes, Aboriginal groups from

¹¹⁰ See further Wild et al, above n 104, 182-3.

¹¹¹ This snapshot is based on reflections of a person who has worked with the 'Thetown' community for more than a decade. Names of places, families and individuals have been changed to protect the identities of those involved.

¹¹² The term 'family' is used here in a broad sense, referring to feuding factions, however it is important to note that all fighters were related to each other in one way or another, no matter what side they were on.

surrounding areas settled in Thetown, and by the early 1990s a number of local organisations and enterprises (such as the school, shop, council and women's centre) had been set up. These organisations came to be 'influenced' by certain local Aboriginal families; and in effect they operated as 'power' bases in Thetown. A family holding power over a particular local organisation obtained access to a range of benefits, including use of phones or vehicles; lifts into the city; holidays with non-Indigenous staff; as well as access to negotiators who could act on their behalf in bureaucratic and administrative procedures.

Throughout the 1990s, the number of local organisations increased, as did – in many cases – the rate of turnover of their non-Indigenous managers. The arrival of each new manager generated a short period of frantic negotiation between families in Thetown until one family 'won' and 'settled in' with that particular organisation.

About a year before the jealousy fight between the Harris and Porter girls, the two families began to extend their respective realms of influence in Thetown. Each family started to assert power over organisations that were traditionally the domain of the other, while simultaneously retaining power over 'their own' enterprises. Local organisations came to be seen as contested sites of power between the Harris and Porter families and, inevitably, were therefore implicated in the feud.

6.3.4. Two attempts to resolve the feud

There have been numerous attempts by both non-Indigenous and Indigenous people to resolve the feud over the years since the initial jealousy fight. Two of these are detailed below. Neither of these, nor any other attempt by non-Indigenous or Indigenous people to date, has resulted in a lasting agreement for peace between the feuding parties.

A first attempt to resolve the feud

An initial attempt to resolve the escalating conflict involved an appeal by some local Aboriginal people to a senior non-Indigenous person in government to mediate the feud. The bureaucrat responded to the appeal by instructing the relevant government department to arrange a mediation.

As part of the preparation for the mediation, government officers sought information from people in Thetown about the history of the feud, from the initial jealousy fight to the present day. In particular, they approached a non-Indigenous person working with the Thetown community to prepare a history of the feud. However the individual declined to assist when it became apparent that the government department would insist the report be kept confidential and not accessible to members of the feuding families.

The department's insistence on confidentiality evidenced a lack of understanding of the local cultural protocols and practices operating in the Thetown community, and had the result that the process was planned on the basis of limited, and somewhat subjective, background information about the feud. It appears there was little detailed 'mapping' of the dispute or the groups involved in the feud.

It was decided that the mediation meeting should be attended by certain representatives from the feuding families – a small group of people with equal numbers of people from the Smith family and the Porter family. The meeting was to be mediated by a local mediator employed by an Aboriginal organisation, and observed by government representatives.

People who know the local dynamics of the feud expressed concern to the government department prior to the mediation meeting, that the process was unlikely to result in a resolution of the feud for reasons relating to local practice. These included that:

- the meeting was not public;
- the meeting was not to be held at Thetown – it was to be held in a nearby city;
- not all of the invitees were 'the right ones' and many others were missing; and
- any outcome of the mediation would not be considered binding by those who were not part of it.

Nevertheless, the meeting proceeded as planned.

A few days after the 'mediation', the government department organised a free lunch in Thetown to celebrate the end of the feud. The event was well attended by politicians and public servants, but poorly attended by Aboriginal people involved in the feud, many of whom had left Thetown in protest upon hearing about the mediation and the celebratory lunch. Eventually, some of the parties who had attended the mediation arrived at the lunch, shook hands, and declared that they had signed an agreement that all fighting was over.

The feud continued.

A second attempt to resolve the feud

The second attempt at resolution of the feud occurred when the local Council took an interest in the conflict and made its resolution a priority. The Council secured government funding to employ 'Tom,' a law graduate with expertise in conflict resolution but little experience in Indigenous communities, to research the feud and work with the community on conflict resolution methods over the course of a year.

Tom began work by talking to the various groups and dealing with detail after detail about incidents related to the ongoing conflict. However as a result, and inadvertently, Tom became caught up in the feud, as the feuding parties used his position as a means of accruing greater power and influence. By way of an example of this process, one family asked Tom to obtain a copy of the official records of a particular incident related to the feuding. Tom duly obtained the documents, but the information contained in them did not support the family's views about the cause of the incident. It was alleged that the relevant information had been edited out of the document, presumably by or on behalf of the opposing side. This did little to progress the resolution of the feud. Tom's attempts to resolve the feud were, in fact, contributing to it.

A key problem with the process employed by Tom was the mismatch between his understandings of where a mediator 'sits' in relation to the feud, and those of the Aboriginal parties involved in the conflict. While Tom saw his role as that of an 'outsider' or impartial mediator, the feuding parties saw him as another 'inside' part of feuding. In a sense, the parties used Tom as a means of suggesting to the other side: *We are right, we are strong – Tom works for us. We have convinced these people of our position – you better come around to it, too.* Tom's lack of awareness of the way in which his attempts at mediation were being interpreted rendered him ineffective in bringing about a resolution to the conflict.

It is possible that a more effective process may have involved planning with the parties and facilitation by a person who understood the cultural dynamics at play in the feud and who commanded respect of the people involved. There may have been challenges to accessing such a process and practitioners because, firstly, as the situation worsened, local respected people with skills in peacemaking or dispute management practice became implicated in the conflict in one way or another and may have become too 'close' to the feud to be acceptable to the feuding parties. Secondly, looking outside the local context, there appear to be limited options for the community to identify and access practitioners with kind of skills and expertise that could be effective in engaging the community in planning processes and dispute management, given the challenging dynamics of the Thetown feud.

6.4. Snapshot: Indigenous experience within a Family Relationship Centre

6.4.1. Context – the establishment of Family Relationships Centres

In 2006 the *Family Law Act 1975* (Cth) was amended to place greater emphasis on the resolution of family disputes by out-of-court dispute resolution processes.¹¹³ In conjunction with these legislative reforms, the Federal Government established a national system of Family Relationships Centres (FRCs) to assist families to access family dispute resolution services.

¹¹³ Among other things these amendments introduced a legislative requirement that parties seeking parenting orders must first attempt to resolve their disputes using a registered family dispute resolution practitioner. Exceptions exist in a number of circumstances, such as where there are allegations of family violence or child abuse: see s 60I(9) of the *Family Law Act*.

FRCs operate as a free referral and information service, and provide up to three hours of joint dispute resolution sessions to couples free of charge (or six hours if an interpreter is required). If the FRC considers that ongoing family dispute resolution is needed, clients may be referred to another mediation service. Most FRCs work in partnership with mainstream dispute resolution service providers operating in the area.

At the time of writing there were 68 FRCs operating across Australia.¹¹⁴ 12 of these are funded specifically to provide Indigenous Advisors to assist Indigenous people to access family dispute resolution services. FRC Indigenous Advisors have a wide range of roles and functions, including to:

- act as a point of contact for Indigenous clients;
- assist other FRC staff to arrange referrals or conduct mediation and counselling sessions;
- contribute to the development of effective models of Indigenous service delivery across the network of FRCs;
- conduct community education to Indigenous communities about FRCs and other services;
- liaise with Indigenous communities and with other agencies serving those communities;
- coordinate arrangements for service delivery;
- provide cultural advice and training to FRC staff; and
- if trained, provide family dispute resolution to clients.¹¹⁵

As the above list illustrates, Indigenous Advisors have a wide range of roles and functions and are required to have a diverse and specialised set of skills and expertise. In addition some Indigenous Advisors are undertaking training to become registered as family dispute resolution practitioners.

The *Family Law Regulations 1984* (Cth) provide a scheme for the accreditation and registration of family dispute resolution practitioners.¹¹⁶ At the time of research, to become registered as a family dispute resolution practitioner a person must have been awarded an 'appropriate degree, diploma or other qualification' from a university, college of advanced education, other higher education provider or Registered Training Organisation (RTO), or be admitted to practice as a lawyer. The person must also have completed at least five days training in family dispute resolution,¹¹⁷ 10 hours of supervised family dispute resolution, and meet other requirements for registration in the Family Dispute Resolution Register.¹¹⁸ A new accreditation scheme commences on 1 January 2009.¹¹⁹

6.4.2. Experiences of Hamish, an Indigenous Advisor

Hamish¹²⁰ is an Indigenous Advisor at an FRC¹²¹ and is training to become a family dispute resolution practitioner. He has been working at the FRC for about two years. A key part of his current role is to promote the FRC as a resource for local Indigenous people. Hamish commented that the FRC is now attracting more Indigenous clients and the service is *getting the numbers in*.

Hamish said that, in his experience, local Indigenous people have been keen to hear that there is a new and free service that can help them deal with family problems. But he also expressed the view that there are barriers to Indigenous peoples' access to and use of FRC services. Some of these barriers result from the current institutional arrangements between the FRC and its 'partner organisations.'

¹¹⁴ For details see Family Relationships Online at

<http://www.familyrelationships.gov.au/www/agd/familyreonline.nsf/Page/RWPFDDAE1FF77800FB5CA25721800038A30>

¹¹⁵ See Commonwealth of Australia. *Operational Framework for Family Relationship Centres July 2007*, Attorney-General's Department, Canberra, 2007.

¹¹⁶ See *Family Law Regulations 1984* (Cth), Part 4A.

¹¹⁷ Including at least 1 training course of a duration of at least three days.

¹¹⁸ The Register of Family Dispute Resolution Practitioners is maintained by the Attorney-General's Department. Eligibility requirements for inclusion on the Register are set out in reg 60D of the *Family Law Regulations 1984* and amongst other things require the Secretary to be satisfied that the applicant has complied with relevant laws for employment of people working with children and has access to a complaints mechanism. Regulation 60D(3) disqualifies from eligibility for registration a person who has been convicted of an offence involving violence to a person or a sex related offence.

¹¹⁹ The current accreditation system will cease to be available to family dispute resolution practitioners on 30 June 2009, at which time individuals seeking accreditation will be required to meet new standards set out in the *Family Law (Family Dispute Resolution Practitioner) Regulations 2008* (Cth). For further discussion of training and accreditation issues, see Chapter 8.

¹²⁰ 'Hamish' is a pseudonym. This snapshot is based on Hamish's reflections and points of view. It does not and is not intended to reflect the experiences of other FRC Indigenous Advisors.

¹²¹ The other Indigenous Advisor is an Aboriginal woman.

Two mainstream dispute resolution service providers jointly won the federal government tender to deliver FRC services in Hamish's city and became 'partner organisations' for the FRC.¹²² The FRC refers clients to family dispute resolution practitioners at the partner organisations. Although the FRC is a separate entity to the partner organisations and has its own office, the FRC relies heavily on the service delivery models and infrastructure of the 'senior partner organisation', which also employs FRC staff.

Hamish expressed the view that neither of the partner organisations has a strong history of service delivery to Indigenous peoples, and that before the establishment of FRCs, Aboriginal people in the area rarely used their services.

Hamish explained that the FRC does not have its own policies and procedures manual and that the FRC tends to adopt the policies and procedures of the senior partner organisation. In Hamish's view, the policies of the organisation have not been sufficiently flexible to accommodate the kind of service delivery Hamish would like to see the FRC provide to Indigenous clients. For example, the partner organisation prohibits meeting with clients in their homes. However Hamish said that Indigenous clients may prefer a 'home visit' for various reasons including:

- it can be expensive and inconvenient for clients to travel to attend an appointment in the city;
- it can be difficult for clients to access childcare in order to attend an appointment; and
- the Family Court's Indigenous Family Liaison Officers¹²³ routinely conducted home visits in male/female pairs and clients expect that FRC Indigenous Advisors will follow this practice.

The FRC office is located in the central business district of the city and is not easily accessible to outer suburban areas, where most of the Aboriginal people living in the area reside. Hamish felt that Aboriginal people might be more inclined to access FRC services if the FRC office was based in outer suburban areas or if the FRC was able to do more outreach work to connect with Aboriginal people in these areas. He said: *We've got to go to the clients. At the moment, we're bending over backwards to accommodate the partner organisations instead of looking after our own clients.*

Hamish thought that it would be preferable for the FRC not to provide family dispute resolution services to Aboriginal people by referring them to the partner organisations. He explained: *When you get Aboriginal people through the door, they want to see you. They don't want to be transferred to one of those other [mainstream] services.*

Hamish also noted that the family law system makes it difficult to utilise 'bush courts' (circuit courts) or work with traditional dispute management practitioners in communities where traditional law is strongly observed.

Hamish's perception of how to achieve greater effectiveness through the FRCs is one of the reasons why he is undertaking training to become a registered family dispute resolution practitioner. Hamish has completed the training component required to achieve accreditation and he intends to complete a Certificate IV dispute resolution course to meet the remaining requirement for an appropriate degree, diploma or other qualification. The Certificate IV course is not offered in his local area and Hamish will need to travel a significant distance to undertake it. He is contemplating enrolling in some modules which can be done externally, and hopes to become accredited as a family dispute resolution practitioner before 30 June 2009.

6.5. Snapshot: Community Justice Group mediation in 'Gintji', Northern Queensland

6.5.1. Introduction and context

In a community known as 'Gintji'¹²⁴ in Cape York, Queensland, the community justice group (CJG) has

¹²² Through a process of tendering for the provision of FRC services, federal government funding is allocated to non-government dispute resolution service providers to provide FRC services in certain locations. FRCs are funded by FaHCSIA and the Attorney-General's Department.

¹²³ Before the 2006 reforms to the *Family Law Act* which, amongst other things, saw the establishment of FRCs, Indigenous Family Liaison Officers (IFLOs) were employed by the Family Court in Cairns, Alice Springs and Darwin to liaise with Indigenous families and communities in relation to proceedings before the Family Court. For a discussion of IFLOs see the Hon Justice Nicholson, A. 'Family Court Initiatives with Aboriginal and Torres Strait Islander communities' (1995) 3 (76) *Aboriginal Law Bulletin* 15.

developed a specific process for conducting mediations, involving both young people and Elders. The process is a blend of mainstream mediation models and traditional conflict resolution processes that can accommodate local customs and cultural protocols regarding such things as kinship obligations, avoidance relationships, and the balance between the two main tribal groups in Gintji.

6.5.2. The Community Justice Group mediation in Gintji

The two main tribes, 'Clan Ay' and 'Clan Bee', each have their own distinct languages, connection to country and customs. The CJG consists of 12 members representing a balance between the two clans and a mix of ages and roles, including Elders who are also regarded as Cultural Advisers. The membership ensures as much as possible the fair and equitable representation of all family groups, including those that come from outside of the local clan network. The CJG ensures that the interests of all families are treated equally and that no families or individuals dominate the make up of the CJG or its work.

The Coordinator of the CJG, a local Indigenous woman, is the only person receiving a wage at the CJG.¹²⁵ CJG members are not paid for their community justice work. Most members work on CDEP or in other jobs, or are retired and live on pensions, and an arrangement exists that supports those members on wages to attend CJG meetings and conduct mediations in work hours with no loss of wages. Some basic training in mediation has been provided over time, primarily by the Queensland Department of Justice and Attorney-General through its Dispute Resolution Branch, and most CJGs have adapted that training to suit their own communities. One of the primary roles that CJGs saw for themselves when first established in the 1990s was to resolve conflicts, heal the hurts and restore harmony in their communities.

According to a senior local Indigenous man, 'Jim', who has extensive experience in mainstream mediation, the locally developed model is a very effective cultural adaptation of standard conflict resolution models. Jim helped to develop mediation training for Justice Groups and in 2000 conducted a workshop in Cairns, attended by representatives from 13 communities across Northern Queensland, that resulted in the development of the 'Peacemaker' mediation model. Workshop participants were trained in the standard mainstream mediation model which they then adapted to make it more applicable to the social and cultural requirements of their communities. Jim recalled that the workshop was convened and sponsored by government departments which provide mediation and conciliation processes as part of their services – including Queensland Departments of Justice and Attorney-General (Dispute Resolution Branch), Department of Communities (Youth Justice Conferencing Branch) and the Family Court (Conciliation Unit). Jim identified this workshop as a critical event in the development of CJG mediation practice in Gintji and elsewhere, and commented that local CJGs' adaptation of the standard model had proved successful in many of their communities. Jim reflected:

*Some people think it is too difficult to implement mediation programs in communities where there is strong customs and cultural taboos. They put it in the too hard basket. But it's not too hard. It works really well, provided that once people have learnt the concepts of the mainstream mediation model [confidentiality, neutrality, how mediation is used to assist communication between parties], they know and understand that they can adapt it in their communities to meet those other cultural requirements.*¹²⁶

6.5.3. Planning for CJG mediations and the role of Elders

People at Gintji have strong customs and culture governing social interactions and kinship relations. These impact upon who can talk to whom, or be in the same room, and what can and can not be discussed with certain people, depending on relationships and status. Jim emphasised that, for these reasons, careful consideration needs to be given to who should be involved in the mediation process; participants, CJG members or support people.

Once a conflict is identified or referred to the CJG, the Coordinator scopes the dispute, identifies the

¹²⁴ This snapshot uses pseudonyms for the town, tribal groups and individuals. This snapshot utilises information provided by the CJG Coordinator and a senior member of the CJG, as well as from documentary sources.

¹²⁵ The Queensland Department of Justice and Attorney-General administers the CJG program and it is assumed that the Coordinator's wage is paid by the Department.

¹²⁶ Jim, pers comm. to the project manager, 7 August 2008.

main parties and issues, and identifies who could attend or help in some way to resolve the conflict. The full CJG then decides whether to mediate or not, how it will be conducted and then calls the parties together at a suitable time. Parties are informed that participation is voluntary, but because they are included in the planning, and because they usually want to end the conflict or problem, most agree to participate.

A key feature of the Gintji mediation process is the role of Elders. Prior to the 'Peacemaker' workshop, most communities expected that only Elders would conduct or lead mediations. During the workshop, all participants including Elders saw the benefit of having younger adults conduct the mediation, so that the traditional role, authority and respect of Elders would not be diminished or compromised. In Gintji, younger adults with good listening skills are supported by the Elders to facilitate and manage the mediations. Impartiality is considered most important and rather than support or make judgements on the content of a dispute or conflict, Elders primarily support the people involved to clarify what has happened and then find a peaceful and agreeable outcome that makes up for or repairs any harm done. Restoration is the main aim and the respect for Elders is often enhanced in the eyes of all participants by not having them directly managing the mediation. In addition to support, Elders will also remind participants of their value to family, community and each other, and how culture and traditional customs apply in those relationships.

Elders support the mediators and may add or interject at any point in the mediation. Often younger adults – who have more energy, are well educated and are seen as 'good listeners' – are chosen as mediators. Elders' roles are separate, and they will decide between themselves who of them is best suited to participate in any given mediation after considering such things as their relationships to the parties, the issues concerned, and the cultural aspects of the conflict. Elders support, reinforce and give authority to the mediation process; they are the overseers of 'fair process' and 'proper conduct' and only intervene to encourage participants or discourage any 'wrong' or disrespectful behaviour. Reminding participants of their ties to each other, their value and the importance of respect and good relations is an important way that Elders support participants to overcome conflict. The Elders also give their blessing and authority to any outcome reached between the parties, thereby strengthening the resolve of parties to abide by or carry out any agreed outcomes.

6.5.4. How mediations are conducted

Mediations in Gintji take place at the local courthouse, and can include police or any other community representative who has something to contribute. The members of the CJG (including Elders and mediator/s) sit at a large table at the same level as the parties and other participants. Disputing parties tend to sit on opposite sides of the room which basically forms a triangle of clusters (CJG, Party 'A' and Party 'B'). The mediation is usually opened with a brief summary of what is known or has been reported about the conflict, and ground rules such as:

- speaking in turn;
- no interrupting; and
- basic respect protocols: no name-calling, swearing or raised voices.

The mediator then asks each person in turn to describe what has happened, been said or heard or seen. The focus is kept strictly on facts until all the details are clearly stated, heard and understood. This helps to keep the emotions under control, and people are redirected to discussing only what has happened rather than why they think it has happened. Once everyone's version of events has been covered, the parties are encouraged to explore the impacts (and feelings) and what they think was behind the actions. This is where the scope for admissions and apologies develops. By this stage, the emotions can be allowed to run more freely and this adds to the appreciation of the impacts. Once people are clear about what has been said and done, they can more safely talk about why, which opens the way for better sharing and appreciation of the feelings involved and what may have fuelled the conflict.

Experience has shown that quick mediations tend to leave too many things unexplored and unresolved, so CJG mediations tend to take some time. The process is designed to provide a thorough coverage of what was done, by whom and why, before talking about the impacts and then moving on to what needs to be done to fix the problem and make up for any harm caused. Throughout the process, the parties involved are assisted and encouraged to talk openly and honestly and to make their own outcomes, agreements or solutions, much as is done in a mainstream mediation process. Supporting the parties to develop their own solutions is not only empowering, it also increases the 'stickability' of

any agreements they make.

Mediations in Gintji are often conducted in a mix of English and local languages and vernacular, with outcomes summarised in English for the benefit of those who cannot speak or understand local languages (police, school, council, visitors etc). Although Aboriginal people at Gintji speak English, it is often their second or third language, and many things, particularly those of a more personal nature, are more accurately explained and understood in language. With regard to explaining relationships and emotions, many of the language words and terms cannot be readily translated into English without losing their impact or some meaning. Often apologies and things said to 'make up' towards the end of a mediation will be said in language. Apart from being more easily understood, there is also a traditional strength in this, and an assurance that the spoken word amongst Aboriginal people is sacred when spoken in language.

The Coordinator of the CJG explained that:

*People get embarrassed if they have to speak in English first... It is hard for people to say what an issue really is in English - sometimes English language is too direct... Talking in language first means that people can go around an issue.*¹²⁷

The majority of disputes dealt with by the CJG are family problems.¹²⁸ While often they deal with teenagers, people of all ages can and do use the CJG. Emphasising that the CJG is a service which promotes non-violent approaches to conflict management, the CJG Coordinator stated: *It is a place where men can talk about their feelings instead of using their fists.*¹²⁹

6.5.5. The CJG process at work

The following passage, based on the reflections of the CJG Coordinator,¹³⁰ provides an example of the CJG process at work:

A senior man was in dispute with his daughter about her care of her children. The daughter was in her late 20s and he thought she was drinking too much. The family was frustrated with her and believed she wasn't caring for her children properly. They were 'growling' her and there was a big fight in the street. Some of the family members were charged with public nuisance and their cases were brought before the Magistrates Court.

The CJG made a submission to the Magistrates Court and asked for the matters to be remanded to allow mediation to take place. The Magistrate allowed it. The father, brothers, sister, and the daughter participated in the CJG mediation. The family members talked honestly and everyone got to speak their minds. This was significant because the father was very head-strong man and rarely listened to others' points of view. The mediation created the right environment for the father to listen to the other sides and to come to a resolution with his daughter.

