

## Community policing and beyond - A story about justice and mediation at the remote communities of Ngukurr and Galiwin'ku

*In parallel with increased police numbers, there be an emphasis on quality community policing with police officers receiving relevant training and development before deployment to an Aboriginal community.*

Report of the NTER Review Board, Summary of Recommendations, October 2008

By Julian Johnson, North Australian Aboriginal Justice Agency (NAAJA)

In a history dating back some 34 years, the North Australian Aboriginal Justice Agency (NAAJA) has, by force of circumstance, focused on its criminal law practice. Organisationally speaking, NAAJA only came into existence in 2006 following a Federal Government dictated merger of three existing Aboriginal Legal Services in Darwin, Katherine and Nhulunbuy (NAALAS, KRALAS and MIWATJ).

In recent years, NAAJA's civil law practice has begun to extend its mark. Whilst the lion's share of our work remains in the criminal jurisdiction, a properly focused civil practice can work in parallel and advocate for our clients in different ways. The great volume of our funding comes from the Commonwealth Attorney-General's Department, but we also receive pro bono support from the national law firm Blake Dawson who locate a full-time civil lawyer in our Katherine office on a six month rotational basis, and from the Northern Territory Legal Aid Commission, who assist us with funding a family lawyer, also in our Katherine office. Additional Intervention funding from the Commonwealth has allowed us to expand our services with the placement of a full-time civil lawyer in our Nhulunbuy office. We receive no recurrent funding whatsoever from the Northern Territory Government.

The civil law practice tries to



*The store at the Ngukurr community*

put the majority of its weight into servicing clients in remote communities, so civil remote travel consumes a significant component of our human and financial resources.

The relevance of all of this to the subject at hand is perhaps best reflected in the unambiguous opinion we hear about policing from our clients on remote Aboriginal communities right across the Top End of the Territory. Here's a sampling:

"Police don't work with the community, don't communicate with the community. Both of us need to know what's going on, we need to help each other. Young fella police here not good enough – trained for policing white man law in white community. They should also respect our community but that's not happening.

"We respect the white law, we just want them to respect us too. If we

don't work side by side, what's going on? Police have to work with us and we have to work with them.

"Police should do training in the community and have a Police Aid working with them.

"Used to happen before that if any trouble police would contact appropriate Elders and sort it out. Law is only way to go forward and for our kids to grow. Our law is forever. You can't take it away from us.

"Young policeman don't know their own law. Your law is a funny one, police should protect us. Make it so we work together and things will be good for both laws. I respect all people, look after them, that's my law. If police don't respect us we'll pretend but we won't cooperate.

"Your law changes every year. Our law been here forever passed



down by songs and language. Maybe young police only respect their father and mother – in our law you must respect everybody.

“Police not working with our community. Doing wrong thing. Arrest person, don’t talk to mother or father so mother and father come and ask me as Elder where they are and I can’t tell them. Your law has done the wrong thing to our community. Police don’t listen to our story, don’t use interpreter.

“These youngfella policeman reckon they the boss of our lives, reckon they can do what they like. They break their own law but nothing ever happens to them. How can we respect that?

“Law is my backbone, without my law I am nothing. But 50 years of your law, your courts, nobody ever listens to us. Innocent people in jail because nobody listens.

“Our law teaches respect. White law has no respect for anybody. White law has to “see” our law and make them work together. Treat us like human beings, not animals. We are the first Australians.

“‘Respect’ is the word.

“Can’t be one-way law, no such thing.”

I should be clear that this verbatim opinion is not necessarily reflective of all opinions about policing on communities in the Top End - it varies a lot in between. Steps forward have been made and are continuing to be made, and I will discuss a couple of these later.

NAAJA has regular meetings with the Police Commissioner, Deputy Commissioner and Assistant Commissioner Operations, and it is clear from these meetings that police have a genuine and serious commitment to improving community policing outcomes. And, although you might hear me being critical of police actions in some circumstances, I do respect the fact that in an environment sometimes marked by chronic substance abuse and dysfunction, community policing on remote Aboriginal communities is no easy task.

In my discussions with leaders on Aboriginal communities about policing, there are a trio of themes that seem to regularly arise:

### 1. A continuing police presence

Most communities articulate the need for a continuing police presence in their community so that they feel safe - for them,

law is synonymous with feeling protected.

### 2. “See” and respect

Aboriginal people largely respect western law. What upsets them is that western law doesn’t “see” or respect Aboriginal law. This is not so much about recognition of their law by the Courts or even enforcement per se - it’s just about “seeing” and respecting their law and learning how, particularly in enforcement terms, to find a balance so that the two systems can work harmoniously together most of the time.

### 3. Cross-cultural training

Communities expect that when we send them our best, they will come equipped with a sizable measure of cross-cultural appreciation from their initial training, and that a further specific period of time will be set aside for them to undertake out of uniform cross-cultural familiarisation when first posted to a community.

The two brief examples that follow attempt to illustrate how this trio of themes might become a meeting point.