6.5.6. A local process which faces limitations in servicing by government

An evaluation of the Queensland Aboriginal and Torres Strait Islanders Justice Agreement, the governmental framework within which CJGs operate, was conducted by Professor Chris Cunneen and others in 2005.¹³¹ The Report made a number of findings in relation to the operation of the CJGs generally. Particularly in relation to CJGs' dispute management functions, the Report stated:

During the research it was common for CJGs to describe mediation as an important part of their ongoing daily work. Mediation might be related to family, kinships or community

¹²⁷ CJG Coordinator, pers comm. to the project manager, 28 August 2007.

¹²⁸ According to the CJG Coordinator, when the CJG was first established any kind of conflict or argument in the community would be brought in for mediation by the CJG. However the CJG felt that it was replacing the role of the local police. The CJG negotiated with the police and community as to what sorts of disputes were appropriate to mediate. Consequently, the CJG only deals with disputes if the family members agree to mediate and does not deal with disputes involving violence.

¹²⁹ CJG Coordinator, pers comm. to the project manager, 28 August 2007.

¹³⁰ Ibid.

¹³¹ Cunneen, C., Collings, N. & Ralph N. *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, Institute of Criminology, University of Sydney Law School, Sydney, 2005.

problems. Many issues are complex – such as community disharmony caused by the suicide of a teenage girl, or the removal of children by the Department of Child Safety. The demand for mediation may derive directly from the community or involve matters referred by either police, the courts or other agencies.

The Report also identified deficiencies in access to training among most CJG members:

Very few CJG members had received training and this was acknowledged to be a problem. 'No-one has any proper training in mediation but we try to work through the issues. We have been developing rules, but we do need training – this is a big issue.' (CJG coordinator)¹³²

At the micro level the Gintji CJG mediation process exemplifies an effective 'locally owned' practice – a form of dispute resolution which has evolved in response to the cultural make-up and politics of the local Indigenous community. However at a macro level it appears that CJGs are struggling to fill the gap left through what Cunneen and others described as inadequate service provision by government.¹³³ The Cunneen Report noted the range of demands placed on CJGs by government agencies, including:

- providing assistance in locating young people and bringing them to court or youth justice conferencing;
- preparing reports and advising the Department of Child Safety in relation to child protection matters;
- liaising with local police;
- providing advice and assistance to the courts;
- providing interpreting services;
- involvement in the supervision of offenders on community services orders, corrective orders or probations; and
- responsibility for making decisions in relation to Alcohol Management Plans, including making declarations of dry areas and carriage of alcohol.

The Cunneen Report also noted a different set of demands placed on CJGs from within the community, including:

- mediation;
- assistance with night patrols;
- community referral and advice (acting as a drop in centre); and
- providing access to office facilities for the community, such as a computer, phone, fax or photocopier.

The Cunneen Report asserted that in most cases, *inevitably, all this work falls on the [CJG] coordinator,*¹³⁴ and further noted that *there has been a growing list of demands placed on CJGs to the point where their long term viability is under threat because of the workload and lack of resourcing.*¹³⁵ These statements highlight the vulnerability of CJG services and points to the need for greater institutional support to help CJGs meet all their stakeholders' needs.

Anecdotally it appears that some CJG resourcing issues have been alleviated by the recent transfer of responsibilities from the former Department of Aboriginal and Torres Strait Islander Policy to the Department of Attorney-General and Justice. However at the Gintji CJG, the Coordinator position is still the only paid role and CJG members continue to provide their services without payment, and many of the challenges for CJGs identified in the Cunneen Report appear to remain.

6.6. Snapshot: Nguiu Jealousy Program, Tiwi Islands

6.6.1. Introduction and context

The following program was identified in the course of conducting research for the Tiwi case study. Like TYDDU, the 'Jealousy Program' operates at Nguiu, Bathurst Island, in the Tiwi Islands. It is an initiative

¹³² Ibid, 138.

¹³³ Ibid, 141.

¹³⁴ Ibid, 138.

¹³⁵ Ibid, 102.

of the Indigenous Family Violence Offender Program under the umbrella of the Department of Correctional Services.

6.6.2. Nguiu Jealousy Program

The program was designed by Tiwi people as a response to the fact that jealousy is often a key trigger in family violence.

Where people are charged with a family violence offence they are, if the circumstances are appropriate, referred to the Jealousy Program. The first step of the program involves a male and female team from the program observing the people involved for a period of time. This allows them to assess a range of issues and to decide on the most appropriate ways to intervene. Then team members separate and the male staff member meets with the man or men involved and the female staff member meets with the woman or women involved.

During these separate sessions the staff assist them to identify and explore their feelings. This is done in a variety of ways including through discussion and the use of drawings and pictures that allow people to 'show' rather than talk about their feelings.

Following the separate sessions, all involved are brought together and encouraged to discuss their issues and how to manage the situations where their 'jealousy' may arise. Once the issues have been resolved or settled the process concludes by bringing in the children of the participants. This ensures two things: firstly, that any issues the children have are also considered and discussed and, secondly, that the children have an opportunity to see that issues involving their parents have been settled. The staff check carefully that children genuinely see and believe matters are settled, as they are aware that if children are not included they can retrigger the problems.

Staff involved with the program explained to researchers for the Tiwi case study that the program has been operating for five years and that they are starting to see a definite reduction in the number of repeat offenders.

6.7. A note about land disputes

In Chapter 2, the constraints the Project encountered in carrying out case studies into land or native title disputes were noted. The Project has however been able to benefit from an existing body of literature, including the research into native title mediation and facilitation practice carried out by the IFaMP at AIATSIS; the work of Dr Loretta Kelly in relation to the development of Aboriginal dispute resolution in the native title context;¹³⁶ the work of Professor Marcia Langton and others as part of the Agreements, Treaties and Negotiated Settlements Project at the University of Melbourne;¹³⁷ various case studies conducted by the Human Rights and Equal Opportunity Commission;¹³⁸ and a recently published book by Dr Kim Doohan on the history of relations between Aborigines and miners at the Argyle Diamond Mine in the Kimberley region of WA.¹³⁹ A selection of relevant findings is provided below.

Many of IFaMP's conclusions mirror those of the Project. They include:

- the need to develop more holistic approaches to native title mediation, including co-mediation, which recognise and account for the Indigenous community and whole-of-government context as well as the legal context;
- the incorporation of Indigenous expertise into native title mediation processes, and support for the development of such expertise, including the establishment of a national network of Indigenous process experts;
- the need to develop standards and/or a code of ethical conduct in relation to the practice of native title mediation; and

¹³⁶ Kelly, above n 28.

¹³⁷ Langton, M., Tehan, M., Palmer, L. et al. (eds) *Honour Among Nations?: Treaties and Agreements with Indigenous People*, Melbourne University Publishing, Carlton, 2004.

¹³⁸ Aboriginal and Torres Strait Islander Social Justice Commissioner. *Native Title Report 2006*, Report No 2, Human Rights and Equal Opportunity Commission, Sydney, 2007; Aboriginal and Torres Strait Islander Social Justice Commissioner, above 5.

¹³⁹ Doohan, K. *Making Things Come Good: Relations between Aborigines and miners at Argyle*, Backroom Press, Broome, 2008.

- the need for training in mediation/facilitation that is relevant to Indigenous practitioners who do not have experience in native title or (mainstream) training.

In Toni Bauman's paper, *Waiting for Mary: Process and Practice Issues in Negotiating Native Title Indigenous Decision-making and Dispute Management Frameworks*,¹⁴⁰ a 'case study' format provided the basis for exploration of conceptual and practical issues in native title mediation, and emphasised the importance of process design, negotiating contingency plans, developing a decision-making and dispute management framework at the outset of processes, and relationship-building. The paper also addressed issues of free prior informed consent and the need for locally based process experts to deal effectively with Aboriginal cultural approaches to conflict.

A series of case studies based on interviews conducted with Aboriginal people involved in native title mediation were reported by Kelly, a member of the Project's RCG, as part of her doctoral thesis on native title mediation and Aboriginal dispute resolution.¹⁴¹ Kelly's thesis explored the emotional costs of native title disputes and in particular the effects of poor mediation practices. Her work emphasised the need for Aboriginal practitioners in the native title context and, like IFaMP, concluded that a national network of Aboriginal practitioners was required to support, develop and promote the practice of Aboriginal dispute resolution.

In *Making Things Come Good: Relations between Aborigines and Miners at Argyle*, Doohan describes the historically strained relationships between local Aboriginal groups and the mining company operating the Argyle Diamond Mine. The diamond mine is situated in Barramundi Gap, a place of significance to local Aboriginal people, particularly women.¹⁴² Aboriginal resistance to the proposed mine, and dissatisfaction with the implementation of a 'Good Neighbour' agreement between the mining company and local Aboriginal people affected by the mine, caused various disturbances and tensions from the late 1970s until the late 1990s. The proposed closure of the mine in 1998 precipitated a renewed agreement-making process between local people and the mining company. Doohan argues that as part of this process, local Aboriginal people increasingly turned to ceremony and ritual performance in order to build better relationships with their non-Aboriginal neighbours. The use of ceremonial performance – for example to welcome newcomers or dignitaries to the mine site, or in the event of a death – became important mechanisms by which Aboriginal people asserted their spiritual connection to Barramundi Gap and engaged with miners and the mine site on their own cultural terms. The miners were incorporated into the ceremony as active participants in the performance, which in the view of some local Aboriginal people had been a successful strategy to *make them think about culture* and improved the miners' ability to respond to local people appropriately.¹⁴³

The Aboriginal and Torres Strait Islander Social Justice Commissioner's *Native Title Report 2006* includes a case study on the Argyle Participation Agreement – a key outcome of the agreement-making process explored by Doohan's book – describing it as a *high water mark example* of a negotiation process for an Indigenous Land Use Agreement which reinforced the importance of Indigenous models of governance. The case study also highlighted the ways in which the Agreement was tailored to meet the needs and aspirations of traditional owners and industry parties.¹⁴⁴

6.8. Conclusion

This chapter has considered a series of snapshots in managing disputes in the Indigenous context. Many of the issues raised have resonances with those explored in the case studies, for example in relation to the cultural and community context of disputes, the role of Elders and local governance structures, and the importance of institutional support and resources to enable the process to develop, evolve and be sustained. The next two chapters draw on the Project's case studies and snapshots examples to comparatively analyse, and distil lessons from, the research as a whole.

¹⁴⁰ Bauman, T. 'Waiting for Mary: Process and Practice Issues in Negotiating Native Title Indigenous Decision-making and Dispute Management Frameworks' (2006) 3(6) *Land, Rights, Laws: Issues in Native Title* (Australian Institute of Aboriginal and Torres Strait Islander Studies).

¹⁴¹ Kelly, above n 28.

¹⁴² Doohan, above n 139, 17.

¹⁴³ *Ibid*, 109.

¹⁴⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 138, 15 & Chapter 5.

Chapter 7

Lessons from the case studies: practice issues in Indigenous dispute resolution and conflict management



7.1. Introduction

The case studies and snapshots in this report cover a range of Aboriginal dispute resolution and conflict management situations, reflecting a continuum from ‘community owned’ processes, such as Tiwi interventions and Community Justice Group mediations, to processes and services which are located within or alongside mainstream services such as NSW CJs and FRCs.

The Project’s research does not purport to represent the vast range of processes and services which are used for Indigenous dispute management in contemporary Australia. Yet, as a collection of studies enquiring into effective dispute management practices, they raise policy and practice issues which have relevance across the range of contexts discussed. Among other things they demonstrate that effective dispute management practice is marked by an ability of practitioners to tailor and design processes, in collaboration with the disputants, to match the unique characteristics of each situation. This chapter, and Chapter 8 following, present a comparative analysis of the Project’s case studies and snapshots. These chapters rely on and incorporate analytical work of the principal researchers of the Halls Creek, NSW and Tiwi case studies.

This chapter discusses:

- the role of ‘culture’ in Indigenous dispute management;
- the importance of preparation;
- issues in designing dispute management processes;
- implementation and sustainability of agreements; and
- qualities and skills of an effective practitioner.

This chapter also identifies a series of critical factors for effective practice in Indigenous dispute management. The following chapter takes these factors as a starting point to discuss what is needed to support effective practice, and identifies a number of strategies for their implementation.

7.2. The role of ‘culture’ in Indigenous dispute management

In any dispute management process, including those involving Indigenous and other culturally diverse communities, there is a need to take into account a range of factors contributing to the conflict context, not only those related to culture. In identifying factors contributing to a dispute, it is important to remember that Indigenous Australian cultures are diverse. Cultural understandings, priorities and responsibilities to land and kin differ markedly between and amongst Indigenous communities across Australia.

Culture is not a fixed, bounded entity: it is produced by interactions and interplays between people in context. Cultural meanings are embedded in the social, economic, and political dynamics of a community and in individual emotional, personal and psychological needs and understandings. There is no single, immutable Indigenous culture, nor are there pre-existing ‘traditional’ dispute resolution processes which can be used as a formula to manage all conflicts involving Indigenous peoples. As the case studies and snapshots show, every dispute is different, and every process is a site of collaboration and negotiation.

Whether living in urban, regional or remote locations, Indigenous peoples have distinct cultural identities, values and beliefs, emerging from their past and present conditions. This fundamental aspect of Indigenous life must be carefully and respectfully addressed in the design and implementation of effective dispute management processes.

7.2.1. The importance of history

Understanding Australia's history of colonisation and its impacts on Indigenous peoples can help dispute management practitioners appreciate the underlying reasons for disputes and the ways in which disputes manifest in Indigenous communities. History may also contain elements critical to the management of conflict. For example, the Ali-Curung snapshot explains that a 'three-tier' dispute resolution process was developed to govern relations between four Aboriginal language groups that settled there when the community was established by government in the 1950s. Similarly, the situation in the Thetown snapshot is contextualised by the forced settlement of Aboriginal groups in the area, and the consequent politics of local groups in an isolated and disadvantaged community seeking to establish new forms of power to deal with a new cultural, social and economic order.

In recent decades, there have been significant changes in government policies of engagement with Indigenous peoples and laws which affect their lives. Despite such changes, Indigenous people continue to experience conditions of poverty, social dysfunction, unemployment and illness, which are a major cause of conflict within Indigenous communities, and between Indigenous and non-Indigenous people, groups and institutions. The NSW and Tiwi case studies exemplify how conflict can be fuelled by circumstances of disadvantage, such as where people are living in overcrowded and inappropriate housing, in stressful or culturally isolated conditions, and where family members are experiencing compounding financial and health related problems.

7.2.2. Kinship and other relationships between the parties

Relationships - and in particular kinship - are central aspects of contemporary Indigenous societies. Kinship systems can allow for the extension of kin relationships to locate everyone (including non-Indigenous people) in some form of relationship. Kinship relationships define inter-personal obligations, rights and privileges. They form a vital and intimate component of community governance, providing commonly recognised forms of constraint on inter-personal behaviour and promoting broad community cohesion. Kinship relationships can result in disputants holding a complex range of responsibilities and duties towards each other. The prioritisation of relationships in Indigenous dispute management processes contrasts to many non-Indigenous processes, where the emphasis is often on the dispute itself and resolution outcomes.

In the Halls Creek example, kinship structures and the dynamics between family members informed the preparation and design of the mediation process. The mothers and grandmothers - reluctantly at first but with increasing vigour - had been drawn into the fighting because of their need to back up their children, to look out for them, to protect and stand up for them. The mediation was essayed on the possibility that, just as the fighting had escalated up through the generations, so the willingness to make peace would cascade down through the generations - from the grandmothers, to the mothers, down to the daughters. They effectively recruited family solidarity, which had fuelled the conflict, to bring the conflict to an end. Once the grandmothers, and then the mothers, agreed to make peace, the dispute was reduced to its original proportions: a fight between sister cousins. The girls were left to confront their dispute themselves, no longer able to draw on cultural obligations or kinship as a power base to bolster or fabricate reasons to continue the fighting.

Although the mediators' approach in the Halls Creek case study drew upon the standing of the most senior women in the families, it did not place the onus of making peace on them as representatives of their families. It was understood by all parties that peace could not endure unless the girls made peace with each other, directly and personally. The grandmothers simply set the pace for peacemaking and left it for the other generations to follow. They did not abandon the other parties or force a peace upon them. Rather, the older women withdrew the cultural impetus for the girls to *back up* their families, replacing it with an example - tinged with obligation - to make peace and restore mutual understandings and kinship connection.

In the Tiwi case study, the TYDDU intervention program is introduced as a relationship-focussed, Tiwi-driven process which draws on the local Skin Group kinship system. TYDDU offers ongoing opportunities for Tiwi to come together and resolve the normal and natural tensions and fights which make up family and community life, and provides positive role models for Tiwi people dealing with conflict. Tiwi people access TYDDU knowing that the service employs members of all Skin Groups. They can therefore feel confident that the service has been designed for them.

The process used at TYDDU evolved in response to the Tiwi community's need for a local way to deal with local disputes. It recognises that individuals are members of Tiwi families and part of the broader community. The TYDDU program may be seen not so much as a conflict resolution program, but as a stable, strategic process which continually supports, encourages and enables Tiwi to manage their own relationships.

Economic, social and political conditions have a significant bearing on the manner in which kinship and other relationships are played out. The identification of 'jealousy' by Tiwi as a major source of conflict, demonstrated in both the Tiwi case study and the Ngiuu Jealousy Program snapshot, exemplifies how kinship obligations and historical relationships are implicated in disputes about material possessions and access to opportunities and resources. Kinship and family-based power dynamics were also at play in the feud examined in the Thetown snapshot. There, the families employed techniques to maintain and extend their respective power bases, including asserting influence over local businesses and incorporating 'outsiders' into the dispute. The Thetown snapshot illustrates the potential for practitioners to exacerbate conflict by failing to identify the substrata of kinship affiliations and power relations, or to explore the history of family relationships, in designing processes to deal with local disputes.

7.2.3. Reinforcing local authority and owning disputes

Managing conflict is a part of everyone's lives. Indigenous communities, like all communities, experience a range of conflict, although many Indigenous communities experience levels of violence and conflict that are exceptional and often lethal. The sources of exceptionally intense conflict in Indigenous communities in part stem from, and in part are sharpened by, historical and contemporary sources of disadvantage and alienation from the formal justice system. The ability of Indigenous communities to deal with conflict in ways that reflect their local practice and reinforce local community authority not only help make communities safer and more enjoyable places to live, they also go some way to addressing the sources of dysfunctional and systemic conflict. As Indigenous mediators and facilitators at an AIATSIS workshop in 2005 noted: *The most powerful thing is when a community is assisted in developing processes that are their own.*¹⁴⁵

The Ali-Curung 'three tier' approach reflects and reinforces the authority of Elders from all language groups in the community, while also recognising the ultimate decision-making power of the Kaiditch as traditional owners of country. The use of paintings by the Ali-Curung L&J Committee to explain and teach the process to others can be seen as an expression of 'ownership' of the process by the community.

The Tiwi case study highlights that TYDDU interventions maintain and incorporate Tiwi authority in a variety of ways. TYDDU's program uses a locally owned process, conducted in Tiwi language, which employs local ways of doing things. Interventions focus on healing and repairing family and community relationships, in line with Tiwi values and law, and offer opportunities for those involved to negotiate tensions according to local rules governing kin behaviour. The intervention process has built on local Tiwi knowledge and experience in its development. As a result Tiwi people have a strong sense of TYDDU as offering a relevant and accessible service that they genuinely want to use.

Several of the case studies and snapshots – particularly the Tiwi, Gintji and Ali-Curung examples – demonstrate how dispute management can become a normalised part of the everyday life and culture of a local community. In each of these examples, local people viewed Indigenous dispute management as part of the cultural fabric of their community: strengthening existing local practices, kinship structures and religious traditions, and providing a positive way of managing community business. While each of these examples concerns remote Aboriginal communities, ownership of processes by Indigenous people who are involved in them is equally important in urban or rural contexts. The ability for Indigenous parties to feel a sense of ownership of the process ultimately depends upon whether the process is sufficiently responsive to their cultural understandings and needs to attract trust and allegiance.

¹⁴⁵ Kingham, F. & Bauman T. *Report on Proceedings of Indigenous Native Title Mediation Practitioners Workshop 17 - 18 February 2005*, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2005, 21.

7.2.4. Rituals and ceremony

Rituals and ceremonies can provide opportunities for parties to build mutual understandings and respect, to restore fractured relationships and to mark the 'end point' of a dispute – celebrating the outcome of a dispute resolution process in a culturally meaningful way. Ceremonial events also have the potential to contribute to broader processes of reconciliation and healing among communities and cultural groups. They can have important relationship-building functions: the Argyle Diamond Mine agreement-making process referred to in Chapter 7 exemplifies a situation where traditional owners increasingly turned to ceremonies as a way of communicating with miners and influencing them.

'Ceremonies' and rituals in the Indigenous dispute management context can take a range of forms. In the NSW CJC case study, rituals associated with the sharing of food and drink provided opportunities for the parties to exchange reconciliatory gestures. In the Tiwi example, the ritual of prayer – including the Serenity Prayer, drawn from experience of Alcoholics Anonymous, and the Lord's Prayer, reflecting the strong Christian traditions in the Tiwi Islands – is often employed by TYDDU to open and close interventions. By contrast, one of the Halls Creek mediators, who was familiar with alcohol counselling techniques, stated that the Serenity Prayer *wouldn't mean much* to local Aboriginal people: *You have to use what you learn and change it to run it back here at home.*

Whether or how to incorporate ceremony or ritual into a dispute management process is a matter to work through with the parties, by identifying what is appropriate and facilitating its taking place. In the Thetown snapshot, it was apparent that the free lunch organised by government department to celebrate the end of the feud did not have the same 'ceremonial' meaning for the parties to the dispute as it did for those organising the event. Many local people had left town in protest at the way in which the mediation had been organised and did not recognise the mediation as having reached a binding agreement to stop the feuding.

7.2.5. Role of Elders

Much has been written about the role of Indigenous Elders in decision-making and dispute management¹⁴⁶ and it is clearly important to respect Elders' authority. While Elders can be essential to the effectiveness of a dispute management process, their function will differ from context to context, community to community. In the Gintji CJG snapshot, the role of Elders is described in terms of providing support, reinforcement and authority for the process; rather than intervening actively. Within the Gintji CJG mediation, their purpose is to remind participants of their ties to each other, their value as members of family and the community, and to give their blessing and authority to any outcome reached between the parties. At Ali Curung, Elders are brought in after a dispute to support Night Patrol workers. If the parties cannot negotiate an acceptable outcome, the matter is then referred to a community forum in which traditional owners are involved in making a final decision.

No one is immune from conflict and Elders can themselves be parties to disputes. The Halls Creek case study highlights the subtlety, and potential limitations, of the role of Elders in managing intergenerational conflict. In that case, the senior women – the grandmothers – had become drawn into the feud. A carefully designed process was needed to ensure that their status was not undermined by the mediation process. Their seniority was harnessed in the peacemaking process: they demonstrated to the younger generations that peace could be achieved. The grandmothers were vital in making the first connection between the families, drawing on a longer history of friendship, rather than enmity. However it was appreciated that their actions would be insufficient to bring about an end to the feud and that each echelon of the family had to make peace independently. The mothers making peace increased the intra-family influence, but did not replace the vital factor of an agreement between the girls themselves. The Elders' were part of a catalytic process; but not 'the solution.'

¹⁴⁶ See, eg, McIntyre, P. 'Some reflections on the role of elders in decision-making in Indigenous communities' (2001) 3(9) *Australian Alternative Dispute Bulletin* 109. See generally Brockwell, S. et al. *Culture, Conflict Management and Native Title: An Emerging Bibliography*, Report No 4, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2005.

7.2.6. Gender

It has often been noted that there is a separation of men's and women's business in Indigenous communities. Processes which involve male and female staff, working together and/or separately, can be effective in delivering services which are relevant and accessible to men and women respectively.

The involvement of men and women was clearly important in many of the case studies and snapshots. The Nguiu Jealousy Program, for example, recognises that separate sessions are required for men and women to express their feelings, and also that family members need opportunities to come together, with the children if appropriate, to deal with the issues in a whole-of-family response. Working with men and women separately was a key strategy in planning for initiatives within the Ali-Curung Law and Order Plan. In the Tiwi case study, men and women from all four of the Skin Groups participate in TYDDU interventions.¹⁴⁷ That said, Tiwi interviewees recognised that a predominance of interventions are conducted by senior men assisted by younger women and identified a need for more senior women to be involved in the provision of services.

In the Halls Creek case study, two of three practitioners selected to mediate the feud were male: all parties were women. In those circumstances, matching the gender of the practitioners to the parties was of less concern than selecting the most effective team of practitioners who were known, trusted and respected by the parties.

In general the case studies and snapshots suggest that, while there are specific factors affecting the involvement of men or women in any particular case, dispute management services that offer processes in which both men and women can participate may be more effective, because they offer inclusivity and are able to cater for the distinct needs of men and women. Effective practice in any dispute requires negotiating the approach to gender issues with men and women, separately and together as appropriate, as an explicit part of the process design.

7.2.7. Dispute resolution and conflict management 'models'

The NSW case study sets out a '12 step' mediation model (see also Appendix D) which, broadly, parallels those employed by many other mediation services. Applied with flexibility, this model – or versions of it – can result in successful outcomes in the Indigenous context. However, the effectiveness of any particular model or variation is dependent on a range of factors, including the ability of practitioners to deal with cultural differences within the process and to understand socio-economic and linguistic conditions of Indigenous peoples.

Although practitioners in the case studies and snapshots may not have received training in the stepped mediation model, the processes they employ sometimes reflect a similar conceptual approach. For example, the TYDDU intervention process incorporates:

- party identification and preparation;
- bringing all affected parties together in one place;
- establishment and reinforcement of clear ground rules;
- allowing and encouraging those involved to air their grievances;
- encouraging discussion of issues and feelings;
- moving to negotiation and resolution of differences; and
- responsibility for resolution resting directly with those involved.

There are however key differences between TYDDU interventions and the model employed by NSW CJsCs. These differences include that TYDDU interventions:

- do not recognise a distinct '12 steps' in their process;
- do not use caucus or private sessions during an intervention;
- are managed by at least three or more TYDDU staff; and
- involve Tiwi staff in a much more active role, for example by encouraging the parties to apologise and move to resolution.

¹⁴⁷ Northern Territory Department of Community, Development, Sport and Cultural Affairs above n 83.

The Gintji CJG process is also broadly informed by the stepped model, although it too has distinctively local characteristics, such as in relation to the role of Elders, described earlier.

Critical factors for effective practice

The role of 'culture' in Indigenous dispute management

- Recognise that cultural issues are inseparable from other issues affecting Indigenous peoples' lives, including historical and contemporary issues.
- Ensure that local services include staff members from each relevant cultural group in the community to enable greater local ownership of the service.
- Manage conflicts in negotiation with parties in ways that are congruent with the parties' cultural values, priorities and governance structures – including kinship protocols, respect for Elders and traditional owners, use of ceremony, and approaches to gender.
- Assist the community to develop processes that are owned by the community.
- Evolve processes and services in response to local needs and issues.
- Adapt and modify approaches according to the context in which they are employed.

7.3. The importance of preparation

The manner in which parties engage with the dispute management process affects their perception of the process and their willingness to participate in it. Issues to be considered in preparing for dispute management include: procedural options; whether the situation is appropriate for mediation; who is to be involved; whether the parties wish to participate; and how the process is to be explained to participants. Thorough preparation is essential. The negotiations which occur during the preparation phase have a major impact on the success of the dispute management process overall.

7.3.1. Pre-mediation procedures

Disputes are usually referred to community mediation centres, such as NSW CJsCs, by other institutions or by parties themselves. At NSW CJsCs, when a matter is first referred, it is dealt with by a CJC intake officer – or 'mediation advisor' – who assesses the suitability of the dispute for mediation and what pre-mediation processes are appropriate. Most intake is done by mediation advisors either by phone or in person at the CJC office and in some circumstances – such as in complex multi-party disputes or, relevantly, where there is one or more Indigenous parties – the mediation advisor may arrange for face to face pre-mediation to be conducted by a practitioner trained in pre-mediation. The NSW case study illustrates that mediation advisors at the Wollongong CJC were responsive and well trained; they acted appropriately in receiving the complaint, logged it in a timely manner, and decided that the pre-mediation would be most appropriately conducted by an Aboriginal pre-mediator.

As explained in the NSW case study, a person conducting intake at CJsCs is not usually the same person as the practitioner who conducts the mediation. In cases involving face to face pre-mediation, NSW CJsCs' standard procedure was for a pre-mediator to be a different person to the subsequent mediator of the dispute.¹⁴⁸ In the case study, however, NSW CJsCs engaged a local Aboriginal woman to both carry out pre-mediation and as co-mediator. This proved to be an effective strategy. Face-to-face pre-mediation enabled the Aboriginal practitioner to develop rapport with the parties, especially the Aboriginal parties, which helped to build their confidence in the CJC's service and encouraged their participation in the process. The Aboriginal practitioner explained the basic tenets of mediation to the parties in clear language and allayed their fears. Through the knowledge she gained in pre-mediation, the Aboriginal practitioner was able to make recommendations to CJsCs about how the mediation should proceed and how to account for the parties' age, gender, class and cultural expectations. By the time the parties attended the

¹⁴⁸ As noted in the case study, NSW CJsCs has recently changed its standard procedure in relation to the use of pre-mediators as mediators in the same dispute and is now more encouraging of pre-mediators also being mediators.

mediation, they had established solid relationships with the Aboriginal practitioner and felt prepared to participate.

The use of the same person as pre-mediator and mediator in the NSW case study highlights, as do many of the other case studies and snapshots, the central importance of building relationships of trust between the parties and practitioners. These relationships can have a significant bearing on the willingness of Indigenous parties to participate. However, in some circumstances there may be good reasons for a person other than the mediator to speak with groups in an intake or pre-mediation phase, and to then hand over to a mediator. If intake officers or pre-mediators are to be different from those conducting the mediation, they require specialist training and expertise similar to that of the mediator. They also need to be seen as having the same status as the mediator: if the mediator is senior to the 'intake' or 'pre-mediation' person, the mediator may not take his or her advice.

7.3.2. Who should participate in the mediation?

Identifying the 'right' parties – that is, the people who have the authority to settle the dispute and who can make agreed outcomes 'stick' – can be a difficult issue. This is why mapping relationships between the parties is a critical aspect of preparation, particularly in situations like the Halls Creek case, where the dispute was intergenerational in nature. Kinship obligations can also result in extended family members becoming involved in the dispute. The Tiwi case study highlights the importance of interventions being open to all members of the affected Skin Groups, including those who may provide support to those in dispute.

The Thetown snapshot clearly demonstrates the potential consequences of not mapping relationships to identify the 'right' people to be involved in the process. In the first attempt at resolving the Thetown feud, government officials invited equal numbers of representatives from the two feuding families to attend 'mediation,' but failed to include key family members who were critical to an agreed outcome.

In the NSW and Halls Creek examples, the parties were primary parties to the dispute – that is, they were the people most affected by the dispute. In native title disputes, the primary dispute is often about who the 'parties' should be. This can be a source of dispute not only between Indigenous people themselves, but also between them and institutions such as the National Native Title Tribunal or Native Title Representative Bodies, which are involved in identifying the appropriate parties.

Identifying the 'right' participants extends to identifying relevant support people. Although support people may not be directly involved in the dispute, they may be integral to the parties' involvement or in the implementation of particular outcomes. In the NSW case study, the community aged care worker's support was vital. She had the trust of the Aboriginal family, she was sympathetic to their position and actively encouraged them to participate in the process. She attended a separate one on one meeting with the Aboriginal pre-mediator, prior to the pre-mediation meeting with the Aboriginal parties. She also attended the pre-mediation meeting with the Aboriginal parties and debriefed with them after the mediation session. She was also willing to attend the mediation meeting as a support for the Aboriginal family.

Two other community service workers – an officer from the Department of Housing and an Aboriginal Community Liaison Officer with the NSW Police – were also crucial in supporting the Aboriginal parties' engagement in the NSW CJsCs mediation process. However, neither of them participated in the mediation. Their participation, even as observers, may have changed the dynamics of the mediation, possibly resulting in an undermining of the Aboriginal parties' sense of personal power to resolve issues themselves. It may have also affected how the non-Indigenous parties saw the process and their willingness to participate. This could have undermined the spirit and intent of the mediation process which was seeking to restore the relationship between all the neighbours. An approach which involved representatives of the 'police' or 'welfare workers' to reinforce the relationships and/or outcomes for them may well have been counter-productive.

As several of the case studies and snapshots demonstrate, disputes involving Indigenous parties can involve large numbers of people. The need to examine relationships between multiple parties –

even sometimes multiple communities – has implications for the amount of time and resources needed to properly prepare for a dispute management process.

7.4. Preparing the parties for effective participation

7.4.1. Processes that are entered into voluntarily by the parties

Many of those involved in the case studies saw that the effectiveness of the processes flowed from the parties' voluntary participation. As none of the practitioners had the power to compel the parties to attend, the process depended on the parties choosing to attend.

A number of factors can underlie a person's choice to enter a dispute management process. These might include encouragement by others, the desire to end the conflict, avoidance of the criminal justice system, family or kinship obligations, and financial pressures. Such issues need to be explored with the parties in the preparation stage in order that they understand and accept their own reasons for entering mediation, and so they 'own' their disputes and ways of dealing with them. As the Gintji CJG snapshot highlights, supporting people to arrive at their own solutions increases the 'stickability' of agreements made.

In the Halls Creek case study, while pending court charges provided a considerable incentive to participate, the parties had a choice about whether to participate and it was ultimately their decision to attend the mediation. Prior to the mediators' involvement, the parties were encouraged to participate by an Aboriginal Community Liaison Officer within the local police force and an Aboriginal staff member of the ALS. These people were known to and trusted by the parties; they also had a direct involvement in the pending court matters and an interest in alternative modes of managing the dispute. They understood that an abstract proposal for the parties to undertake mediation – without knowledge of the mediators with whom they would be asked to talk through intensely private matters – would be unlikely to be accepted. They therefore undertook preliminary work to identify potential practitioners, to assemble the proposed mediator team. They kept in contact with the parties after the initial offer was made and were involved in preparing the parties for the mediation.

The NSW case study suggests that the mediation in that case would not have occurred without the referral, support and follow up throughout the process of the three community workers, each of whom felt they were a critical factor in influencing the Aboriginal parties to attend the mediation. The community workers provided pathways to the CJs' services and encouraged and supported the Aboriginal parties to engage. The Aboriginal parties may have been reluctant at first to participate but, following the mediation, they confirmed that they would do it again.

The majority of TYDDU interventions are initiated by Tiwi themselves. This reflects their desire to deal with conflicts pro-actively and TYDDU's success in enabling them to do so. TYDDU staff cannot assume or enforce participation. Its voluntary nature – including the right to say 'no' to interventions – was regarded by interviewees as critical to its effectiveness. TYDDU staff undertake careful preparation with those involved in the dispute, as a means of building a climate of goodwill and a desire to participate. Staff responsible for convening interventions recognise that preparing the participants and establishing ground rules enable people to be 'primed' to attend and participate effectively in an intervention.

Each of the case studies and a number of the snapshots highlight that while there may be a range of factors and/or players that encourage people to attend mediation, the process is more likely to be effective if the parties voluntarily participate in it, and when practitioners use the preparation stage to build the parties' willingness to do so.

7.4.2. Processes that are court ordered

Mediation is increasingly being incorporated into the formal justice system or ordered in court proceedings. While none of the case studies or snapshots examines specifically court 'ordered' mediation, the Tiwi case study, the Ali-Curung, Nguiu Jealousy Program and Gintji snapshots explore processes that routinely deal with matters which have come into contact with the

mainstream justice system, and FRCs deal with matters which are legislatively required to go through family dispute resolution before court processes can be accessed.

The Halls Creek mediation process involved liaising with and reporting to the Magistrates Court. Magistrate Flowers spoke of a *great distance between my court room and the reality of life within the Aboriginal community* of Halls Creek. He recognised that the law and order kept by the police and backed up by the courts, is significantly different from the law and order kept between Aboriginal people and backed-up by families. His comments highlight that a court sentence may not match what is required for justice and resolution in the eyes of the community.

Structuring dispute management around court proceedings has some benefits: it can offer a focal point for the assessment of the potential of a proposed intervention, provide definite entry and end points, and avenues of review. There is, however, a need for caution, as the mandatory nature of court ordered or annexed mediation can lead to a tendency to neglect the appropriate and careful preparation of those participating. Arbitrarily imposed court timeframes can significantly reduce the effectiveness of a dispute management process if they do not match the parties' needs.

Critical factors for effective practice:

The importance of preparation

- Design the preparation phase thoroughly, allowing sufficient time and resources to implement specialised intake procedures as appropriate.
- Ensure that people who conduct intake and pre-mediation are trained in preparation techniques which are complementary to dispute management.
- Map relationships to identify whose dispute it is and appropriate support people. The dispute may be 'owned' by individuals, or small or large groups, depending on the nature of families and communities involved.
- Build the parties' willingness to participate by fostering goodwill, instilling confidence and trust, and explaining the process to them in clear language.
- Support local people to take responsibility for fixing their own problems, by initiating dispute management processes themselves.
- Prepare thoroughly for court ordered or annexed processes, ensuring that timeframes are appropriate for the parties as well as the court and practitioners.

7.5. Issues in designing dispute management processes

Effective dispute management practices are responsive to, and driven by, the needs of the people to whom the process is to apply. It is important that practitioners work with the parties to design and settle the procedural elements of the process prior to the consideration of substantial issues in the dispute. Examples of procedural elements to be explored with the parties include: availability and timeframes, forms of representation, and communication strategies. Practitioners also need to identify the parties' values, practices, priorities and governance mechanisms and check if and how to incorporate these into process design.

7.5.1. The 'right' practitioner

Choosing the 'right' practitioner is a critical aspect of process design and involves decision-making by practitioners and their agencies, and importantly, the parties themselves. In choosing a practitioner, some considerations, such as their training, references from others, potential for conflict of interest, competence and availability, are always important. Other considerations, such as the need to be known to the parties, will vary from community to community and context to context.

NSW CJs maintain a panel of mediators. As part of the intake process, NSW CJC mediation advisors decide who on the panel would be appropriate to mediate a particular dispute. In matching mediators to parties and disputes, the mediation advisor considers the demographics of the parties – for example, Aboriginality, gender and age – as well as a range of other factors including the skills, training and experience required, availability, requests made by the parties themselves, and any relevant policies. Being able to choose from a panel of practitioners, both

Aboriginal and non-Aboriginal, and with various attributes and experience, increases the likelihood of an acceptable fit between the parties and practitioners.

The panel structure of NSW CJs allows for mediators to be replaced if they are not suitable to mediate the dispute. For example, during an initial attempt at mediation in the NSW case study, when concern was expressed about the appropriateness of the first male mediator, he was quickly replaced by an alternative male practitioner. Other agencies, who employ mediators on staff, may allocate mediations to particular mediators based on the work load of the latter rather than on a specific assessment as to their suitability, and may be limited in their ability to offer alternative mediators to parties.

All of the case studies and snapshots, with the exception of Thetown snapshot, involved Aboriginal mediators. In the Tiwi and Gintji CJG examples, the selection of practitioners to manage a particular dispute is affected by local kinship protocols. In both cases local people choose to access the service with full confidence that practitioners in the 'right' kinship relationship will be available to manage the process. Both services are carefully organised so that they are inclusive of all kinship groups: TYDDU employs Tiwi staff from all four Skin Groups; and there is equal representation of members of the two local clan groups in the Gintji CJG.

In the Halls Creek example, the 'right' practitioners were two senior men of the *East Kimberley mob*, and an Aboriginal woman, based in Kununurra, with professional training and experience in mediation. This practitioner team was selected by a group of people who were known to and trusted by the parties. The selection process occurred prior to approaching the families about participation. The identity and character of the mediators was considered vital to the prospect of the families being willing to engage in the process. The degree of 'closeness' between the practitioners and the families was carefully assessed. While they were of the 'same' mob or regional network of kin, they were not residents of the same town. This allowed the practitioners to be trusted by the parties, while also giving parties a sense of sufficient distance to enable them to feel comfortable in exposing their private business.

The Halls Creek case study also illustrates the difficulties Indigenous parties can have in accepting complete 'outsiders' as practitioners, even if they are Indigenous. One of the participants recalled attempts to conduct mediation in Halls Creek through an established Aboriginal ADR service in Perth: *There was a Noongar man they sent up here. People didn't want to talk to him. You have got to have knowledge of the background, information about the families, deep background knowledge. It's easier to get trust if they know you.*

Local knowledge guides the nomination of who might most effectively conduct an intervention as well as who cannot. Past dealings with the parties, kinship connections or the need to consider the degree of proximity between the practitioners and parties are all key considerations. Dispute management services therefore benefit from well trained Indigenous practitioners and staff who understand local issues and networks. The case studies and snapshots suggest that Indigenous people are more likely to approach and use services if they are met by Indigenous staff and have a choice of an Indigenous practitioner, particularly a locally or regionally connected practitioner.

The presence of Indigenous practitioners on a panel can be a major factor in the dispute being referred for mediation. In the NSW case study, the officer from the Department of Housing stated that she would have referred the dispute between the neighbours more readily, had she known that NSW CJs had a panel of Indigenous mediators.

Indigenous parties, however, may not always choose an Indigenous practitioner. Having a panel of practitioners, from which Indigenous and non-Indigenous practitioners with appropriate experience and training can be selected in a particular case, affords greater choice and can enhance the 'matching' of practitioners to parties particularly in disputes involving both Indigenous and non-Indigenous parties.

7.5.2. Co-mediation and team approaches

The case studies and snapshots suggest that effective processes in the Indigenous context employ co-mediation and/or team approaches. NSW CJs and a number of other community mediation

centres use only co-mediation approaches which prescribe complementary and alternating roles for mediators as part of the 12 step process. The Tiwi case study shows that interventions can involve a large number of people, and by working in 'teams' TYDDU staff are able to more effectively control the process. This also allows for the mentoring of younger Tiwi practitioners in how to manage interventions.

Even in disputes that have a limited numbers of parties, such as disputes between couples, having a male and female co-mediation team provides a balance of perspectives, as the Nguju Jealousy Program snapshot demonstrates.

In the Halls Creek case, one of the strengths of the practitioner team was that it brought together a range of skills and knowledge. The two male practitioners had an intimate local knowledge of the East Kimberley, were members of the AJC, and were known to the parties personally or by reputation. They could provide the female mediator with local information that she did not have. At the same time, she brought a degree of gender balance and procedural skills to the process, and was able to introduce the two men to techniques she had learned herself in training.

Working in teams enables practitioners to give each other support, debrief, be on the lookout for signs that the engaged mediator might miss, and provide checks and balances. A team approach also avoids a focus by parties on a single individual and can assist in managing parties' perceptions of bias.

7.5.3. Timeliness and responsiveness

Early intervention ensures that conflicts do not fester, and grievances and fights do not compound. The escalation of disputes increases the likelihood of involvement of the criminal justice system, and necessitates more complex, time consuming and resource intensive interventions. The ability to respond promptly to situations of conflict is therefore essential.

The NSW case study highlights the importance of well-established services which can respond quickly to referrals. Having personnel available 'on the ground' is imperative to identify conflict, to monitor and manage its progression, and to implement strategies to ensure that agreements 'stick.' Local or regionally based services enable this, and also assist in building relationships with local people, so that they feel comfortable and confident to access the service when they need to.

In the Halls Creek case study, the suggestion of mediation came at a time when the parties were tired of feuding, and apprehensive about the increasing physical danger to family members and the consequences of criminal prosecution. The mediators of the Halls Creek process thought that, even if an offer to intervene had been rejected, it could nevertheless have had positive results. It could have *sown the seed* for future participation by introducing the concept of mediation and raising it as an option to people who might be willing to engage in such a process at a later stage.

In the Tiwi case study, TYDDU's ability to respond quickly to requests for interventions was seen as central to its effectiveness. Tiwi people recognise the importance of responding promptly to conflict, and may initiate an intervention following the onset of the dispute or fight – often, the morning after. TYDDU staff recognise that people may not always be ready to attempt an intervention, however they see it as important to continue to promote interventions and to reflect to disputants 'the bigger picture' of a desire for community harmony and social cohesion in the Tiwi community. By virtue of being in the community, and through the links with the Night Patrol, TYDDU is often aware of disputes at the earliest possible stages which means that proactive and preventative strategies can be implemented.

By contrast, the Thetown dispute escalated to a level of intractability as a result of, in part, the absence of any mechanisms which could be accessed easily by those involved to deal with matters.

7.5.4. Identifying appropriate interventions

Conflict in the Indigenous can often be complex and may have underlying situational or systemic causes. Effective management often requires complementary strategies, before and after mediation. These may include counselling for grief, anger management or drug and alcohol

dependency, as well as financial planning assistance, legal advice and health care. It is important for practitioners to work with the parties to obtain a full picture of the dispute situation and to assess, with the parties, whether they may benefit from accessing other services, either in addition to or instead of mediation or dispute management.

Part of the effectiveness of the Tiwi intervention process is that TYDDU offers a range of programs that, while not directly related to dispute resolution, are capable of identifying needs for dispute management. TYDDU has evolved programs to address emerging or identified needs and the service ensures that those programs work together to refer appropriate matters for dispute management.

In both the NSW and Tiwi case studies, broader systemic factors – such as overcrowded, inappropriate accommodation and financial problems – contributed to the conflict. However, neither service was in a position to find solutions to these underlying causes of conflict, meaning that while individual disputes may be resolved, the likely systemic causes of them remain largely unaddressed.

7.5.5. 'Big meetings'

Many dispute resolution and engagement processes used in Indigenous communities take the form of community meetings, often as an initial step to address an identified conflict. However, while large meetings may be required in any multiparty contexts, individuals and groups need to be involved in making the decision to hold such a meeting. They also need to understand and agree to the purpose and ground rules of any meetings and be prepared to participate effectively in them. Without such preparation, 'big meetings' can inflame existing tensions and are unlikely to achieve sustainable results.

The Tiwi case study makes a distinction between TYDDU interventions – which may involve large numbers of people – and 'big meetings' of which Tiwi are wary. Tiwi interviewees identified that 'big meetings' are problematic for reasons including that:

- they are often attended by those who do not have a genuine part in the 'business';
- few ground rules are established to govern the process by which the meeting is conducted; and
- the lack of ground rules means that they are often filled with people who are argumentative and talk over each other.