## **Court Ordered Mediation at Ngukurr**

Mr David Daniels is a senior and much loved Elder in the Ngukurr/Roper River area of the Northern Territory, about 500 kms south east of Darwin. In 2005, when he was 58, Mr Daniels was arrested by police at his family home at Urapunga, an Outstation about 20 minutes drive from Ngukurr. Arising out of that arrest NAAJA filed a police tort action on his behalf in the Supreme Court.

When I first met him in 2007, I explained to Mr Daniels that if the tort action went to trial in the Supreme Court and he was successful, the powers of the Court extended only to an award  
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*Pat McIntyre of Counsel (foreground), senior Elder Jerry Ashley and NAAJA lawyer Danial Kelly listening intently at a community meeting in Ngukurr*



of monetary compensation for the damage which he had suffered.

This enlivened a discussion about the possibility of a mediated resolution, whereby the parties could come together for a mutual exchange of views and, potentially, the development of mutual respect and agreed community policing protocols for the future. Mr Daniels readily grasped the concept of mediation as it is a well known and highly respected ceremony of dispute resolution in Aboriginal law.

Emanating from these early discussions with Mr Daniels, I approached the solicitors representing the police in the Supreme Court action, and sought their consent to a Court ordered mediation of the dispute (Rule 48.13 of the Supreme Court Rules). To their credit, police readily agreed to such proposition and it was subsequently ordered by the Court in April 2008.

As it transpired, the Mediator initially appointed by the Court and briefed by the parties had to withdraw due to other commitments. This caused some delay, but the parties ultimately agreed to seek Court appointment of Her Honour Thomas J, a Judge of the Supreme Court, as the Mediator. The parties felt this was a singularly appropriate appointment, as Justice Sally Thomas had recently attended part of the Mawul Rom traditional mediation project [<http://www.mawul.com/home.html>] held at Galiwin'ku in east Arnhem Land and so was familiar with working in a cross-cultural mediation environment.

It is important to recognise here that the proposed mediation was never going to be privately held between two separate parties. Mr Daniels, whilst a very senior Elder, is joint custodian of his law and land with a number of



*Mr Ian Gumbula, currently the assistant to the Government Business Manager at Ngukurr*

other Elders. Thus, any mediated resolution would not have locus standi within the community, unless those other Elders were also present and involved. Similarly, the whole community had been deeply hurt by the way in which they perceived Mr Daniels had been treated, and felt the need to support him and their community in a public way during mediation.

The date of the mediation had, by this time, been set for 21 November 2008, and we traveled to Ngukurr again on 31 October, this time accompanied by the Court appointed mediator, Justice Sally Thomas. This was an important pre-mediation meeting (a similar pre-meeting was held between the mediator and police) as it allowed Justice Thomas to hear directly the effect that the actions of police had on Mr Daniels and the broader community, and the outcomes which they sought from any mediated resolution.

In the afternoon of Friday 21 November, the mediation got underway. The commitment given by police to the process was reflected by the presence of two of its most senior officers, Commander Jeanette Kerr, the

Commander of the Katherine Region, and acting Assistant Commissioner Operations, Bert Hofer. There was a frank exchange of views and mutual respect between the parties, and police were presented with a draft document summarising the outcomes sought by the community from the mediation.

This document, amongst other things, articulated the need for a continuing police presence in the community, a specific period of time to be set aside for those police to undergo out of uniform cross-cultural familiarisation when first posted to the community, and for the development of agreed protocols for community policing which, it was hoped, would ultimately develop into an agreed law and justice strategy between the parties.

The mediation concluded, on the firm basis that much could be achieved between the parties through further meetings to develop agreed protocols and outcomes to which both can formally commit. The first of these further meetings is scheduled to take place in January 2009. In the interim, the action continues to be monitored by the Supreme Court, under the auspices of Thomas J. Much work remains to be done, and the present commitment of the parties bodes well for the future of that work.

For their part, Mr Daniels and the broader community were impressed with the fact that people, with the seniority of the Mediator and police in attendance, were willing to give their time so enthusiastically to achieving important outcomes for the future of community policing.

There will, inevitably, be tensions in the relationship but they feel that a relationship based upon mutual understanding and respect will always triumph over blind



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enforcement and the absence of true communication.

### **Galiwin'ku Law and Justice Strategy**

A similar set of circumstances arose at Galiwin'ku on Elcho Island in 2006. Elcho Island is 550 kms northeast of Darwin, and is home to the largest Aboriginal community in north-east Arnhem Land, with approximately 2000 residents living in the main settlement of Galiwin'ku and nearby outstations.

Following incidents which occurred on Elcho Island in June 2006, two young men filed police tort actions in the Supreme Court and, as with the Ngukurr matter mentioned above, Court ordered mediation of the disputes were agreed to by the parties. It was agreed that the mediation process would include the participation of the Elcho community and consideration of matters of concern to that community and, importantly, as far as it was practical to accord and incorporate the regional Madayan system of mediation law into the process.