It is sometimes the case that those organising 'big meetings' prioritise substantive elements of the process over procedural and emotional ones. Community meetings can be seen as a quick way to move things forward or get things done. However, getting a substantive outcome without proper attention to the process by which it is achieved ultimately reduces the likelihood of it being genuinely 'owned' by the parties or a sustainable agreement.

7.5.6. Choice of venue

The venue for any mediation is a matter of negotiation with the parties. Parties' views on venues cannot be assumed and need to be elicited in preparation processes. Practitioners also have to understand and account for the nuances around decisions about venues, as responses can depend upon who is asking and what parties are told about availability of venues.

That the chosen venue for the mediation in the Halls Creek case study was the courthouse demonstrates that parties sometimes make 'unexpected' choices. Although the Halls Creek courthouse might have been seen as an intimidating place, and hence an undesirable venue for the mediation, it was preferred to alternative venues which were Aboriginal-owned. The alternatives had a number of drawbacks, including perceptions by the parties that they were aligned with particular local groups or families.

The ALS field officer in described the Halls Creek courthouse as a *neutral area*. In the words of one of the mediators, it was a *place where no one is going to hit each other*. The courthouse carried a sense of occasion for the parties, providing a formal setting for an 'informal' process intended as an alternative to court proceedings. One of the male mediators reflected that *some people are scared*

of courthouses... [But h]ere we saw blackfellas running the show. Authority for the resolution of a breach of the peace was held in Indigenous hands, and supported by the authority and significance of the setting. As such, there was a blending of the formal authority of the criminal justice system embodied by the Halls Creek courthouse – witnessed by police and ALS representatives – with a process largely conducted in accord with Indigenous values.

In the NSW CJs case study, the Aboriginal mediator determined that the local library was preferable to the courthouse, which was the alternative venue for the mediation. The library provided a comfortable and informal environment, it was light and airy, and had a kitchenette which became a site for informal peacemaking between the parties. The pre-mediation meeting with the Aboriginal parties was held by the river.

In the Tiwi case study, the public nature of the venue for interventions outside the TYDDU building was seen as a potential problem in some cases. In certain circumstances it was considered appropriate for interventions to be held in a public location to enable the community to ‘witness’ the ‘putting to bed’ of the dispute, but in other cases, such as a dispute involving a small family grouping, it was considered that participants would benefit from greater privacy. TYDDU’s decision to move the venue for some interventions to a more remote location reflects its ability to evolve processes in response to community needs and concerns.

7.5.7. Creating physically safe spaces

The lack of a forum in which to discuss concerns can – in the words of a participant in the Tiwi case study – *kill a community*. Dispute management services need to offer ‘safe’ and non-violent places to air grievances and express strong feelings. In the Tiwi case study, a supervisor described TYDDU as a place where there are *no sticks, no stones*. A similar sentiment was expressed by the Coordinator of the Gintji CJG in referring to the service as *a place where men can talk about their feelings instead of using their fists*.

The importance of practitioners rigorously enforcing the ground rules, and also allowing people to vent their emotions, is evident in each of the case studies. In the Tiwi case study, TYDDU staff move around responding to the emotions and issues of those involved, positioning themselves physically in relation to those who may be angry, and reiterating ground rules as required. In the Halls Creek and NSW case studies, the practitioners supported the parties to tell their stories and express frustrations in productive and restorative ways, and prevented potentially volatile situations from getting out of hand.

This is a skilful balancing act that ensures interventions remain ‘safe’ while at the same time supporting the ‘venting’ of strong emotions. Creating physically safe, non-violent and inclusive spaces for dispute management processes is an important aspect of preparation and design and one which needs to be reinforced continually throughout the mediation process.

7.5.8. Creating culturally safe spaces

A culturally safe space is spiritually, socially and emotionally safe, as well as physically safe, so that participants feel they are accepted and genuinely welcome.

One key aspect of creating culturally safe places is the involvement of staff and mediators who empathise with the parties’ values and understandings. In the NSW case study, the composition of the co-mediator team, comprising an Aboriginal woman and a non-Aboriginal man, was an effective culturally safe strategy. The Tiwi case study and the Gintji and Ali-Curung snapshots illustrate the cultural safety which comes with having local practitioners who understand cultural protocols regarding who can speak to whom, and how. The practitioners in these examples have ‘lived’ knowledge of the local context which assists them to manage conflict in culturally safe ways.

The language in which a process is conducted is also an aspect of cultural safety, and a crucial ingredient in building trust between the parties and the practitioner. In order to work through difficult issues effectively, participants need to feel able to express themselves and have confidence that they are clearly understood by the practitioner.

In the Halls Creek, Tiwi, NSW, Ali-Curung and Gintji CJG cases, the practitioners were able to communicate naturally in the language of the parties. The skilful employing of local Indigenous languages and vernacular, Kriol and/or Aboriginal English removes a level of discomfort for Indigenous parties, lends ownership to the process. As one Tiwi person explained, conducting interventions in the Tiwi language means that people feel they are fixing their own problems themselves; they *feel no shame* in the conflict. The Gintji snapshot exemplifies a process which supports participants to go *around* an issue by talking in language rather than talking about it directly in English. The ALS field officer in the Halls Creek case study emphasised that the parties *have to be free to talk. Talking the same lingo*. Trained and skilled interpreters, who understand their role in the process and can interpret technical legal or other unfamiliar concepts, are essential for parties who may not be proficient in English.

The use of silence and knowing when not to talk are also critical aspects of communication. Practitioners need to be aware of their own non-verbal communication, and skilled in reading others', including body language. Non-verbal communication strategies can be crucial to effective practice: the Ali-Curung women use paintings and stories to explain dispute management concepts and practices; the Nguuu Jealousy Program explores emotions through drawing and using pictures which allows Tiwi to 'show' rather than talk about their feelings.

Dispute management service providers and policy makers have a responsibility to design, develop and deliver services to meet the needs of all their clients, including people with culturally and linguistically diverse needs. Therefore where a service provider offers dispute management services to non-Indigenous and Indigenous people, it needs to be able to offer services that are effective in both the non-Indigenous and Indigenous contexts. This requires 'mainstream' services to be flexible and respectful of Indigenous approaches to service delivery.

The FRC snapshot indicates that people are more likely to use services that present culturally friendly environments – such as those with childcare facilities, playgrounds and areas in which people feel comfortable to communicate.

There is a need to map the full range of elements of an effective organisational model for delivering culturally safe processes to Indigenous people. Such a mapping exercise might build on existing programs which have been specifically developed for working with Indigenous people, and could also be informed by dispute management processes which have been developed for people from non-English speaking backgrounds.

7.5.9. Building relationships between the parties

Effective processes recognise the role of the practitioner as supporting the parties to build their own relationships. The case studies and snapshots highlight that relationships between the parties are the foundation upon which effective substantive outcomes can be built. In the Halls Creek case study, it was an intergenerational family relationship; in the NSW case study, it was a neighbourhood relationship; in the Tiwi case study, it was a program dealing with disputes primarily between extended family members.

All of these relationships are ongoing. This means that new disputes may arise in the future, and that no particular resolution or outcome will be the be-all or end-all. The emphasis in many non-Indigenous dispute resolution processes on disputes and 'resolution' has been criticised as resulting in practitioners *designing mediation and facilitation processes under extreme time constraints which may significantly disadvantage the needs and interests of Indigenous disputants*.¹⁴⁹

Notably in the NSW case study, the agreement reached by the parties acknowledged the ongoing need for respect for difference and good neighbourly relations. There was recognition of underlying issues of cultural difference and disadvantage. The parties' letter to the local Shire Council articulated a shared vision helped to build a renewed sense of community among the parties by addressing issues of mutual concern to them as neighbours.

¹⁴⁹ Bauman T. & Williams R. *The Business of Process: Research Issues in Managing Indigenous Decision-Making and Disputes in Land*, Report No. 1, Indigenous Facilitation and Mediation Project, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2004, 11.

7.5.10. Allowing sufficient time for the process

The research suggests that processes with a degree of open-endedness and flexibility about timeframes are better equipped to deal with the needs of parties, including issues emerging from changes in circumstances, and underlying disputes.

In each of the case studies, and in the Gintji snapshot, time frames were not strictly defined. This is in contrast to processes where a set time is allocated by the practitioner or service provider, such as at FRCs.

Quick mediations are avoided at the Gintji CJG as they *tend to leave too many things unexplored and unresolved*. The CJG process ensures sufficient time to canvass past events which have led to the conflict and to explore their impacts, before moving on to discuss resolution or restitution. Similarly, TYDDU staff do not push people quickly through an intervention, allowing time for comprehensive discussion of the issues involved and for natural energy levels to dictate when the process will conclude. There is no attempt to artificially exclude issues that those involved see as relevant. The high numbers of Tiwi participating in TYDDU intervention program is a clear sign that this approach is perceived as responsive within the Tiwi community.

As illustrated by the Halls Creek case study, it may also be necessary to allow time for those involved in the process to discuss it with others, and to make decisions away from the process itself.

7.5.11. Confidentiality and witnessing

There has been some uncertainty amongst mediation practitioners as to whom, and if confidentiality provisions should apply in Indigenous contexts. Some practitioners have argued that confidentiality applies only to the mediators; others see it as applying to both parties and the mediators. In mandated mediation processes such as those under the *Native Title Act*, confidentiality may or may not apply to parties and often does not apply to mediators as a result of their reporting responsibilities.

In the Indigenous context, as with many multiparty contexts, those involved may have representative and reporting responsibilities, meaning that confidentiality provisions need to be negotiated and confirmed with all participants. In community disputes, such as those in Tiwi or Gintji, it can be necessary for the broader community to witness or observe those in dispute resolving or settling issues. At TYDDU, in disputes or fights that centre on rumours or gossip, the community observing the key players putting issues to rest at an intervention acts to stop further dissemination of rumours throughout the community and helps to break a cycle of disputing. At Ali-Curung, the witnessing of dispute resolution by the broader community allows the community to 'see' that issues have been dealt with. In the Thetown snapshot, concerns were expressed by local people that the first attempt at mediation was a meeting held out of town, and was *not public*, which suggests that a more effective approach to resolving the feud may have been one that could be witnessed by the Thetown community.

Documentation and associated confidentiality requirements can themselves be a source of conflict. A lack of procedural transparency around the sharing of documents is also likely to escalate concerns about and trust in the process. In the Thetown example, in the first attempt to mediate the feud, the government officials organising the process did not want the information they proposed to collect on the history of the feud to be shared with the Indigenous families involved. In the second attempt, official records relating to a particular incident in the feud were given to one family who believed the information had been edited in favour of the other family. These examples illustrate the need for careful consideration about why and how documentation is collected and used. Such issues should be negotiated and agreed with the parties.

In disputes where the formal legal system is (or may be) involved, such as in the Halls Creek case, police officers and legal representatives may attend the mediation to 'witness' the process to observe, learn and report to the court on the outcomes of the process. Witnessing the Halls Creek mediation gave the police confidence to report to the Magistrate that a genuine agreement had been reached, and consequently to drop the charges. As in the Halls Creek case study, there may

also be an educative component to the police witnessing mediations, as it can increase their understanding of the potential usefulness of mediation as an alternative to more conventional responses such as laying charges and applying for restraining orders.

Whatever the process, balancing confidentiality requirements with the need for witnessing are matters to clarify with the parties. Discussions with the parties may explore the kinds of information which are likely to emerge in the process and whether (and how) they are to be kept confidential or disseminated. Parties need to consider their own needs and the needs of their communities. Clarification will not only be required at the outset, but also in the course of the process, and in relation to the reporting responsibilities of support people. The role of the practitioner is to broker an appropriate procedural agreement about whether the process should be confidential or 'witnessed.'

Critical factors for effective practice

Process design

- Build on work carried out in preparation to design effective processes.
- Engage with, and respond to, the parties' preferred ways of doing things and confirm the appropriateness and acceptability of the approach with the parties.
- Use team, co-mediation or panel approaches to:
 - better account for the broad range of interests and needs in multi-party disputes;
 - offer parties a choice of mediators including Indigenous practitioners that allows for matching their gender, cultural background, and other relevant factors such as localness; and
 - provide practitioners with mutual support and debriefing and offer opportunities for developing the skills of emerging practitioners.
- Establish local and regional infrastructure to facilitate access to services and to enable quick responses to referrals or requests for assistance to avoid disputes escalating to the point of intractability.
- Work cooperatively with other agencies to deliver complementary interventions in cases where parties are experiencing a range of problems.
- Consider who should be invited to attend any events or meetings after extensive discussion with parties. Bringing everybody together in 'big meetings' without adequate preparation will be ineffective.
- Ensure that all parties agree to the venue.
- Create physically safe places in which people feel comfortable to express their feelings, including the venting of strong emotions.
- Create culturally safe places which:
 - use language and communication styles that are understood;
 - involve appropriate support people for Indigenous parties, including interpreters; and
 - are located in casual environments, and childcare facilities and playgrounds.
- Promote and model effective non-violent ways of managing conflict.
- Respect the importance and complexity of relationships in the Indigenous context and design processes to build positive relationships between the parties.
- Allocate sufficient time to reduce the risk of repeated interventions which increase the overall cost of processes.
- Negotiate confidentiality and witnessing protocols with the parties.

7.6. Implementation and sustainability of agreements

The agreement reached in any dispute management process may appear, both to those involved and those 'outside,' as the most important thing. In many instances, people in a long running dispute may have no sense of how it can possibly be resolved. The experience of the families in Halls Creek in reaching a resolution was empowering and gave them intense satisfaction in their ownership of their own problems. As a mediator in the Halls Creek case study described it: *they didn't realise they had the ability to do that.*

7.6.1. Voluntarily made and 'owned' agreements

Outcomes are only as binding as peoples' commitment to them. The case studies and snapshots confirm that if people are pushed to 'settle' or 'agree', or if the agreement made between them is not genuine, the problem will continue.

As the Tiwi case study highlights, TYDDU staff see that they have a responsibility to encourage those involved in interventions to see the bigger picture, to apologise and move on, however they do not force those involved in the process to adopt this position. They seek to offer encouragement and recognise that for agreements to be genuinely accepted, those involved must themselves have a sense of ownership over what is said and agreed.

A dispute management practitioner may during preparation and/or during the process itself, find it helpful to canvass other procedural options with the parties if they are unable to reach agreement. This may mean, for example, that the parties agree to incorporate some form of authority, Indigenous or otherwise – such as Elders and traditional owners in the Ali Curung example, or even Magistrates.

The litmus test of any agreement reached in mediation is its genuine, voluntary character. This will depend upon the quality of the process. Regardless of the manner of entry into the process, any agreements reached and decisions made in mediation need to be voluntary.

7.6.2. Implementation and monitoring

While an agreement may be reached within a mediation process, the true test of that agreement is how it is implemented by the parties once the process is finished according to clearly understood implementation processes agreed by the parties in the mediation itself. Dispute management practitioners also need to assist parties in considering how they will review and monitor their agreements and how they will manage any changes to the agreement or unforeseen contingencies. This will include whether or not they wish to have a written or some other form of recorded agreement.

The case studies and snapshots demonstrate a number of approaches to recording agreements. For the NSW CJs and other community mediation centres, a written agreement is part of the prescribed stepped process, where parties write their own agreement and negotiate its wording. In contrast, resolutions in the Tiwi and Halls Creek case studies were not formally documented or written down. In Halls Creek, the parties shook hands and made peace, and this agreement kept the peace for a substantial period of time. Although some interviewees for the Halls Creek case study suggested that parties' agreements could be recorded and registered with the court, this approach was not generally favoured, as it could mean that the court becomes the governor of the agreement, not the parties. In the Halls Creek example the power to make and keep the peace remained in the hands of the parties.

The Tiwi case study shows the importance of monitoring issues that have been 'settled' and identifying whether there are outstanding issues that may need further intervention. The fact that TYDDU staff are community members means that they are in daily contact with those who participate in interventions and can work closely with the Night Patrol to monitor the outcomes of any intervention. TYDDU staff do not provide interventions with an expectation that people will be locked into agreements or settlements. Rather they see experiencing conflict as a normal part of life. As the Tiwi case study states, the nature of the intervention program is ongoing and cyclical.

Critical factors for effective practice

Implementation and sustainability of agreements

- Assist the parties to reach an agreement that is made voluntarily and genuinely, thereby ensuring that agreements will be more likely to 'stick'.
- Check whether the parties wish to have their agreement formally documented.
- Assist the parties to consider how they wish to implement and monitor their agreements and manage changes and contingencies, including whether they wish to meet to review how their agreements are progressing.
- Establish local services staffed with local people to offer the greatest opportunity for independent monitoring and prompt response in the instance of agreement breakdown.

7.7. What makes an effective dispute management practitioner?

Indigenous dispute management practitioners need to be competent, and ethical, and supported and resourced appropriately. This section identifies the personal qualities and skills of effective practitioners, which shape and affect each other.

7.7.1. Personal qualities of an effective practitioner

Dispute management practitioners need to trust and respect Indigenous parties and have confidence in their ability to resolve matters themselves. Flexibility, and sensitivity to the social and cultural needs of Aboriginal people and others involved in the process, are essential characteristics.

The key qualities possessed by the male practitioners in Halls Creek were described in terms of dignity, honesty, trust and respect. Their female co-mediator described them as *moderate, flexible and like minded in their attitude to building peace. They had a good reputation, but of more profound importance to the parties was their character and personality.* In the NSW example, the Indigenous mediator was warm and friendly, and empathised with Aboriginal experiences of disadvantage and disempowerment. Both she and her non-Aboriginal colleague were seen to be approachable.

Qualities such as honesty, fair-mindedness, and impartiality do not exist independently of their perception by the parties and, more broadly, their communities. Such qualities are not merely personal – they are earned through reputation, particularly where those intervening are known to the local community. Even when those intervening are not known, they will quickly establish a reputation depending on how they behave.

7.7.2. Skills of an effective practitioner

Practitioners need a range of skills and the ability to modify and adapt these skills as required, some of which have been described in the previous sections. In particular, the strategies they employ need to be effective in engaging with and putting all parties at ease, and in establishing rapport. They also require strategies and skills in identifying and checking with parties the range of factors that may affect how they are perceived.

In both the Tiwi and Halls Creek case studies, and in many of the snapshots, the practitioners involved had highly varied training underpinning their skills sets. The NSW case study is the only example where the two mediators involved had undertaken the same training.

7.7.3. Local knowledge and the dispute management practitioner

Skilled practitioners who know about local conditions, language and culture – such as those involved in the Tiwi, Halls Creek and Gintji cases, among others – are irreplaceable and in short supply. The Halls Creek case study emphasises the importance of mediators' *deep background knowledge* about the community and the families involved in the feud. Their knowledge meant not only that there was a far greater chance the parties would agree to participate in mediation, but that

once they did agree the practitioners could invoke their local authority and ‘connectedness’¹⁵⁰ to the parties in order to facilitate a resolution. This sort of knowledge cannot be replicated in briefings: there is a sense of familiarity and comfort in speaking with practitioners which comes not merely from a sound knowledge of the context, but from shared history.

The Thetown example demonstrates that failing to understand and engage with local practices and knowledge can lead to a rejection of (or lack of genuine engagement with) the dispute management process. In the second attempt at resolving the feud, the non-Indigenous practitioner lacked familiarity with local power dynamics, and was inexperienced working in the Indigenous context. These factors caused him to inadvertently become caught up in the feud. While trying to clarify matters in dispute, the practitioner created new sources of conflict – the feuding parties began to fight over the content of documents he had retrieved and more broadly sought influence over him to advance their position in relation to the feud.

It is not always necessary for the mediators to be known to the parties, either personally or by reputation. In the NSW case study, the mediators had broad experience working with Aboriginal people and were regionally based. These factors, together with Cherie’s Aboriginality, and the extensive face to face preparation undertaken with the parties, gave them a ‘head start’ in knowing the parties’ cultural context. It was their interpersonal skills and careful process design which were arguably crucial to their effectiveness.

While local knowledge is clearly important, mediators also need to have the skills to quickly understand a range of other contextual information, such as that relating to legislation, referral pathways and often complex technical information relating to the matters in dispute. This is not to enable them to provide advice, but rather to assist the parties in exploring issues more effectively. They also need to identify gaps in their own and parties’ information and understanding.

7.7.4. Impartiality and fairness

Impartiality is as much a matter of perception as reality. In the Halls Creek example, one of the mediators saw that the parties needed to *take back that business out of town*. The mediators were seen as *neutrals from a different town*. This was important as some of those involved in referring the matter for mediation were seen as too ‘close up’, meaning that they were seen to be to be partial and involved and that it may be difficult for people to open up to them without feeling embarrassed.

For Tiwi, TYDDU interventions are conducted by people who are in the community and accepted as a part of daily life. There is no shame or embarrassment in using and being seen to use the service. Even though those providing the interventions are local, people have confidence that they will be dealt with in an impartial, fair and even-handed way. The team approach used by TYDDU allows practitioners to step in when other practitioners might be ‘overstepping the mark’ all of which serves to reinforce impartiality and fairness.

The connectedness of the mediator to any of the parties needs to be made clear to all of the parties. The impact of such ‘connectedness’ on the acceptability of the mediator then needs to be checked with all of the parties.

7.7.5. Ethics

Indigenous dispute management practitioners need a strong commitment to ethical practice. Ethics relates to the kind of preparation people undertake, the time they allow for processes, how fairly they deal with people, whether they allow one party to push an agenda at the expense of others, as well as their commitment to maintaining a fair, transparent and accountable process.

Where the community can influence perceptions of the practitioner’s reputation, and where practitioners are connected and/or known to the community, they will be under much closer scrutiny than those who are not known or connected. ‘Connected’ mediators who do not behave ethically will find that word will travel quickly and that people will not wish to have them involved. For

¹⁵⁰ For a discussion of the concepts of ‘authority’ and ‘connectedness’ see Honeyman, C. et al. ‘Skill is not enough: Seeking authority and connectedness in mediation’ (2004) *Negotiation Journal* 489.

'outside' or unconnected mediators, where the community has no knowledge of their reputation, and no ability to influence perceptions of their reputation, an unethical practitioner often leaves without consequence.

Critical factors for effective practice

What makes an effective dispute management practitioner?

- Respect for those participating in the process and confidence in their ability and right to manage their own disputes.
- Ability to:
 - build rapport with and gain the trust, confidence and respect of parties;
 - examine one's own cultural assumptions;
 - communicate with a range of people and facilitate conversations between those with diverse communication styles and approaches;
 - recognise personal limitations of one's own understanding and experience, including of local and regional socio-cultural contexts and protocols; and
 - acquire information and understanding as required.
- Being acceptable to parties, including being known to the parties if this is important to them.
- Personal qualities such as fairness, non-judgementality, compassion, empathy, humility, flexibility, impartiality, even-handedness, patience and a sense of humour.
- Focussing on relationships, including kinship, and being able to balance the parties' substantive, procedural and emotional interests.
- Strong ethics, and commitment to:
 - work effectively with co-mediators and debrief;
 - work in partnership with other services in an interagency approach;
 - recognise the limits of a process, including when it is inappropriate;
 - identify and allocate appropriate timeframes rather than focussing on personal needs;
 - apply a range of techniques in comprehensive planning, preparation, relationship building, and process design;
 - evolve the process as determined by the needs of parties; and
 - listen.

7.8. Conclusion

In this chapter, the case studies and snapshots have provided the basis for the identification of factors that are essential for effective dispute management practice in the Indigenous context. Effective practices, cannot, however, be realised without the kinds of support which are discussed in the following chapter.

Chapter 8

Lessons from the case studies: supporting effective practices



8.1. Introduction

Effective practice does not occur in a policy or organisational vacuum. It requires well-resourced and competent support to effectively address the complexities of Indigenous disputes. Dispute management and decision-making processes are nested in webs of relationships, systems and structures. They are not single events isolated from other aspects of communities and from government services and engagement.

Drawing on the case studies and snapshots, this chapter addresses what is needed to support and implement effective practice. It addresses needs for:

- awareness raising and education;
- appropriate training, support and recognition of prior learning;
- professional support and appropriate remuneration;
- interagency cooperation and whole-of-community approaches;
- supporting Indigenous dispute management services at national, state/territory, regional and local levels.

8.2. Awareness and education

The case studies and snapshots demonstrate the need for raised awareness and education about Indigenous dispute management processes and services within communities and among government agencies and Aboriginal organisations across Australia. Greater awareness about dispute management processes and services could assist in the early identification of disputes, pre-empt the escalation of violence and lead to increased referrals and the improvement of services.

Indigenous communities are subject to much negative media reporting of disputes. Positive examples of Indigenous people dealing with conflict – such as those in the case studies and many of the snapshots – can provide opportunities for learning and build the profile of Indigenous dispute management processes and practitioners. More generally, public exposure of the positive steps that Indigenous communities are taking to deal with conflict works to counteract negative stereotyping of Indigenous communities and their conflict.

8.2.1. Awareness in Indigenous communities and community education

As one of the Halls Creek mediators observed ironically, there is greater awareness of compensation for criminal injuries in his community than awareness of mediation as a means of preventing injury. Similarly, many of the people involved in the NSW case study had not heard of the concept of mediation or knew that CJs offered a process that could respond to the needs of Aboriginal disputants.

There is a need to raise awareness in Indigenous communities across Australia about the possibilities of dispute management services, how services can be accessed (if they exist), what constitutes effective practice, and what works in other communities. In order to make informed choices to participate, parties need information about how the process might work and what is required for it to be effective. Community education programs could specifically promote dispute management processes as a means for individuals, families and communities to assert their own independence and strength in resolving conflict.

Designing and delivering education and awareness programs involves specific skills. Specialised training and resources can assist educators to engage with a variety of audiences, particularly Indigenous audiences. The Ali-Curung snapshot illustrates the value of educational programs delivered by Aboriginal people who have cultural connections to audience, and the use of locally-

produced visual and oral resources to promote processes to others throughout the region and beyond. For example NSW CJs has plain English documents, specifically developed for Aboriginal and Torres Strait Islander parties, that explain the service and what to expect.

8.2.2. The importance of 'champions' and 'advocates'

'Champions' and 'advocates' are influential people who genuinely believe in the benefits of dispute resolution and conflict management processes. They disseminate information about mediation, encourage parties to try it, and advocate for the development and improvement of services.

Those who work at the interface between Indigenous communities and non-Indigenous institutions including government employees, lawyers, police, community development workers, health workers and school teachers can play particular roles in 'championing' dispute management services and referring people to appropriate interventions. Their personal commitments, together with their status within a community, are often key factors in the successes of a dispute management process. 'Champions' and 'advocates' may also be policy makers and politicians.¹⁵¹

Many of the processes in the case studies and snapshots emphasise the fundamental role played by one or more influential people in the community, such as:

- Police officers (Halls Creek case study);
- Aboriginal Police/Community Liaison Officers (Halls Creek case study; NSW case study);
- Night Patrol (Tiwi case study);
- Magistrates (Halls Creek case study; Gintji CJC snapshot);
- Aboriginal Legal Service staff (Halls Creek case study);
- Indigenous Advisors (FRC snapshot);
- Community service workers (NSW case study); and
- Indigenous leaders (Gintji CJC snapshot).

A number of the case studies and snapshots particularly demonstrate the benefits of positive relationships between the police and local Indigenous people. Police officers who are respectful, fair, innovative, and who support dispute resolution and conflict management as alternatives to the application of the criminal justice system can have a profound effect on the ways in which conflict is dealt with in Indigenous communities.

Strategies for implementing effective practice

Awareness raising and education

- Build knowledge and awareness about dispute management processes within both Indigenous and non-Indigenous communities and government and industry sectors as a means of asserting Indigenous independence and strength in resolving conflict by:
 - establishing community education programs;
 - producing resources which show how effective services operate, and include feedback from community members to assist other communities in reviewing services, with a view to developing their own;
 - supporting knowledge-exchanges and story-telling sessions among Indigenous peoples who have participated in dispute management; and
 - developing awareness raising and educational tools using creative media, audio-visual materials, ceremony, art and performance for Indigenous communities.
- Promote the roles of community and government workers, including police officers and lawyers, as 'champions' and 'advocates' in:
 - raising awareness of and utilising dispute management processes;
 - assisting in the early identification of problems;
 - identifying appropriate referral pathways; and
 - policy development.

¹⁵¹ See, eg., Queensland Government. *Government Champions*, Alcohol Fact Sheet 7, Alcohol Reforms Project, Office for Aboriginal and Torres Strait Islander Partnerships, Department of Communities, Queensland Government, 2008, <<http://www.atsip.qld.gov.au/communities/alcohol-limits/documents/fact-sheet-07-govt-champions.pdf>>.

Awareness raising and education (cont.)

- Build the capacity of staff of government agencies and community organisations by developing:
 - training resources for government agencies about Indigenous dispute management processes;
 - a series of pilots identifying key elements of relationship issues between government agencies including the police, evaluating them and rolling them out as appropriate; and
 - 'cultural competency' and 'community education' criteria in recruitment policies, induction programs and performance measures.
- Campaign for positive media reporting of Indigenous communities and how they are managing disputes.
- Establish a national award system (or 'peace prize') which recognises achievement in Indigenous dispute management.

8.3. Appropriate training, support and recognition of prior learning

The practice of dispute management and associated training in the Indigenous (and non-Indigenous) context has evolved in ad hoc and inconsistent ways. Training for practitioners is uncoordinated, uneven and of variable quality. There is little if any practitioner training in Australia which has been specifically designed for the Indigenous context. A few isolated courses have been specifically designed and delivered to Indigenous trainees – NSW CJs, for example, has developed a specific course for Indigenous trainees conducted by experienced Aboriginal mediators. However there is no formal curriculum in Indigenous dispute management which also offers a career path to Indigenous practitioners with particular skills and experience managing conflict in the Indigenous context.

A national mediator accreditation scheme (NMAS) has recently been established by the mediation industry with administrative support from NADRAC. It sets out industry practice and approval standards (National Standards) and provides a voluntary compliance scheme for mediation service providers. The National Standards do not address issues specifically relevant to the practice of dispute management in the Indigenous context, rather they are intended as a baseline standard upon which specific competencies – such as practice in the Indigenous context – can be added. Assessment and accreditation of mediators under the NMAS is conducted by a Recognised Mediator Accreditation Body (RMAB).¹⁵² A wide range of mediation organisations are RMABs.

Specific qualifications and accreditation requirements are currently being developed in the family dispute resolution field as a result of amendments to the *Family Law Act* in 2006.

There are a number of courses available through the VET sector, including the Certificate IV in Community Mediation which is recognised nationally. Some government-funded community mediation services currently refer to competencies within the Certificate IV in assessing mediators for accreditation. It appears that many service providers and RTOs delivering training in dispute resolution and associated areas are currently reviewing the scope and focus of their courses, due to the new requirements and competencies for mediators under the NMAS and family dispute resolution practitioners under the *Family Law Act*.

The Australian Indigenous Leadership Centre offers a one-day conflict management course and FaHCSIA's leadership program contains elements of conflict resolution, but neither equips trainees to be dispute management practitioners. Most of the courses currently delivered are relatively short introductory courses (3-5 days) and insufficient to ensure effective practice, although a range of follow-up courses and refreshers are also available.

¹⁵² RMABs providing services in the Indigenous context include: Community Justice Centre NT, Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General and the Australian Mediation Association.

8.3.1. Formal training undertaken by the case study participants

With the exception of the NSW CJs mediators, most case study and snapshot practitioners had received little or no dispute resolution training, let alone training specifically designed for the Indigenous context, though many identified the need for it.

In Halls Creek, the panel of co-mediators was comprised of three Indigenous people: one woman and two men. The first had substantial formal training, mediation experience and strong process skills. One of the men had undertaken a three day course relating to alcohol counselling - the other had done no training. TYDDU staff have had a range of training including restorative justice and drug and alcohol awareness, but no dispute resolution training. The coordinator of TYDDU had completed short courses in mediation and family conferencing when the service was established in 2003.

In the FRC snapshot, while Hamish had undertaken some training, the opportunities for him to access courses which would allow him to meet the accreditation requirements for family dispute resolution practitioners were very limited. Opportunities for him to access dispute resolution training with a focus on working with Indigenous peoples are virtually non-existent.

In Gintji some CJG members were involved in developing the 'Peacemaker' mediation model which took place as part of a training program for Northern Queensland justice groups in 2000. Since then it appears that some training has been delivered by government providers.

8.3.2. Selecting people for training

The previous chapter outlined a number of critical factors which inform an effective practitioner. They mean that not everyone will be a good mediator, let alone in the Indigenous context, and highlight the need for the development of careful selection procedures.

Recruitment and selection processes at NSW CJs take place on a 'needs basis.' NSW CJs' policy on the recruitment and selection of mediators has two requirements. First, the range of mediators should reflect the nature of the community in which it operates, therefore the selection of applicants may be determined by age, gender, availability, ethnic and cultural background or specific program needs. Secondly, the basis for recruitment and selection is personal attributes rather than formal qualifications. Good listening and communication skills are crucial. The selection process involves an information session, followed by group and individual interviews, prior to the NSW CJs' training course.

Selecting people to achieve a gender balance within TYDDU was raised in the Tiwi case study. TYDDU recognises the need to have more senior women involved in its service who could provide support to the senior men who work there and build capacity and expertise in dealing with women's issues and conflicts. Senior women could also act as mentors to the younger women, particularly when they are called upon to manage or assist with interventions.

While cultural sensitivity and awareness might be acquired through exposure to Indigenous people and through experience with a range of different life circumstances, practitioners must also be able to demonstrate the specialised skills which are required in mediation processes. Not all of these skills are necessarily part of an Indigenous practitioner's 'tool box'.

In the Halls Creek case study, the two male mediators were selected by local people, primarily on the basis of their personal qualities, knowledge and experience, and standing within their communities. The female practitioner, a trained mediator, was able to coach the two less-experienced practitioners in some of the technical skills which could 'add value' to their skill-sets, as the mediation proceeded.

Given the significance of understanding local and regional situations, the training of regional panels of Indigenous practitioners, who are perceived by their communities as possessing the personal attributes outlined in the previous chapter, and who are selected in carefully designed processes in the region, would significantly enhance the delivery of effective services to Indigenous communities.

8.3.3. What kind of training is needed?

A range of training is needed to match the kinds of skills and competencies identified in the previous chapter. Practitioners working in a particular local context – such as the Tiwi TYDDU intervention program and Nguui Jealousy Program – will have different training needs from those seeking to become family dispute resolution practitioners, such as Hamish in the FRC snapshot, or those wishing to become accredited as mediators within the NMAS. Practitioners working ‘cross culturally’ also have specific training needs which innovative programs such as the Mawul Rom Project seek to address.¹⁵³

A number of training needs have already been identified through IFaMP¹⁵⁴ at AIATSIS and in the case studies and snapshots of this report. Training courses might include modules in:

- multiparty dispute management approaches;
- micro skills, such as ‘reality testing’ and ‘agent of responsibility’ skills;
- designing management systems to accommodate cultural elements, protocols and kinship requirements;
- ‘intake’ and pre-mediation processes;
- debriefing;
- managing episodes of violence or crisis situations;
- drug and alcohol awareness and grief awareness;
- effective engagement with Indigenous people and communities;
- working with survivors of violence and abuse;
- working with young people;
- awareness of referral pathways and identifying the appropriate intervention;
- working in teams, including teams of Indigenous and non-Indigenous practitioners; and
- understanding formal and technical aspects of the particular dispute contexts (for example, family law or native title).

Mediators who work for community mediation centres have recognised the need for training in specific context mediations, such as native title, to broaden their scope and create vocational pathways as full-time mediators.

Training is only as good as the trainer. The Halls Creek and Tiwi case studies indicate the need for training to be customised to the needs of Indigenous trainees and Indigenous contexts. As a TYDDU Supervisor stated: *It would be so good to have training in [Tiwi] language with tutors who understand.* In the Halls Creek example, one of the mediators commented in a similar vein: *In the end we need better training courses that really look at our problems.*

Training programs need to be delivered in communication styles and language that can be understood by, and is directly relevant to, Indigenous participants. Creative techniques and audio-visual materials can assist. It should not always be necessary for Indigenous people to have a high level of English literacy to undertake training. Ideally, training would be delivered regionally by Indigenous trainers, and incorporate extensive role plays derived from the regional Indigenous context and the services of local Indigenous ‘peacemakers’ as coaches and trainers.

Training courses need to be accompanied by mentoring and the supervision of practice, immediately after training sessions have concluded, to consolidate skills and build the confidence of

¹⁵³ The Mawul Rom project involves a week long workshops, held annually, which engage participants in Yolngu ceremonial practice and an exchange of conflict resolution methods. The Mawul Rom project aims to engage people in an exploration of the connections between approaches and conduct within the Yolngu and non-Indigenous cultural spheres. For further information about the Mawul Rom Project, see www.mawul.com. See also Newman, S. ‘The Mawul Rom Project: An Experience of Cross-Cultural Mediation’ (2004) 6(6) *Indigenous Law Bulletin* 11; Mawul Rom Association. *Cultural Healing in Criminal Justice Service Delivery: An identification of best practice and innovation to inform future service design*, paper presented by Rev Djinyini Gondarra OAM, Co-Chair of Mawul Rom Association & Sarah Blake, Mediator and Mawul Rom Participant, at the Third National Indigenous Justice CEO Forum, 21-22 November 2007; and Brigg, M & McIntyre P. ‘Cross-Cultural Mediation and Training: Problems and Prospects’, edited transcript of a seminar given at AIATSIS, 16 May 2005, in the seminar series *Native Title, Decision-making and Conflict Management*, Indigenous Facilitation and Mediation Project, Native Title Research Unit, AIATSIS, Canberra, 2005; Wild et al, above n 104, 177.

¹⁵⁴ Bauman, above n 9, 21-25.

new practitioners. As the case studies show, approaches which utilise practitioner teams and co-mediation can offer ideal opportunities for this.

8.3.4. Peer modelling and exchanges

Both the Halls Creek and TYDDU case studies highlight the importance of Indigenous dispute management services and practitioners learning from each other and 'peer modelling'. A number of Tiwi interviewees also saw that the principles that underpin the TYDDU intervention process could apply elsewhere and that other communities may find it useful to observe their intervention process and the operations of TYDDU. Those communities could then make their own assessments as to techniques and approaches that are useful and adapt them accordingly.

In the Halls Creek case, mediators from the East Kimberley identified that a place to bring together Aboriginal people – *to share their experiences and to swap stories* and *where we can talk and workshop* – was needed *right now* to provide professional development and avenues for de-briefing. Practitioner exchanges, and a national practice conference, would assist not only in promoting awareness of Indigenous ways of managing disputes to non-Indigenous service providers; they would also offer a range of potential benefits including opportunities for practitioners to:

- observe and experience how other Indigenous communities manage disputes;
- exchange useful techniques that could then be trialled back in the community including innovative evaluation procedures;
- learn what training and resources, including funding options, others had found useful and/or helpful;
- learn how other services operate, including their community education and engagement strategies;
- observe how particular cultural practices are integrated with the dispute management process;
- establish networks with other Indigenous practitioners and services; and
- build the confidence and authority of Indigenous dispute management services and approaches.

8.3.5. Building on existing Indigenous skills and recognition of prior learning

Prior recognition of existing knowledge and communication skills enhances Indigenous peoples' access to training and their ability to gain accreditation. An absence of formal mediation training should not prohibit Indigenous people who clearly have a range of a range of competencies and understandings from working as practitioners. There is a need to develop clear standards and specific competencies in the Indigenous dispute resolution and conflict management context, which recognise pre-existing Indigenous competencies and attributes.

In recognition of the specialised skills and knowledge required of mediators in some cultural contexts, the NMAS provides for accreditation of 'experience qualified' mediators, who must be either:

- be resident in a linguistically and culturally diverse community for which specialised skills and knowledge are needed; and/or
- from a rural/remote community where there is difficulty in attending a mediation course or attaining tertiary or similar qualifications.

The National Standards require *a level of competence by reference to the competencies expressed in the Practice Standards*. These Practice Standards do not identify specific requirements or competencies for working in the Indigenous context.

The FRC snapshot explains the current accreditation requirements for family dispute resolution practitioners. New accreditation standards commencing 1 January 2009¹⁵⁵ provide several pathways to accreditation as a family dispute resolution practitioner, which require competencies delivered within the Vocational Graduate Diploma of Family Dispute Resolution (or higher education

¹⁵⁵ See *Family Law (Family Dispute Resolution Practitioner) Regulations 2008* (Cth).

provider equivalent).¹⁵⁶ Recent research conducted by AIATSIS suggests the core competencies for the new Family Relationships qualifications have a number of deficiencies in the Indigenous context. These include an absence of reference to issues of cultural safety or cultural competence, and a lack of recognition of cultural and community skills which Indigenous people bring with them to mainstream organisations.¹⁵⁷ While there is some recognition of prior learning within the new system, it appears that the current approach may not be sympathetic to recognising a range of valuable pre-existing competencies demonstrated by local Indigenous practitioners, such as TYDDU staff and the East Kimberley mediators in the Halls Creek case study. These include:

- knowledge of Aboriginal law and ability to negotiate associated issues;
- fluency in local language;
- social mapping based on relationships and family and community dynamics; and
- ability to negotiate local ways of doing business.

Training which recognises, builds on and develops the existing skills of Indigenous practitioners will enhance, rather than override, local approaches. The Tiwi case study spoke of the need not to impose 'whitefella way'.

8.3.6. Training and capacity building for parties and people who support them

A range of training is required for parties and those who support them to participate in dispute management processes. An extension of this is the need for training for Indigenous community members generally, which overlaps with the awareness raising and education strategies suggested above. Training needs include:

- understanding mediation;
- identifying the right practitioner;
- identifying when mediation is the appropriate intervention;
- managing conflict;
- negotiation skills; and
- specialised interpreter training.

The case studies and snapshots also reveal that staff within local Indigenous services, such as TYDDU, may benefit from training in the development of planning strategies, literacy, report writing, administrative and governance skills.

Strategies for implementing effective practice

Appropriate training, support and recognition of prior learning

- Develop a 'brief to tender' to call for expressions of interest nationally from individuals and/or organisations in the development of a training curriculum and training packages in a range of Indigenous service delivery contexts which focus on:
 - the balance between building and managing relationship techniques and outcome-focussed processes;
 - micro skills such as 'reality testing' and 'agent of responsibility' skills;
 - 'intake' and pre-mediation processes;
 - process design;

¹⁵⁶ The *Family Law (Family Dispute Resolution Practitioner) Regulations 2008* define the Vocational Graduate Diploma of Family Dispute Resolution as 'the vocational graduate diploma recognised under the Australian Qualifications Framework as the competency requirement for accreditation as a family dispute resolution practitioner.' The regulations require practitioners to have either: completed of the full Vocational Graduate Diploma of Family Dispute Resolution (or higher education provider equivalent); or completed an appropriate qualification or accreditation under the NMAS and competency in the six compulsory units from the Vocational Graduate Diploma of Family Dispute Resolution (or higher education provider equivalent); or been included in the Register of Family Dispute Resolution Practitioners before 1 July 2009 and achieved competency in the three specified units (or higher education provider equivalent).

¹⁵⁷ Australian Institute of Aboriginal and Torres Strait Islander Studies. *National Family Relationship Competencies and Indigenous Workers Project: Issues Paper*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, September 2008. The AIATSIS Issues Paper found that, with the exception of one unit there are no core competencies in the new Family Relationships qualifications which prepare practitioners for working with Indigenous families and communities. The Issues Paper noted the core competencies make no reference to issues of cultural safety or cultural competence, nor do they reflect the cultural and community expertise which Indigenous workers bring to their roles within mainstream organisations such as FRCs.

Appropriate training, support and recognition of prior learning (cont.)

- communication skills in a variety of cultural contexts including the Indigenous context;
 - large scale multi-party dispute resolution processes;
 - managing episodes of violence or crisis situations and working with survivors of violence and abuse;
 - co-mediation and team approaches;
 - supervision and debriefing skills and tools; and
 - identifying the appropriate intervention.
- Conduct and independently evaluate a series of training pilots across Australia including the responsiveness of the training to Indigenous learning and communication styles, develop relevant training packages and roll out as appropriate.
 - Develop specific competencies for practitioners and trainers working in the Indigenous context.
 - Provide easy access to formal recognition of prior learning and competencies for Indigenous mediators to increase access to VET sector training, tertiary education and accreditation schemes.
 - Encourage partnering between Indigenous and non-Indigenous RTOs to deliver mediation and dispute management courses.

8.4. Professional support and appropriate remuneration

Indigenous practitioners often receive little recognition and remuneration for their work. They may not be attached to institutions, but nevertheless are carrying out 'peacemaking' activities in their communities as a matter of course. Some services, such as the Gintji CJG, rely almost exclusively on the voluntary work of respected and often senior members of the community. Most of the Tiwi staff at TYDDU are on CDEP wages.

Wage parity is also an issue. A comparative study of the wages paid to practitioners employed by State-funded services (such as NSW CJs, State-funded local Indigenous programs including TYDDU, CJGs and restorative justice initiatives) and those paid to staff in Commonwealth funded services (such as FRCs and the National Native Title Tribunal) might assist in identifying appropriate wage rates for the range of functions performed.

Practitioners working in the Indigenous context may need to depart from 'standard' 'mainstream' procedures to meet the needs of Indigenous clients. They may, for example, need to take more time than others, particularly given the mobility of clients, the involvement of extended family members, the need to establish trust, and the geographical distances which may need to be covered in working effectively with them. Such departures need to be sanctioned and encouraged by the service provider and reflected in performance measures.

The experience of Hamish in the FRC snapshot cautions against providing a service to Indigenous people as an 'add on' to an essentially 'mainstream' service. Indigenous Advisors' duty statements cover a wide range of activities and require distinct sets of skills. These include, for example, community liaison, teaching and awareness raising, program design and development, and in some cases, family dispute resolution. Ideally Indigenous staff working as dispute resolution practitioners would not be required to wear a range of 'hats' which might prejudice their impartiality or ability to perform in other roles effectively. The establishment of panels of practitioners may avoid some of the difficulties associated with employing one (or two) Indigenous person/s within a particular service.

The case studies and snapshots also demonstrate that staff working in dispute management services benefit from positive professional environments, where their work is affirmed and supported by management. Administrative assistance, access to practitioner networks and skills development, mentoring and debriefing processes can play a significant role.

Strategies for implementing effective practice

Professional support and appropriate remuneration

- Recognise the contributions which Indigenous practitioners and others working voluntarily in the community make to the integrity and social cohesion of their communities.
- Ensure appropriate remuneration for Indigenous dispute management practitioners.
- Develop standards for remuneration, professional recognition and support needs.
- Understand the possible need for departures from 'standard' policies and procedures to meet the needs of Indigenous clients, and reflect this in performance assessments and duty statements.
- Consider the feasibility of the scope of tasks to be performed by Indigenous staff and possible inconsistencies between them.

8.5. Interagency cooperation and whole-of-community approaches

Indigenous conflict management processes can be seen as part of a broader process of assisting Indigenous people to create, develop and implement their own decision making, dispute management and engagement systems. The focus of effective policy should therefore be identifying, supporting, extending and networking the people and processes which are already working in Indigenous communities, rather than on intervening to 'fix' a specific problem.

In the previous chapter, it was noted that 'mediation' or facilitative dispute management will not always be the 'right' intervention and may need to be accompanied by or replaced by a range of other processes. TYDDU, for example, recognises this by working with the police, health services and legal system to agree on referral mechanisms, protocols for feedback and the monitoring of referred outcomes. The NSW case study illustrates how mediation can be accompanied by – and intertwined with – other interventions relating to legal, housing and health related issues.

Dispute management processes are only one of the services which are provided, or need to be provided in Indigenous communities. Interagency coordination and collaboration (including with Aboriginal organisations) is needed to ensure the provision of targeted service delivery and to minimise the likelihood that individuals will 'fall between the cracks.' Coordinating the delivery of services also assists in the effective use of resources and avoids unnecessary duplication in service provision.

Coordination between all services is needed to address systemic or structural sources of conflict: such as poor housing or financial stress due to a lack of economic opportunities. Greater interagency cooperation could also assist in providing professional support to local and regional Indigenous services.

There is also a need to review interagency arrangements and monitor their effectiveness for ongoing improvement. Accountability mechanisms to monitor government and non-government responses to requests for dispute management assistance – particularly from communities or individuals – are important.

Interagency cooperation is dependent not only on government agencies having effective collaborative policies and associated performance measures, but also on the competence, attitudes and teamwork of individuals who are responsible for it at local and regional levels. One of the key characteristics in both the Halls Creek and NSW case studies was the highly responsive and willing collaboration by the agencies that contributed human and physical resources to the process. Various individuals in the Halls Creek process – including the ALS field officer, local police officers, the team leader at the DAA in Kununurra, and the Magistrate – enabled the various institutions to work cooperatively and with a common purpose. There was no hierarchy of contribution; all were essential to the outcome. In the NSW case, the Aboriginal Community Liaison Officer from the local police and a housing officer from the Department of Housing worked together to hold what appeared to be informal case conferences about the problems experienced by the Aboriginal family and their neighbours on a regular basis, prior to the referral to mediation. They conferred on the

advisability of mediation before the housing officer referred the matter to NSW CJs and were instrumental in encouraging the parties to participate in the process.

A lack of interagency cooperation imposes significant administrative and other burdens upon Indigenous communities already over-stretched and under-funded, and is likely to exacerbate conflict. Effective interagency cooperation and coordination is reliant upon well targeted policy and performance measures. Consistent approaches need to be negotiated, not only between interest groups and services located in the community, but also between them, and multi-levelled government agencies and regional Indigenous organisations. Interagency cooperation is also essential for Indigenous organisations and government and non-government agencies to work in genuine partnership with Indigenous groups.

Research is another example where an enormous range of institutions and individuals undertake un-coordinated activities in Indigenous communities. Communities need ways to identify the research projects in which they wish to be involved and which will meet their needs. The development of community research protocols could ensure that research requests are coordinated and prioritised, that results are consistently reported back across the community and discussed, and that the findings are implemented where appropriate.

8.5.1. Whole-of-community approaches

Ad-hoc approaches to managing conflict, in which individuals or groups within the community are ignored or excluded and strategies are not agreed upon, are unlikely to produce sustainable and meaningful outcomes. While the NSW CJs mediation focussed on interpersonal relationships between the parties, the next step in the process may well have been the development of an integrated conflict management strategy, involving, for example, the Aboriginal parties' extended family who visited the house often, others in the street, the children's school representatives, community service workers and mental health staff who provided services to the family.

Whole-of-community approaches need to be agreed and designed by community members. This will require effective dialogue, involving, in the first instance, individuals, interest groups and services within the community itself, and then extending to include regional service deliverers and policy makers, to discuss the specifics of achieving more coordinated approaches. This might involve, for example, a 'drop in' centre which deals with a range of issues and problems. The Tiwi case study also suggests the need for community dialogue as to the appropriateness of banning alcohol consumption and banning access to venues serving alcohol, as penalties for alcohol related misdemeanours which can be a significant source of conflict. Some Tiwi people expressed concern that using alcohol as both reward and punishment reinforces the centrality of alcohol to community life. Suggestions for alternative punishments included participation in rubbish patrols. Bush camps, hunting and fishing trips for families were suggested as alternative rewards.

Ultimately, interagency cooperation and coordination, whole-of-community approaches and partnerships require the development of integrated decision-making systems 'from the ground up' and 'top down'. Community systems could prescribe protocols for engagement which enable communities to know what is being proposed, to negotiate matters that directly affect their future and to influence, shape and change the systemic and structural causes of conflict in their communities.

8.5.2. Coordinating a whole-of-community initiative

Whole-of-community engagement and interagency cooperation requires independent facilitation to coordinate the contributions of a range of interest groups, government agencies and community groups. 'Community engagement' facilitators might be locally or regionally based and perhaps associated with local governments, depending on the size of communities, and local and regional governance arrangements. Their importance has been identified in several recent reports¹⁵⁸ and

¹⁵⁸ The importance of the role of community engagement facilitators (or positions with similar functions) has been identified in at least six significant reports to governments. These reports have recommended a whole-of-community/whole-of-government response to Indigenous needs and interests. These reports include the Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2006*, Report No 1, Human Rights and Equal Opportunity Commission, Sydney, 2007; Aboriginal and Torres Strait Islander Social Justice Commissioner. *Building a sustainable National Indigenous Representative Body – Issues for consideration*, Issues Paper, Human Rights and Equal Opportunity Commission, Sydney, 2008; Wild et al, above n 104; Bauman, above n 9, Northern Territory Emergency Response Taskforce. *Final Report to Government*, report to the Minister for Families, Housing, Community Services and Indigenous Affairs, Office of Indigenous

their roles are variously described as ‘community mediator’, ‘community agent’, ‘cultural broker’ and ‘external planner.’ While job descriptions may vary, each requires specialised participatory community development, facilitation and engagement skills.

Whole-of-community engagement practitioners, located locally or regionally depending on the size of communities, may assist communities in a range of activities including:

- coordinating approaches and services between agencies both in the community and external to the community;
- designing, developing and implementing integrated decision-making systems;
- developing engagement strategies including protocols for engagement with external stakeholders and visitors and research protocols;
- identifying the need for and supporting the development of local dispute management processes;
- writing funding submissions and obtaining resources;
- developing innovative approaches to alcohol and domestic violence issues;
- designing complaints processes in the community, including reporting community complaints to government;
- monitoring the implementation and follow-up of decisions and initiatives and evaluating them; and
- ensuring succession planning and good governance for community organisations.

The aim of community engagement strategies is to build the capacity of Indigenous people to develop and implement their own decision-making and conflict management strategies, including, if appropriate, the use of existing services. It is not to entrench community reliance on third party process expertise.

Strategies for implementing effective practice

Cooperation between agencies and whole-of-community approaches

- Develop intake and referral pathways between agencies, to ensure that Indigenous people receive the appropriate service/s and do not fall ‘through the cracks’.
- Implement accountability measures within government and non-government agencies to ensure quick responses to requests from Indigenous people for assistance in managing conflict.
- Promote dialogue around more coordinated interagency whole-of-community approaches, involving, in the first instance, individuals, interest groups and services within the community, and then extending to include regional, State, Territory and national service deliverers and policy makers.
- Use community engagement facilitators, including local facilitators, to develop more effective interagency whole-of-community approaches, dialogue and relationships between local and regional communities, government services, non-government organisations and industry.
- Develop the facilitative and engagement skills of government employees to prevent government-driven consultation processes or negotiations from exacerbating existing community conflict.
- Conduct pilots in urban and remote communities, which are aimed at identifying the elements of effective interagency cooperation and community engagement in a range of sectoral contexts, and which are independently evaluated and rolled out as appropriate. Examples of pilot contexts include:
 - the NTER intervention;
 - the establishment of locally based Indigenous dispute management initiatives; and
 - the architectural design of housing and the allocation of housing as a source of conflict.
- Encourage research partnership with Indigenous communities which are orientated to their needs.

8.6. Supporting Indigenous dispute management services at national state/territory, regional and local levels

Many Indigenous communities experience a similar profile of disputing to that described in the Halls Creek case study – the escalation of conflict through generations of families, culminating in more intense fighting and underpinned by kinship affiliations, often resulting in contact with the criminal justice system. Yet there is a scarcity of reliable and accessible dispute management services designed to meet these complexities. While the process in the Halls Creek case study demonstrates excellence in responding to an immediate local need, its 'almost organic' development of the process, without legislation or formal service frameworks, reveals its central, structural flaw: an absence of sustainability. The process was essentially the product of like-minded people responding to a specific situation. It did not rest upon any sound institutional foundation, durable policy or specific funding base.

The Halls Creek case study concludes that the situation in the East Kimberley appears to have *gone backwards* since the successful mediation was conducted in 1998. The East Kimberley AJC no longer operates and there is no immediately available capacity or infrastructure to support dispute management processes, such as mediation, in the East Kimberley.

In many regions of Australia, accessible dispute management services for Indigenous peoples simply do not exist. Where services do exist, they are often under-resourced to meet demand and in the main, do not provide the range of specialised services which would help create meaningful and lasting outcomes for Indigenous peoples.

There is clearly a need to create stable policy frameworks and infrastructure that are capable of incorporating and replicating the critical factors in effective practice that are identified in this report. The policy challenge is for governments and institutions to support and retain the positive qualities of flexibility, creativity, local initiative, adaptability and real responsiveness to the needs of the parties, while also supporting and enabling sustainability, reliability and accountability in service provision. Governments and institutions also need to be proactive, rather than reactive, by seeking out communities in conflict and offering services to them.

Responsibilities for a stable policy and organisational platform lie at regional, State/Territory and national levels. The missing piece of infrastructure is a national Indigenous dispute management service, working in collaboration with others including existing local and State/Territory based services, to design and implement timely and effective dispute management interventions.

8.6.1. The uncertainty of funding and effects of changing government policies

Some services which are described in this report no longer exist as funding has been withdrawn. Funding for the Ali Curung service ceased in 2005, which is a source of continuing unrest and confusion in that community,¹⁵⁹ and the AJC discussed in the Halls Creek case study no longer operates. Some existing services face funding restrictions or changes in policy which affect their ongoing capacity. NSW CJs has, since the time of the case study, closed its regional office at Wollongong.¹⁶⁰ TYDDU has some guaranteed funding over a fixed period but lives with the uncertainty of CDEP policies. At the time of writing 12 FRCs (out of 68 nationally) received funding for Indigenous Advisors who can assist in the development and delivery of Indigenous-specific services. Anecdotal evidence suggests that these Indigenous Advisors are overburdened, and the FRC snapshot illustrates how Indigenous use of FRC services can be hampered by inflexible application of policies and procedures developed for the non-Indigenous context. Furthermore it is well documented that Native Title Representative Bodies lack the resources necessary to support their clients to negotiate a range of complex agreements in a sustained manner.¹⁶¹

¹⁵⁹ Wild et al, above n 104; Wright, above n 107.

¹⁶⁰ This does not mean that the service is no longer available to Wollongong or other regional NSW communities; rather NSW CJs' intake functions, which are usually conducted over the phone in any event, are now carried out centrally via the Parramatta office. CJs' current service delivery model does mean, however, that the service does not maintain a physical presence in some NSW regional centres where they once did, which may impact on its visibility at the local level and willingness of people to refer and access CJs services.

¹⁶¹ Aboriginal and Torres Strait Social Justice Commissioner. *Review of the Claims Resolution Process in the Native Title System*, submission to the Native Title Claims Resolution Review, 21 August 2006, <http://www.hreoc.gov.au/legal/submissions/sj_submissions/claims_resolution_review_process.html>.

It takes time and resources to develop and manage dispute management processes in a genuine and sustaining way. This is true in any cultural setting, but perhaps especially so in the Indigenous context where there are particular needs to build mutual understandings, to address disadvantage and dysfunction, and to allow genuinely local responses to evolve. Specific support is also needed to ensure that men and women, and people from the range of language or clan groups within the community, are included.

Indigenous communities require secure resources over the long term to review and evaluate the effectiveness of current ways of dealing with disputes, to assess their dispute management needs and to develop mechanisms and services to address those needs. Communities also require support to build local capacity and to experiment, to trial and change processes as necessary. For example the planning process leading to the signing of the Ali-Curung Law and Order Plan by the community and 10 government and non-government agencies took 17 months. Yet, despite this significant investment for a program that appears to have been working for the community over a period of nearly a decade, the program was de-funded.

As the Ali-Curung situation illustrates, the de-funding of projects by governments can occur without warning and consultation. The fundamental building blocks for effective practice are lost; the development of local processes is disrupted or remains incomplete which further exacerbates conflict in the community. There is thus a need for government transparency about funding decisions, linked to clear evaluation procedures, including opportunities to improve and address identified problems before de-funding occurs.

It is important to recognise that NSW CJC had already established credibility and effective processes as a non-Indigenous service before it introduced an Indigenous specific program. Local Indigenous services such as those at Ali-Curung and TYDDU do not have the same level of institutional backing and are, in many respects, 'starting from scratch.'

As the Gintji CJG snapshot illustrates, local organisations often provide services to and for non-local agencies (including government departments). The value of their work, in terms of cost savings and other benefits to those who have responsibilities for service provision, could be reflected in the provision of appropriate resources. Such local organisations are operating in stressful conditions with limited resources and access to training or networks. So, too, are other services still in existence discussed in this report.

8.6.2. The need for regionally based services

The Project's research shows that developing regional panels of practitioners is an effective way to deliver Indigenous dispute management services. Recall that in the Halls Creek case study, it was to the regional (East Kimberley) AJC – no longer in existence – that the local police, ALS and DAA turned to identify practitioners who would attract the respect and trust of the parties. However, regional panels must be supported by regionally based infrastructure, which was not the case in the Halls Creek example. And ultimately, regionally based services require national coordination and support.

Local and regional infrastructure means that communities do not have to wait for service delivery from the major cities, and enable practitioners to monitor changes in local dispute dynamics and respond quickly at critical moments in the dispute. Services need to be easily accessible to attract Indigenous participation. TYDDU have practitioners from all local Skin Groups who are accessible daily. In the NSW case, there was, at the time of the case study, a regional CJC office near the area of the dispute, whose staff were able quickly to undertake 'intake' procedures, contact all the parties and set in place the arrangements and infrastructure to proceed. By contrast, in the FRC snapshot the location of an office in the central business district was identified as a disincentive to Aboriginal use of the service, as many who may benefit from the service live in 'outer' suburban areas. Getting public transport from these outer areas to the CBD was difficult and costly, and presented a barrier to Indigenous access, especially for parents needing childcare.

The development of regional panels of practitioners and the borrowing of practitioners between them would provide disputants with choices and enable the matching of the needs of parties to practitioners. While the case studies and snapshots highlight the desirability in many cases of practitioners with local knowledge, that is not to say that practitioners who are based locally, or

regionally, will always be the preferred choice of disputants. Neither will Indigenous parties always choose Indigenous practitioners. The context of a dispute may also require specific expertise and specialised practitioner knowledge, for example in areas such as native title; natural resource management; family dispute resolution; housing, income management and social and emotional wellbeing.

A key factor is that communities are involved in discussions as to their dispute management needs. The configurations of appropriate services and the ways in which processes are identified will vary from place to place. The terms 'mediation' and 'facilitation' may not resonate locally and may need interpretation. The TYDDU dispute management process, which evolved from a youth diversion program, is called an 'intervention' – a term that Tiwi people are comfortable with which is now part of the local vernacular. Tiwi regularly use the term to describe what they see as being needed. Other communities may choose to emphasise peace and healing.

Regionally based services could be usefully guided by regional forums or committees, comprised of members of local justice groups and regional representatives of relevant service providers. These may include Indigenous Coordination Centres, the police and Indigenous organisations. Crucially, the *modus operandi* of any regional forum or committee must resonate with local cultural, social and governance systems, and members must be respected by their local community.

Regionally based services could:

- coordinate regional and local panels of dispute management practitioners to respond in timely ways to Indigenous resolution needs;
- serve as a clearing house for the consideration of potential interventions;
- match practitioners with disputes, in coordination with other regional panels as required;
- develop regionally specific educational materials;
- identify and coordinate the key functions performed by local agencies;
- promote the use of dispute resolution and conflict management processes;
- provide a resource for courts, police and others working in the mainstream justice system, including provision of information or evidence about Indigenous law and culture;
- develop selection procedures for regional mediators;
- assist in the design and development of locally specific dispute management protocols and processes and services including local justice groups as required;
- coordinate interagency activities and referrals, identifying and arranging appropriate therapeutic interventions where dispute management may not be appropriate;
- coordinate and develop the delivery of appropriate regional training and mentoring services;
- develop and implement regional 'peer modelling' initiatives and arrange the exchanging of stories, skills and resources;
- develop regional evaluation and monitoring processes and support associated changes;
- identify relevant research; and
- keep relevant data and statistics.

8.6.3. Building regionally based services from existing panels and networks

There is a need to map existing services and responsibilities for the provision of Indigenous dispute management services, State by State and region by region. In some areas, regionally based services (and their regional panels of practitioners) could build on existing Indigenous networks, with additional resources and training as required. Existing networks include:

- community justice groups;
- FRCs; and
- community mediation centres in NSW, Victoria, Tasmania, ACT, NT and Queensland.

With additional training, appropriate graduates from FaHCSIA's leadership program networks and the certificate programs of the Australian Indigenous Leadership Centre might be recruited.

8.6.4. Coordinating regional and local services

Regionally based services require careful planning, development and coordination to be effective. The Project's research demonstrates the key role of coordinators within local or regional services who understand Indigenous dispute management processes and who can assist communities in the delivery of a locally owned service.

In most of the case studies or snapshots, a key individual, with strong commitment, assisted communities in identifying their dispute management needs, communicating them to governments, and coordinating the development and delivery of services and programs. Some were regionally based, while others were located within local Indigenous communities.

Examples in the case studies and snapshots include:

The planners/field officers for the ALJS (Ali-Curung snapshot)

The male and female government-employed 'community planners' were central to the negotiation of the Ali-Curung Law and Order Plan and the implementation of the local and regional initiatives of the ALJS. Their participatory planning enabled the identification and communication of community concerns and priorities to 'external' stakeholders including government, and the establishment and monitoring of local and regional initiatives under the Ali-Curung Law and Order Plan. Having worked with the community for a decade, the planners were able to build long term relationships with local people, which assisted them to facilitate a whole-of-government, whole-of-community approach.

The coordinator of TYDDU (Tiwi case study)

Interviewees in the Tiwi case study emphasised the important role of the TYDDU coordinator who speaks Tiwi language, has a long association with the community, has administration skills and understands government machinations. This role serves a key function in ensuring that TYDDU operates effectively within both the Tiwi and non-Tiwi worlds.

The coordinator of the CJG (Gintji snapshot)

As well as coordinating local mediation services, the coordinator of the CJG performs a significant role in facilitating community engagement with government departments, courts, community services and local governance initiatives. The coordinator may be called upon by to assist with interpreting, providing information, advice and reports, advocating and liaising between community and government agencies, as well as providing a local mediation service.

Indigenous advisor (FRC snapshot)

Indigenous Advisors and other Indigenous-specific positions within mainstream services such as FRCs are not only vital in communicating with Indigenous people and encouraging their use of the service, but also in facilitating Indigenous engagement with mainstream legal and administrative processes. Their knowledge of formal procedural requirements, together with their understanding of Indigenous networks, plays a key role in service provision.

The Gintji and Tiwi examples highlight that dealing with the demands of Indigenous dispute management services is a full-time and service-specific occupation. Although there may be overlap in the skills required, the role of coordinator of dispute management services is different from that of a practitioner.

Ultimately, to be effective, the coordinators of dispute management services need to work in close collaboration with whole-of-community engagement facilitators (discussed at [8.5.2] above).

8.6.5. The need for a national Indigenous dispute management service

The research demonstrates the need for national consistency in standards, policy and training frameworks to support the delivery of relevant and responsive services at the local and regional levels. Nationally coordinated delivery of regionally based services, with the States and Territories, could also promote greater accountability among service providers and governments who have responsibilities in areas relating to the provision of dispute management services.

Specifically, a national Indigenous dispute management service could:

- work with the States and Territories to identify appropriate regional locations for services and coordinate and support their development;

- act as a clearing house for best practice across Australia through a national network of practitioners, including holding a bi-annual national practice workshop or conference for the sharing of practice nationally;
- coordinate a range of pilots in training and service delivery to inform the development of regionally based services;
- develop a national profile for Indigenous dispute resolution and conflict management;
- develop Indigenous-specific code of ethics, national standards, competencies, accreditation and recognition of prior learning procedures;
- develop a national training curriculum, and coordinate the development and delivery of training;
- develop template procedures which can be regionally adjusted including for:
 - monitoring and evaluation;
 - education and awareness;
 - mentoring of Indigenous trainees; and
 - selection processes for trainees; and
- conduct and manage ongoing research.

There are international models for such national services, including the Native American and Alaska Native Environmental Program and Native Dispute Resolution Network¹⁶² whose aims are similar to what those of any Australian service may be. They include fostering a deeper understanding of underlying principles and practices of conflict resolution, sharing skills among Native and non-Native conflict resolution practitioners and improving the ability of all parties to engage effectively in collaborative dispute resolution processes.

Strategies for implementing effective practice

Supporting Indigenous dispute management at national, state/territory, regional and local levels

- Engage with local Indigenous communities to find out their dispute management needs and whether they wish to develop their own processes or services.
- Support local and regional experimentation and trialling of processes, and build flexibility into policies and practices of services to support the development and delivery of effective processes for Indigenous people.
- Develop regional panels of dispute management practitioners, supported by accessible regional service infrastructure, and which build on existing services where possible in partnerships in regional, State/Territory and national governance structures.
- Employ committed coordinators for Indigenous dispute management services who are based locally or regionally, and are dedicated to developing locally 'owned' processes.
- Use regional panels in a range of contexts, including Indigenous community engagement with governments, broader community disputes and native title.
- Establish a national service to develop consistency in standards, coordinate and build the capacity of regionally based services, provide resources, disseminate information, and develop training and accreditation procedures.
- Hold a national practice exchange conference.
- Conduct a 'scoping project' to map existing services, infrastructure and networks at local, regional State/Territory and national levels, upon which a national Indigenous dispute management service could build.

8.7. Conclusion

Despite demand, Indigenous dispute management services do not exist in most communities and regions. Through the case studies and snapshots, this chapter has demonstrated not only the need for such services, but also the need for various kinds of support without which effective practice cannot be realised.

¹⁶² The U.S. Institute of Environmental Conflict Resolution initiated the Native Network in response to input from a broad range of participants, sponsors, and leaders about the need to identify Native dispute resolution practitioners to assist with environmental conflict resolution processes involving Native people or communities. Further information about the Native Dispute Resolution Network is available at <http://www.ecr.gov/Resources/NativeNetwork/NativeNetwork.aspx>

Chapter 9

Supporting Indigenous dispute management processes through further research



There are a number of case study contexts which the Project was unable to address. The following areas have been identified by the Project as potential priority areas for further research which could contribute to the development of strategies for delivering Indigenous-specific training in decision-making and dispute management, and/or inform the development of an Indigenous-specific training curriculum and competencies. Further funding and community engagement would be required to conduct such research.

Strategies for implementing effective practice

Supporting Indigenous dispute management processes through further research

Carry out further research into:

- systemic causes of Indigenous disputes and 'whole-of-community' ways of addressing them, such as programs for victims of community violence, Indigenous governance mechanisms relating to the role of alcohol and native title issues;
- ways of building local capacity in managing conflicts including:
 - relationship-building initiatives, and
 - Indigenous 'peacemaking' approaches;
- Torres Strait Islander dispute management processes;
- training approaches, curriculum development and competencies in Indigenous dispute management;
- the mapping and evaluation of effective policies, procedures, organisational attitudes and values in the Indigenous dispute management context.
- the mapping of government responsibilities for Indigenous dispute management services and how effective services might be delivered; and
- longitudinal studies of dispute management processes, enabling researchers to study the process as it unfolds and the immediate responses of those involved.

Chapter 10

Conclusion

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The greatest strength of a report based on case studies of Indigenous dispute resolution and conflict management lies in its potential to reflect the distinctive and diverse realities and values of contemporary Indigenous life. The greatest challenge is to capture the common characteristics and develop general principles drawn from individual cases, while not confining the creativity, flexibility and responsiveness of practitioners at the community level.

The research findings of the Project have application to a wide range of audiences. The critical factors for effective practice may particularly assist practitioners, while the strategies for implementing effective practices are designed to be taken up by those with responsibilities for delivering services to Indigenous people – particularly State, Territory and Commonwealth governments. It is hoped that the responsible organisations will implement those strategies that are relevant to their responsibilities, in spirit of genuine commitment to achieving more effective and sensitive service delivery mechanisms for Indigenous peoples.

The conclusions of the report ultimately point to the need for a national Indigenous dispute management service, networked with regional panels and infrastructure, to provide consistent and specialised services to Indigenous peoples in a wide range of contexts. Such a service could give effect to all the critical factors and strategies identified in this report, including mechanisms to raise awareness of Indigenous dispute management services, to identify and network practitioners with expertise in the Indigenous context and support their professional recognition and development, provide appropriate training and accreditation procedures, and deliver effective and accessible services offering processes that are physically and culturally safe and 'owned' by the parties.

A national Indigenous dispute management service would ultimately result in significant cost savings. From a government or industry perspective, an investment in effectively managing disputes is likely to reduce costs caused by delays to projects, enhance the potential for meaningful partnerships with Indigenous communities, and avoid the costs of Indigenous contact with the criminal justice system. From an Indigenous perspective, effective dispute management can provide a permanent forum for community self-regulation and may form part of a community's justice and governance structures. In this sense, the functions of a national Indigenous dispute management service can be seen as integral to a broader response to 'closing the gap' and the building of safer, self-sustaining Indigenous communities.

There is increasing international recognition of the value and sophistication of Indigenous conflict management processes.¹⁶³ It is also recognised that Indigenous approaches to dispute management are an under-utilised resource. Professional recognition and structured support for Indigenous practice should expand both its effectiveness and field of operation, not isolate or reduce its reach through imposing rigid formal boundaries.

Support for programs that enable Indigenous people to negotiate conflict will enable them to negotiate change and to shape the nature of that change rather than simply having it imposed on them. Change is like conflict; it needs to be understood and negotiated. In order to do this effectively, Indigenous communities need real opportunities to develop their own negotiating structures and approaches and be able to influence, persuade and manage conflict both within and beyond their communities. Effective processes are driven by the local context – from the 'bottom up' – and are also supported by clear and constructive integrated policy directives – from the 'top down'. A national Indigenous dispute management service, supporting regional and local services, provides a clear pathway to achieving this.

¹⁶³ See, eg. *Handbook for Conflict Transformation*, Berghof Research Center for Constructive Conflict Management, Berlin, Germany, 2006, <http://www.berghof-handbook.net/std_page.php?LANG=e&id=1>; Hagmann, T. 'Bringing the Sultan Back In: Elders as Peacemakers in Ethiopia's Somali Region' in Buur L. & Kyed, H.M. (eds), *State Recognition and Democratisation in Sub-Saharan Africa: A New Dawn for Traditional Authorities?*, Palgrave Macmillan, New York, USA, 2007; Huyse, L. et al. *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International IDEA, Stockholm, Sweden, 2008; MacGinty, R. 'Indigenous Peace-Making Versus the Liberal Peace,' (2008) 43(2) *Cooperation and Conflict* 139; Babo Soares, D. 'Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor' (2004) 5(1) *The Asia Pacific Journal of Anthropology* 15.

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Family Law Regulations 1984 (Cth)

Family Law (Family Dispute Resolution Practitioner) Regulations 2008 (Cth)

Native Title Act 1993 (Cth)

Community Justice Centres Act 1983 (NSW)

Filmography:

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Appendix A



Framework for Case Study Report and Analysis¹⁶⁴

A. CASE STUDY REPORT

1. Introduction: Brief description of the case study context

- 1.1. Notes on overall study (i.e. 1 paragraph including applied research questions and aims of study)
- 1.2. Geographical location of the case study
- 1.3. Length of time in the field and dates
- 1.4. Brief description of the issue and context (e.g. native title, community dispute, custody dispute, neighbour dispute etc)

2. Case study approach

- 2.1. Permissions to do the case study, from whom and how
- 2.2. Stakeholder mapping: who has an interest?
- 2.3. Approaches taken (e.g. focus groups, one-or-one or group interviews and consultation on draft report)
- 2.4. Categories of those interviewed and who they represented
- 2.5. Review of relevant documents
- 2.6. How were confidentiality issues addressed?
- 2.7. Location in broader program and incorporation of directly relevant institutions
- 2.8. Participation of Indigenous people and communities in the research process
- 2.9. Acknowledging the 'lens' of the researcher
- 2.10. Constraints on the study

3. Background to dispute

- 3.1. How was a dispute identified and by whom?
- 3.2. What were the circumstances leading to the intervention?
- 3.3. How was a decision made to intervene and by whom?
- 3.4. How was a decision made about the kind of intervention which was desired or required?

4. Permissions to participate

- 4.1. How were the parties identified?
- 4.2. How were representatives chosen to make a decision?

¹⁶⁴ **Note:** Issues raised in the questions in this document are not exhaustive and are to be used as checklists and triggers. They may be added to or employed by the researcher as relevant and appropriate to the specific case study. Nevertheless, the broad section headings are to be used as the framework for the report. Researchers may also employ other headings and subheadings as relevant.

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- 4.3. What permissions, if any, were obtained for the intervention?
- 4.4. How were they obtained to arrive at free, prior and informed consent?
- 4.5. How was the process explained to participants?
- 4.6. Did participants have the right to say no to participation?
- 4.7. Were there any legislative requirements to participate?
- 4.8. What was the role of the commissioning institution/representative body in obtaining permission?
- 4.9. How was the primary practitioner chosen?
- 4.10. How, if at all, was agreement obtained from the parties for the particular practitioner/s?
- 4.11. What kinds of discussions occurred around conflict of interest and what actions were taken where conflicts of interest whether real or perceived were apparent?
- 4.12. How were confidentiality provisions negotiated?
- 4.13. What kinds of considerations were given to using Indigenous practitioners?

5. Planning

- 5.1. How was the process planned?
- 5.2. How was the dispute mapped?
- 5.3. What were the logistical issues?
- 5.4. What discussions occurred around venues and where particular actions were to take place?
- 5.5. Was there a team of people involved consistently?
- 5.6. Were local Indigenous 'peacemakers' or mediators incorporated into the process, and if so, how?
- 5.7. What strategies were in place to incorporate technical advice or assistance, such as from lawyers, researchers and other experts?
- 5.8. How did planning processes account for the emotional, cultural, procedural and substantive needs of parties and what were these needs?
- 5.9. What attention was paid in planning to ensure that the process did no harm?
- 5.10. What mechanisms were incorporated in the planning process to address Indigenous cultural issues including kinship relationships, Indigenous law and 'men's' and 'women's' issues?
- 5.11. What community education component was there?
- 5.12. What input did parties have in negotiating the process?

6. Preparation of parties

- 6.1. How were parties prepared for the intervention?
- 6.2. What choices of intervention were parties given and how were such choices explained?

- 6.3. How did the practitioner/s ensure that all the right people were involved?
- 6.4. What level of understanding did parties have as to what they were getting involved in?
- 6.5. What was done to ensure that sufficient time was given to building the relationships necessary for an effective outcome?
- 6.6. What was done to ensure that the needs of parties to enter effectively into the intervention had been met?
- 6.7. How were other organisations, departments and interested parties integrated into the process or informed about it?
- 6.8. How did people know the parties were ready to do business?

7. Progression of the process

- 7.1. What form/s did the intervention and any subsequent interventions take?
- 7.2. How and why did these deviate from earlier plans?
- 7.3. What was the fit between preferred Indigenous ways of doing business and what actually happened?
- 7.4. How were local traditional laws and customs and cultural needs incorporated into the process?
- 7.5. How was local decision-making and dispute management expertise incorporated into the process?
- 7.6. How was the process tailored to local capacity?
- 7.7. What capacity building initiatives were put in place for all parties?
- 7.8. What contingencies put in place in the event of parties being unable to reach agreement?
- 7.9. What actions were taken to address power imbalances amongst the parties?
- 7.10. What facilitative techniques were used to ensure effective dialogue between the parties?
- 7.11. What relationship building activities were undertaken?
- 7.12. How were unspoken dimensions and interactions understood or used as part of the process?
- 7.13. How was technical expertise incorporated into the process?
- 7.14. How were relevant institutions and organisations incorporated into the process?
- 7.15. How were extended family members involved in the process?
- 7.16. What was the role of community leaders, 'peacemakers' and advocates?
- 7.17. How were they identified?
- 7.18. What techniques were used to ensure that information was understood?
- 7.19. Were parties given time to consider and evaluate their positions away from the process?
- 7.20. What kinds of options were generated for parties and how?

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- 7.21. How were parties and program managers kept informed?
- 7.22. If a team was involved, how was team cohesion ensured?
- 7.23. How were the parties, program managers and practitioner/s debriefed?
- 7.24. What was the impact of time?
- 7.25. What was the impact of resources?
- 7.26. What issues were at play, other than those identified as the primary issues to be addressed?
- 7.27. How was/is the intervention described by practitioner/s? Parties? Other interest groups?
- 7.28. What was/would have been the local term/s employed to describe the process?
- 7.29. What local term/s is/are employed to describe 'peacemaking' more generally? Are these term/s regularly in use?
- 7.30. How was local language and nuance understood and incorporated in the process?
- 7.31. What was the effect on the process if parties were compelled to enter the process?
- 7.32. What significant changes were made to original plans to meet the needs of parties and how were these negotiated?
- 7.33. What vantage point/s was/were taken by the practitioner/s – 'community looking out', 'looking in to the community', 'western ADR?' etc?

8. Outcome and implementation

- 8.1. How did the process conclude?
- 8.2. What kind of agreement was reached at that time?
- 8.3. What kind of disagreement was reached at that time?
- 8.4. What is the situation at the time of the case study?
- 8.5. How were any plans for future actions reality-checked, including the provision of appropriate resources?
- 8.6. What measures were taken to ensure that the outcome was/is sustainable?
- 8.7. What has been done?
- 8.8. What has not been done?
- 8.9. What responsibility did the practitioner/s and parties take for implementation?
- 8.10. What processes were put in place to monitor the agreement?
- 8.11. How did the process develop the capacity of parties to manage disputes or decision-making processes in the future?
- 8.12. What prevention mechanisms were put in place?

B. CASE STUDY ANALYSIS

1. Specific case study analysis

- 1.1. What worked and for whom at various stages in the process?
 - 1.2. Why or why not?
 - 1.3. What did not work and for whom at various stages in the process?
 - 1.4. Why or why not?
 - 1.5. What impact did process have on outcomes, in the course of the process and in the final outcome?
 - 1.6. What local conditions and policy conditions were important in influencing the outcomes?
 - 1.7. What were the benefits and losses in the process and for whom?
 - 1.8. What were the unintended or hidden outcomes, in the course of the process and in the final outcome (if any)?
 - 1.9. What were the effects of compromises which were made in the process?
 - 1.10. Was a non-interventionist facilitative role appropriate or were more directive approaches, through to arbitration, required, and who made those decisions?
 - 1.11. Did the process involve Indigenous practitioner/s and what difference, if any, did that make or may that have made?
 - 1.12. What values or priorities were articulated by the parties in the process?
 - 1.13. What could have been done differently and how?
 - 1.14. What does the scenario look like in the future?
 - 1.15. Were there issues arising from the case study which could not be appropriately analysed or commented on? What (if any) additional data would enable those issues to be explored?
 - 1.16. How did the process reflect what indigenous parties may have described as their traditional ways of managing this kind of dispute?
- 2. Locating the case study in the broader Indigenous ADR context**
- 2.1. What specialised knowledge and skills do 'ADR practitioners' have that lend authority to their ownership of the process and their insertion of and imposition of themselves in the process?
 - 2.2. What constitutes 'success' over the short, medium and long term and how might it be measured?
 - 2.3. What learnings can be derived from this process which can be applied to other ADR processes and contexts?
 - 2.4. How can the role of unspoken or nuanced dimensions and interactions of conflict resolution processes and the 'difficult to prescribe' skills and attributes of effective practitioners be understood and mobilised in facilitative processes in Indigenous settings?
 - 2.5. How, if at all, do Indigenous individuals in the community personify this?
 - 2.6. Broadly comment on the following theoretical questions, as relevant:
3. What is 'Indigenous ADR'?
 4. How do Indigenous people think about disputes and what do they mean to them?

5. How can the values and principles of facilitative practices be best aligned with the values and principles of Indigenous law and decision-making?
6. How do facilitative processes articulate and respond to Indigenous values and principles and the mainstream Australian political, social and legal order?
 - 6.1. What strategic suggestions do you have to ensure that your findings are acted upon appropriately?
7. **Critical factors for effective Indigenous conflict management**
 - 7.1. What will assist the parties to participate effectively in conflict management processes?
 - in the short term?
 - in the medium term?
 - in the long term?
 - 7.2. What will assist the practice of conflict management in the community?
 - in the short term?
 - in the medium term?
 - in the long term?
 - 7.3. What will assist policy-makers, program managers, funding bodies and other stakeholders in ensuring effective conflict management outcomes?
 - in the short term?
 - in the medium term?
 - in the long term?
 - 7.4. What are the critical attributes of a good practitioner? What, if any, additional skills and associated training are required by practitioner teams to be effective in conflict management processes?
8. **Conclusion**
 - 8.1. Overall conclusion (ie, return to key issues and reiterate key findings).
 - 8.2. What issues arose in the case study to take into account in future studies?
9. **Appendix**
10. **Notes on researcher/s qualifications and experience.**

Refer also to the references provided for further points of analysis:

- Bauman, T. 2006. *Final Report of the Indigenous Facilitation & Mediation Project July 2003/04 – June 2006: research findings, recommendations and implementation*. Indigenous Facilitation and Mediation Project (IFaMP), Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Canberra (extract)

- National Alternative Dispute Resolution Advisory Council. 2006. *Indigenous Dispute Resolution and Conflict Management*, Canberra.
- IFaMP and Social Compass. 2006. *Evaluation Toolkit: Training and Service Delivery in Decision-Making and Dispute Management Processes in Native Title*. Native Title Research Unit, AIATSIS, Canberra (extract: Table 5 - Examples of Indicators and Measures for the Impact of a Native Title Decision-making and/or Dispute Management Service or Process)
- Kingham, F. and Bauman T. 2005. *Report on Proceedings of Indigenous Native Title Mediation Practitioners Workshop 17 - 18 February 2005*. IFaMP, Native Title Research Unit, AIATSIS, Canberra.
- Kingham, F. Bauman, T and Black, M. 2005. *Report on Proceedings of Workshop of Native Title Mediators 15 and 16 March 2005*. IFaMP, Native Title Research Unit, AIATSIS, Canberra.

Appendix B



Research Protocol

The AIATSIS *Guidelines for Ethical Research in Indigenous Studies* – which set out a code of practice including matters relating to confidentiality, prior and informed consent, storage and use of information, communication of research findings to participants and other matters – provided an overarching ethical framework within which Project research was conducted.

Within that framework, the diversity of potential and actual case study contexts necessitated a range of research strategies and a Research Protocol was developed to provide a Project-wide framework for the conduct of the research. While each research process had to be adapted to the local circumstances and respond to the needs and concerns of participants, the research protocol was applied across all areas of the Project's research. For example the Research Protocol required participants to be given an opportunity to comment on a draft of the report prior to publication¹⁶⁵ and approaches to this requirement varied, depending on the circumstances of the case study or 'snapshot'.¹⁶⁶

Below is the research protocol.

1. Research Protocol

- a. This research protocol is intended to govern the research process for the case studies and the use of information and materials obtained for the case studies and for the purposes of the Indigenous Dispute Resolution and Conflict Management Case Study Project.
- b. Unless other specified, 'case study participants' and 'providers of information' include both individuals and organisations who participate in the case study research.

2. Confidentiality

- a. Case study research will be conducted by researchers in accordance with the following procedures:
 - i. All primary data and material obtained from case study participants will be treated as confidential unless permission to release relevant information is granted.
 - ii. Where appropriate, individual case study participants or other providers of information for the case studies will be requested to sign an interview consent form and/or document consent form, or other form of consent as required, to be provided by the Project Team. All original signed consent forms will be delivered to the Federal Court by researchers upon completion of the case study fieldwork.
 - iii. Where a case study participant has signed a consent form, the relevant information and material covered by the form will be dealt with in accordance with the provisions of the form.
 - iv. Unless otherwise agreed, the researcher will store information and material obtained from case study participants in a secure location to prevent unauthorised access to it until the final report and other products of the Project ('Final Products') have been published.

¹⁶⁵ A specific procedure was established for the NSW case study, whereby participants could elect for CJs (ie, the Directorate) to review and comment on the draft report on their behalf, provided that CJs contacted the participant if CJs formed a view that the participant should comment or suggest any changes himself or herself. This process was devised in the interests of efficiency and in recognition of the different levels of contribution participants were prepared to make to the research.

¹⁶⁶ In the NSW case study, participants were provided with a draft of the report and comments were received by phone or email. This was considered an appropriate strategy given the relatively high literacy skills of participants involved. In the Tiwi and Halls Creek case studies, by contrast, a draft report was provided to select participants in advance of the researchers conducting face to face consultations. This approach was necessary to ensure that all participants fully understood the content of the case study and had opportunity to comment on it prior to submission of the final version to the Federal Court for inclusion in this report. In the snapshots, drafts of the relevant snapshot were emailed or transmitted by fax to the relevant informants and discussions took place by email or phone.

- b. Upon publication of the Final Products, all primary data and material obtained from case study participants or other providers of information for the case studies (including copies of documents made for the purposes of the Project) will be:
 - i. securely destroyed by the researcher, with written confirmation to be provided to the Federal Court that the data has been destroyed; or
 - ii. delivered to the Native Title Unit of the Federal Court of Australia, Commonwealth Law Courts Building, 305 William St, Melbourne 3000 (marked confidential) for secure destruction; or
 - iii. returned to the relevant case study participant or other provider of information for the case study by the researcher, if agreed.
- c. Upon publication of the Final Products, all researcher's notes of primary data and material obtained from case study participants or other providers of information for the case studies (or any other notes containing confidential information obtained from case study participants or other providers of documents) will be:
 - i. securely destroyed by the researcher, with written confirmation to be provided to the Federal Court that the data has been destroyed ; or
 - ii. delivered to the Native Title Unit of the Federal Court of Australia, Commonwealth Law Courts Building, 305 William St, Melbourne 3000 (marked confidential) for secure destruction.
- d. The Federal Court may, with the consent of relevant case study participant/s, hold primary data and material obtained from case study participants or other providers of information for the case studies (including copies of documents made for the purposes of the Project) for up to five years. After that time has elapsed, the data will be securely destroyed, returned to case study participants or provider of information, or deposited in the archives of Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) library in Canberra, as appropriate/agreed.
- e. Researchers will ensure that the case study report does not:
 - i. disclose any confidential or highly sensitive information; or
 - ii. disclose the names of individual case study participants or Indigenous groups involved in the case study,
 - iii. unless permission to do so has been granted.
- f. Unless otherwise agreed with the relevant case study participants, all information and material obtained from case study participants will be used only for the purpose of the Project.
- g. If information is obtained by a researcher in the course of the case study research which gives rise to, or may give rise to, a legal obligation of disclosure, the researcher will communicate that information to the Project Team immediately. If appropriate, the relevant organisational case study participant will be consulted in relation to that information.

3. Consent of Case Study Participants

- a. All proposed individual case study participants will be provided with an 'information sheet' in relation to the Project prior to their participation in the Project.
- b. Free prior and informed consent of all case study participants in the research is to be obtained to before their participation in the Project.

- c. Researchers will use their best endeavours to ensure that participants and other providers of information for the case studies are fully informed in relation to the aims, processes and outcomes of the Project.
- d. Researchers will use their best endeavours to ensure that participants are fully aware that they can withdraw from the case study and the Project at any stage.
- e. Where appropriate, researchers will request the case study participant to sign an interview consent form, document consent form, or other form of consent as required.

4. Intellectual Property and Ownership of Data

- a. Copyright in the case study report and all other products produced by the Project will be owned by the Federal Court.
- b. Without limiting the above, where an organisational case study participant has collaborated with the Project in relation to a particular case study, acknowledgement of the intellectual contributions of that organisation to the case study report may be the subject of a separate arrangement.
- c. Where an individual case study participant has signed an interview consent form, copyright over the content of the interview will remain with the interviewee.

5. Information Gathering

- a. If a case study participant is not comfortable communicating with researchers in English, all reasonable efforts will be made to engage an appropriately qualified interpreter.
- b. If a researcher or the Project Team is aware of any such pre-existing protocols pertaining to access to information and documents to be used in the case study prior to the research commencing, all reasonable steps will be taken to ensure compliance with any such pre-existing protocols.
- c. Subject to compliance with any pre-existing protocols, researchers will allow access to information and documents provided by case study participants and other providers of information for the case study to the Project Team upon any reasonable request by a member of the Project Team.

6. Fieldwork Procedures

- a. Where appropriate and practicable, fieldwork will be carried out in male/female teams and involve at least one Indigenous researcher.
- b. Researchers will consult with the Project Team and the Research Consultative Group in relation to appropriate fieldwork procedures for the particular case study.

7. Communication of Research Findings

- a. Researchers will provide a copy of a preliminary draft of the case study report to the Project Team. Researchers and the Project Team will work collaboratively to address any problems, complexities or required amendments prior to the draft case study report being provided to case study participants.
- b. Case study participants, or representative/s of group/s of participants (if appropriate), will be provided with an opportunity to comment on a draft case study report. If case study participant/s or representative/s request alterations to be made to the draft case study report by reason of:
 - i. factual errors; or

- ii. confidential or highly sensitive information,
- c. those alterations will be made by researchers in consultation with the relevant case study participants. Any other comments on the draft report or requested alterations by case study participants or representative/s will be discussed by the researchers and the Project Team and incorporated into the draft report as appropriate.
- d. Researchers will provide a copy of the final draft of the case study report to the Project Team. Researchers and the Project Team will work collaboratively to address any outstanding issues prior to publication of the Final Products.
- e. A copy of the published Final Products will be provided to all case study participants or representative/s of group/s of participants (if appropriate).
- f. If any document (other than the case study report) produced as part of the Project incorporates case study-specific information provided by case study participants, the Project Team and/or researchers will provide an opportunity for the relevant case study participants or representative/s of group/s of participants (if appropriate) to comment on a draft of the document. Any comments on the draft document or requested alterations by case study participants will be discussed by the researchers and the Project Team and incorporated into the final document as appropriate.

8. Outcomes

- a. The case study report will be written in accordance with the following guidelines:
 - i. The case study report will be directed to the Federal Court Project Team. The case study report will be written in clear and concise language and in a manner which is accessible to multiple audiences including ADR practitioners and case study participants.
 - ii. The case study report will not make any explicit criticisms of the ADR process/es under consideration in the case study.
 - iii. Sensitive and confidential information will be respected (see also confidentiality provisions of this protocol).
- b. Care will be taken to ensure that:
 - i. the analysis of the case study and conclusions of the case study report are based on multiple sources of information;
 - ii. the analysis of the case study and conclusions of the case study report can be traced back to original sources of information;
 - iii. the findings are fair, impartial and non-judgmental;
 - iv. the case study report addresses rival interpretations of events; and
 - v. multiple viewpoints are acknowledged.

9. Publication of Final Products

- a. Publication of the Final Products will be in accordance with the following procedures:
 - i. The project team will present the (unpublished) final products to NADRAC;
 - ii. It is anticipated that NADRAC will endorse the final products;

- iii. The Final Products will be published by the Federal Court and may also be published by NADRAC; and
 - iv. The Final Products are expected to be published on NADRAC's and/or the Federal Court's websites and in hard copy and will be made available to the public.
- b. If NADRAC decides not endorse the final products as contemplated in cl 11.2.2:
- i. The project team will consult with NADRAC in relation to any concerns or requested changes;
 - ii. If NADRAC's concerns are due to or involve a particular case study, the project team/researchers will consult with relevant case study participants in relation to such concerns or requested changes; and
 - iii. No substantial changes to any case study report will be made unless relevant case study participants have been consulted.

Appendix C



List of Potential Case Studies Investigated

To the extent possible given issues of confidentiality, the following list records the potential case studies investigated by the Project team. Those listed in bold are included in the Project's final report as case studies or snapshots.

1. **NSW Community Justice Centre mediation**
2. **Halls Creek mediation to resolve family feuding**
3. **Community process to resolve family and community disputes in Nguiu, Tiwi Islands**
4. **Ali-Curung Law and Justice Committee**
5. **Non-Indigenous attempts at mediating a remote Indigenous community feud**
6. **Family Relationships Centre Indigenous program**
7. **Jealousy Program, Nguiu, Bathurst Island, Tiwi Islands**
8. **Community Justice Group mediation in Northern Qld**
9. Child-related mediation in the Family Court, Northern Qld
10. Family Court mediation with urban / remote families
11. Mawul Rom Project
12. Hopevale land dispute
13. Doomadgee liquor licensing dispute
14. Argyle diamond mine
15. Statewide negotiation process for native title in South Australia
16. Lockhart River health worker mediation
17. Community facilitation process in the Pilbara
18. NT Community Justice Centre mediation regarding marriage dispute
19. Raypirri Rom Project
20. Ngali Ngali Mittji
21. Cross-cultural educational DVDs produced by NT Legal Aid Commission's Indigenous Families Project
22. Land boundary dispute resolution process in the Torres Strait Islands
23. Torres Strait Islander traditional adoption dispute
24. Relationship-building process for negotiations for an ILUA, South Australia
25. Community mediation process in Pilbara
26. Wagait traditional ownership dispute

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27. Indigenous engagement with mining interests in the Pilbara
28. Care circle program, Nowra, NSW
29. NSW circle sentencing cases
30. Training of Elders in Indigenous Courts, Western Australia

Appendix D



Twelve Phases of NSW Community Justice Centre Mediation Model**Phase 1: Preparation**

Working as a team: the mediators establish roles and responsibilities

Phase 2: Opening Statements

Welcome: Introductions, procedures and authority established

Phases 3 & 4: Recounting Concerns

Part A recounts concerns without interruption, then Party B recounts concerns without interruption, then Part C recounts concerns without interruption

Phase 5: Summaries

Mediator 2 summarises the main issues of A's and B's and C's concerns respectively

Phase 6: Listing the Issues

A list of issues is worked out by Mediator 1 from Mediator 2's summary

Phase 7: Exploration

The parties talk directly to each other with the assistance of the mediators

Phase 8: Private Session

Each party has a private session with both mediators (usually whoever went last in their opening statements goes first this time)

Phase 9: Negotiation

Parties work through options to head towards an agreement

Phase 10: Outcome

Parties come up with an agreement (statement of resolved issues) and/or they negotiate a statement of unresolved issues

Phase 11: Termination Phase

The end of the mediation (either with or without an agreement)

Phase 12: Debriefing

This is a critical analysis by the mediators of the mediation session

Source: NSW CJs pamphlet for mediators (2007)

Appendix E(i)
Tiwi Social Wellbeing and Youth Development Shared
Responsibility Agreement



Tiwi Social Wellbeing and Youth Development SRA - Tiwi Islands

1. Community Priority

The primary goal of all parties engaged in discussions leading to this SRA is a more harmonious community environment which encourages broad community participation and engagement in activities designed to promote achievement by young community members. Priorities identified by the Tiwi Islands community to support the achievement of its goal include:

- improving levels of engagement by children and youth with education and training providers on the Islands, and achieving improved outcomes;
- reducing the levels of alcohol and drug misuse in the community(s);
- reducing the levels of self-harm and violence towards others in the community(s);
- reducing the levels of formal interaction with the law and justice system by members of the community(s); and,
- supporting the TIYDDU as a community-managed, holistic and culturally appropriate mechanism for addressing factors contributing to social dysfunction on the Islands.

These priorities demonstrate strong linkages with the following strategic areas for action identified in the Australian Government's "Overcoming Indigenous Disadvantage Report":

- Early school engagement and performance (pre-school to Yr3).
- Positive childhood and transition to adulthood.
- Substance use and misuse.
- Functional and resilient families and communities.

2. Why does the community need this SRA?

The Tiwi community(s) experience comparatively high levels of social dysfunction. This is manifested in generally poor education participation rates and outcomes, high levels of alcohol and other drug misuse, self-harm and violence towards others, and inappropriate social role-modelling for children and youth by a proportion of their peers and some older members of the community(s). There is an urgent need to invest in the social wellbeing and individual capabilities of children and youth. In the absence of sustained investment, the very real opportunities for improvement in the circumstances of individuals, families and the community(s) generally will not be realised in the future.

Low participation rates in primary and secondary education on the Tiwi Islands present a major obstacle to accessing existing and future employment opportunities. Key sectors of the Tiwi Island community recognise that, in the absence of substantial improvements in both education participation and outcomes, the prospects of major improvements in the economic and social circumstances of Tiwi Islanders are limited.

The TIYDDU has a proven track record of successful program delivery and facilitation which has demonstrated positive outcomes in ameliorating some of the causes of that dysfunction and in promoting positive engagement by young community members in productive personal and community development activities. Available statistical information supports the contention that TIYDDU program activities have had a very positive impact since the inception of the Unit. This is evidenced by significant and statistically verifiable reductions in court proceedings involving youth on the Tiwi Islands in the 3 years the Unit has been operating. In adopting a holistic approach to youth diversion activities, the TIYDDU has a pivotal facilitation and delivery role in a broad range of activities for which no financial or service support is currently provided.

Under this SRA, TIYDDU will offer a range of intervention, mediation and support services designed to promote social wellbeing and youth development in the Tiwi community(s). There is broad-based support at community level to see an extension of the Unit's activities to facilitate more active engagement with the communities of Milikapiti and Pirlangimpi than is currently possible and this will be facilitated through this SRA. These initiatives will promote enhanced community engagement and individual participation in a range of

activities, including primary and secondary education, employment and life skills training, family mediation and counselling, substance abuse awareness and management skills, the transmission of Tiwi cultural knowledge and skills, community service activities and sport/recreation activities. The Nguiu Night Patrol(s) report to the TIYDDU daily on matters that require intervention/mediation action. This Shared Responsibility Agreement therefore seeks to establish a framework to support funding for Night Patrol activities, in recognition of the fundamental role of the Patrols in addressing relevant law and order issues in Nguiu and facilitating the the delivery of TIYDDU program activities. Through bringing together funding from a range of agencies to support these initiatives, this SRA will enhance the ability and capacity of the Tiwi people to actively participate in community building as well as take up other Australian and Northern Territory government programmes.

3. How we will address the priority

Australian and Northern Territory Government investment in this SRA will support the continued delivery of TIYDDU program activities for an interim period of six (6) months, from January 2007 to June 2007, while longer term strategies are negotiated and devised for a sustainable framework that will enable the ongoing delivery of those activities.

To assist in identifying pathways for the sustainable delivery of social wellbeing and youth development program activities by the TIYDDU, the Darwin Indigenous Coordination Centre has commissioned a consultancy for the development of an Operational Plan. The Operational Plan will complement this Shared Responsibility Agreement (SRA) and will be in alignment with key objectives identified in the TILG Strategic Plan mentioned above.

An extension to this SRA, from July 2007 to June 2009, may eventuate from those negotiations in order to provide further Australian Government support during a transition to increased investments in TIYDDU program activity delivery by other entities.

In addition to making a financial contribution to the SRA, the Darwin Indigenous Coordination Centre will ensure that:

- financial and in-kind contributions agreed to have been provided by all parties;
- feedback is received from communities, families and individuals; and,
- agreed project milestones are being met.

Under this SRA, TIYDDU will offer a range of intervention, mediation and support services designed to promote social wellbeing and youth development in the Tiwi community(s). These initiatives will promote enhanced community engagement and individual participation in a range of activities, including primary and secondary education, employment and life skills training, family mediation and counselling, substance abuse awareness and management skills, the transmission of Tiwi cultural knowledge and skills, community service activities and sport/recreation activities.

Concurrently, the Tiwi Islands Local Government (TILG) and key community members have committed to a strategy for seeking ongoing financial and in-kind support from various private sector and community-owned entities to secure support for the sustainable future operations of the TIYDDU. They will also be investigating options for enhanced partnership approaches to addressing some of the underlying causes of social dysfunction, including the role of alcohol and other drug misuse on the Islands as a contributing factor to incidents of suicide and self-harm, violence towards others, and associated chronic health problems. The Darwin Indigenous Coordination Centre will assist in facilitating these negotiations, as appropriate to the circumstances.

4. What governments and other partners will do?

Australian Government

Contributor Name:	OIPC - Office of Indigenous Policy Coordination
Proposed Total:	\$74,300
\$74,300	Capital acquisition and operational funding support for the delivery of TIYDDU program activities, i.e. funding for the purchase of a new vehicle and a contribution to other operational costs.

Contributor Name:	AGD - Attorney-General's Dept
Proposed Total:	\$159,959
\$159,959	Capital acquisition and operational funding support for the delivery of Nguiu Night Patrol activities, i.e. purchase of 2 new vehicles and provision of some operational funding for Night Patrol salaries.

Contributor Name:	DEST - Dept of Education, Science and Training
Proposed Total:	\$150,000
\$150,000	Salaries and operational funding support for the delivery of TIYDDU of activities, consistent with the National School Drug Education Strategy.

Contributor Name:	FaCSIA - Department of Families, Community Services and Indigenous Affairs
Proposed Total:	\$63,125
\$63,125	Salary and operational funding to support the delivery of TIYDDU program activities during the project period.

Contributor Name:	DHA - Dept of Health and Ageing
Proposed Total:	\$60,000
\$60,000	Operational funding support for the delivery of TIYDDU program activities.

State/Territory

Contributor Name:	NT Police Juvenile Diversions Unit
Proposed Total:	In-Kind
In-Kind	Ongoing non-financial operational and advisory support for the project period.

Local Government

Contributor Name:	Tiwi Islands Local Government
Proposed Total:	In-Kind
In-Kind	Provision of general administrative and operational support for TIYDDU program activities.

Aboriginal Organisation

Contributor Name:	Nguiu Ullintjinni Association Incorporated
Proposed Total:	In-Kind
In-Kind	Weekly provision of food and consumables free-of-charge for TIYDDU program participants.

Other/NGO

Contributor Name:	Catholic Education Office
Proposed Total:	In-Kind
In-Kind	Provision of premises/work area free-of-charge, to support TIYDDU program activities.

5. What communities will do

In support of this SRA and the achievement of the project's goal:

- TILG will provide administrative and other support to the operations of the TIYDDU, including assistance through the CDEP program administered by the organisation, and facilitate negotiations aimed at securing on-going financial and in-kind support for TIYDDU operations from other entities on the Islands.
- Nguiu Ullintjinni Association (Store, Takeaway and Garage) will contribute food and other consumables for program participants.
- Nguiu Club Association will support and enforce the "Nguiu Good Behaviour Policy".
- Murrupurtiyanuwu Catholic School and Xaxier Community Education Centre will work closely with the TIYDDU on initiatives designed to promote school attendance and outcomes, as well as providing premises for the delivery of TIYDDU program activities free-of-charge.
- TIYDDU will deliver:
 - juvenile diversion activities, including family and victim offender conferencing;
 - alcohol and drug information, awareness and education to students of Xavier CEC;
 - an "Attendance Program" in collaboration with Xavier CEC;
 - a "Rewarding Good Behaviour" program and working with "problem" kids at Murrupurtiyanuwu Catholic School;
 - counselling and family conflict mediation/intervention services;
 - appropriate responses to diversion referrals from the NT Police and Correctional Services;
 - referrals of "at-risk" community members to appropriate services;
 - suicide intervention activities and services;
 - support for the implementation of the "Nguiu Community Safety Plan";
 - support for the Nguiu Night Patrol activities;
 - the co-ordination of "Skin Group" meetings as culturally appropriate forums to resolve conflict and promote social wellbeing; and,
 - after school care and vacation care programs.

There are obvious linkages between these activities and a number of strategic areas for action identified in the Australian Government's "Overcoming Indigenous Disadvantage Report". Those are:

- Early school engagement and performance (preschool to Yr 3).
- Positive childhood and transition to adulthood.
- Substance use and misuse.
- Functional and resilient families and communities.

6. What families/individuals will do

Community members (families and individuals) will support this SRA and the program activities of the TIYDDU in a variety of ways, including:

- senior community members will support and participate in planned negotiations with

entities on the Islands, seeking on-going financial and in-kind contributions to support the operations of the TIYDDU;

- senior community members will voluntarily participate in and facilitate "Skin Group" meetings to resolve issues and incidents causing community disharmony;
- senior community members will voluntarily participate in the Community Court and provide guidance and advice in regard to culturally appropriate sentencing options;
- senior community members will voluntarily provide their time and expertise to support culturally-based diversion activities undertaken by young participants;
- community members will volunteer their time to assist with suicide intervention and conflict mediation activities;
- community members will voluntarily participate in Night Patrol activities, in support of paid Night Patrol personnel; and,
- community members will voluntarily participate in monthly SRA monitoring meetings to provide qualitative feedback on the project.

7. What community strengths can be built upon?

The Tiwi people have a strong cultural identity, and a keen desire to maintain the foundations of that cultural identity, but also recognise the need to equip future generations with the life and job skills necessary to capitalise upon opportunities to improve their socio-economic circumstances.

Governance institutions are well-established and a reasonable level of community infrastructure, facilities and services exist to support the delivery of social wellbeing and youth development initiatives.

The Tiwi Islands has substantial 'human capital', in the form of concerned, committed and skilled individuals who have already demonstrated their willingness to actively support initiatives designed to enhance the social wellbeing of residents in general and associated youth development initiatives.

The administrative and infrastructure capacity exists to support these initiatives. The scope of TIYDDU program activities which has evolved over 3 years of operation testifies to the capacity of key stakeholders to forge mutually beneficial partnerships premised on the common goals of social wellbeing and youth development.

8. Performance Indicators - How will we know if the SRA is working?

	<i>Indicator</i>	<i>Provided By</i>	<i>Frequency</i>	<i>Baseline</i>
1	Number of alcohol-related after-hours callouts by Police in Nguiu during the project period.	NT Police - Nguiu	Quarterly	32
2	Number of family interventions/mediations undertaken by TIYDDU during the project period.	Tiwi Islands Youth Diversion / Development Unit	Quarterly	138
3	Number of 'attempt suicide' interventions undertaken by TIYDDU during the project period.	Tiwi Islands Youth Diversion / Development Unit	Quarterly	2
4	A brief written evaluation, prepared by the Nguiu Safety Committee, of the merits of TIYDDU program activities.	Nguiu Community Safety Committee	Once	An opportunity for relevant community stakeholders to comment on the effectiveness of program activities delivered by the TIYDDU.
5	School attendance rates (Xavier Community Education Centre) during the project period.	Principal - Xavier Community Education Centre	Quarterly	54.00%

9. What are the key milestones for Government / Community / Other parties?

	<i>Description</i>	<i>Target Date</i>
1	Development of an Operational Plan for the sustainable delivery of TIYDDU program activities.	30/03/2007
2	The purchase of new vehicles to support the operations of the Nguiu Night Patrol and TIYDDU.	27/04/2007
3	5+ TIYDDU staff commence/complete training in relevant mediation and counselling skills.	31/05/2007
4	Finalise negotiations for a longer-term SRA, subject to successful performance & milestone outcomes.	31/05/2007
5	Securing commitments for ongoing financial & in-kind support for TIYDDU operations from non-Government entities	31/05/2007

10. What are the agreed two-way feedback mechanisms and SRA monitoring strategies? Include how often and by whom.

Monthly monitoring visits by the Darwin ICC, to maintain regular communication with key project stakeholders, will be timed to coincide with monthly Community Safety Committee meetings.

Community Safety Committee meetings are the most appropriate forum for project

stakeholder engagement and project monitoring due to broad, cross-sectoral participation by relevant stakeholders.

Darwin ICC will endeavour to coordinate joint monitoring visits by representatives of contributing Australian Government agencies, where possible.

A brief written assessment of the effectiveness of TIYDDU program activities to be provided by the Nguiu Community Safety Committee by 31 May 2007.

***NOTE: This funding is subject to the partners entering into a legally binding funding agreement.**

Appendix E(ii)
Nguiu Good Behaviour Policy



NGUIU GOOD BEHAVIOUR POLICY

OFFENCE	PENALTY
General Disturbance (Noise complaints, arguments, apprehended by police drunk in public)	1 week ban from Nguiu Club and police fine and must attend Alcohol and Drug Awareness program at Tiwi Islands Training and Employment Board (TITEB) on Tuesdays from 5 pm to 7 pm.
Damaging Community Property including houses (under \$500 damage)	Ban from Nguiu Club until fine and/ or cost of repairs for damage is paid.
Drug Related Offences (minor offence as determined by police)	Ban from Nguiu Club until fine is paid and must complete Alcohol and Drug Awareness training at TITEB on Tuesdays from 5 pm to 7 pm.
Family Argument and Threatening Violence (first offence)	1 month ban from Nguiu Club and complete Alcohol and Drug Awareness training at TITEB on Tuesdays from 5 pm to 7 pm.
Threatening Suicide	1 month ban from Nguiu Club and must complete Family Awareness Program at TITEB on Tuesdays at 5 pm to 7 pm.
Family Argument and Threatening Violence (second offence) * extra 1 month for each offence committed after the second offence (within each 6 month period)	2 month ban from Nguiu Club and must complete Alcohol and Drug Awareness or Family Awareness program at TITEB on Tuesdays from 5 pm to 7 pm.
Armed in Public – self protection or violence – through the Court process	3 months ban from Nguiu Club and must complete Correctional Services Family Violence Course – Gilbert Alimankinni.
Damaging Community Property including houses (over \$500 damage)	3 month ban from Nguiu Club and must complete Alcohol and Drug Awareness program at TITEB on Tuesday from 5 pm to 7 pm.
Family Violence (first offence) – and charged through the Court process	3 month ban from Nguiu Club and must complete Family Violence Course – Gilbert Alimankinni.
Family Violence (second offence) – through the Court process	6 month ban from Nguiu Club and must complete Family Violence Course – Gilbert Alimankinni.
Attempt Suicide	6 month ban from Nguiu Club and must complete Family Awareness program at TITEB on Tuesdays from 5 pm to 7 pm.
Suicide	Club closed for 1 week.
Drug Related Offences (major offence as determined by police)	6 month ban from Nguiu Club and must complete Alcohol and Drug Awareness program at TITEB on Tuesdays from 5 pm to 7 pm.
Assault Police/ other service provider staff	6 month ban from Nguiu Club and must complete Family Violence Course – Gilbert Alimankinni.
Family Violence (third offence)	12 month ban from Nguiu Club and must complete Family Violence Course – Gilbert Alimankinni.
Riotous or Mob Behaviour	Closure of Nguiu Club (until further notice as determined by police or liquor commission).
Takeaway permit holders buying takeaway beer for non-permit holders or for people banned from the Nguiu Club	Loss of takeaway permit for 12 months and banned from Nguiu Club for 3 months.
Carrying alcohol in any public place at Nguiu (first offence)	Warning and 1 week ban from Nguiu Club.
Carrying alcohol in any public place at Nguiu (second offence)	Loss of takeaway permit for 12 months and banned from Club for 3 months

* All people banned from the Nguiu Club must complete an Alcohol Awareness Training program at TITEB on Tuesday at 5 pm to 7 pm in the evenings, each week as directed above.

Appendix E(iii)
Sample Agenda of Tiwi Skin Group Meeting



SKIN GROUP MEETING – 27TH SEPTEMBER 2007

[NAME OF SKIN GROUP.....]

AGENDA

1. **Kids not going to school.** Parents' responsibility to make sure all children go to school.
2. **Kids' behaviour at school.** Talk to your children about the need for kids to have good behaviour at school and at home.
3. **Kids being suspended from school for bad behaviour.** Parent/ adult needed in class for one week to be with their child.
4. **Kids hanging around outside club when club opens.** Parents to take more responsibility for their children – or parents may be banned from club.
5. **Cleaning up rubbish and houses at Nguiu – action needed**
6. **Housing rules; looking after your house:**
 - Cleaning up houses
 - Turning off taps not being used
 - Reporting leaking taps
 - Reporting damage to houses.
7. **Other issues to talk about today.**