The mediation occurred at Galiwin'ku on 19 October 2007, and was attended by the mediator appointed by the Supreme Court, Mr Patrick McIntyre, assisted by Mr Don Wininba, a Djungkaya of

the Rrakpala Gumatj, appointed according to the Madayan system of law; the plaintiffs and their lawyers; representatives of the Police and the NT government including Commander Dowd, and its lawyers; Mr Djiniyini Gondarra representing Rrakpala Gumatj and their Djungkayai and the Elcho community; and several hundred other members of the Elcho community.

The mediation was successful, and, on 7 March 2008, a formal Settlement Agreement reflecting the mediated outcomes was filed in the Supreme Court to finally resolve the plaintiff's claims. In broad terms, and in addition to the giving and accepting of an apology, it involved two main heads of agreement. The first related to the Elcho community providing, and police agreeing to attend, cross-cultural training for all police posted to work on the community. It involved police contributing to the establishment and development of that training with the object that it should be held on the community and provided by local people and businesses. The second head related to the establishment of a Police Community Advisory Group comprising senior police and police officers working at Elcho Island, and senior community members chosen by the

community itself. The objects of this Advisory Group were to consider and make recommendations about community policing on Elcho, foster goodwill and a mutually respectful working relationship between the community and police, and to provide a forum for discussion of police/community relations and law and justice issues.

As it transpired, and building up to the NT Emergency Response in June 2007, the then Federal Minister for Families, Community Services and Indigenous Affairs and the Minister Assisting the Prime Minister for Indigenous Affairs, Mal Brough, took an interest in Elcho Island.

As part of an agreement to build a new permanent Police Station on the community, Mr Brough promised \$100,000 for the development of a law and order strategy which became known as the "Galiwin'ku Law and Justice Strategy Project". The project was given over to management by the new East Arnhem Shire who appointed Mr Pat McIntyre, the Court appointed Mediator mentioned above, as the project consultant.

The official opening of the project was held at Galiwin'ku in May 2008, and that was followed by a three day workshop held in the community between 18 and 20 June 2008. Both were attended by senior and local police, federal and NT Government officials, and senior Elders from the east Arnhem region, amongst others. Both also involved significant community participation and ceremony.

The project continues, but perhaps one of the most significant achievements so far is the innovative solution devised by the community to provide formal points of contact and consultation when dealing with external service providers.



*David Daniels surrounded by his family at Ngukurr*

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Called the Makarr Dhuni Forum, it envisages a number of portfolio groups each with knowledge and authority in their particular areas of responsibility, and each with an equal blend of men and woman and clan groups. The table below illustrates the five portfolio groups and their areas of responsibility:

The really interesting aspect of this is that it extends the bounds from a dialogue about community policing into a much broader dialogue about service delivery

and communication on remote Aboriginal communities. To quote Chapter 3 of the Ampe Akely-ernemayne Meke Makarle *Little Children are Sacred* report, it provides a focal point from which to develop comprehensive “rules of engagement” with Aboriginal people. Also of significance is that the Makarr Dhuni Forum has been designed from the ground up by the community to balance the complexity and tradition of Yolngu law so as to fit with govern-

ment and western law notions of “engagement”.

The developments at Ngukurr and Galiwin’ku mentioned in this article remain works in progress. Both represent a beginning. Both have the potential to extend beyond community policing in isolation. And both will, hopefully, provide a foundation for strides forward in governance and “engagement” with Aboriginal people on remote communities in the NT.

Forum Name	Forum Area of Responsibility
<p><i>Bayngu Gunyambi Yaka dhu bunanhamirr, Djaga dhu Gurrutmirriw ga djamarrkuliv mala</i></p> <p><b>(No violence No fear)</b></p>	<ul style="list-style-type: none"> <li>• Protecting our community and our people so they feel safe.</li> <li>• Being safe at home, being safe outside</li> <li>• Preventing and ending family violence</li> <li>• Caring for victims of crime</li> <li>• Caring for our homes, our buildings and our other property</li> <li>• Helping to settle family arguments</li> <li>• Stopping bullies</li> </ul>
<p><i>Wanja dhu Yakayun njanitjiv, kavav, ga Waymivga Petrol gu</i></p> <p><b>(Say No To Poison)</b></p> <p><i>Marngikum ga Marngithirr Romku ga Malthun Romku</i></p> <p><b>(Teaching and Learning for Justice)</b></p>	<ul style="list-style-type: none"> <li>• Stopping alcohol and other substance (like marijuana, kava, tobacco, petrol and glue) abuse</li> <li>• Caring for and healing those already poisoned</li> <li>• Stopping the illegal trade in poison</li> <li>• Youth development</li> <li>• Criminal Justice diversion programs</li> <li>• Yolngu cultural orientation programs</li> <li>• Helping good behaviour for those on bail and bonds</li> <li>• Working with Corrections workers</li> <li>• Education &amp; Practice for mutual respect</li> </ul>
<p><i>Marrangun ga djaman</i></p> <p><b>(Taking Responsibility)</b></p>	<ul style="list-style-type: none"> <li>• Looking after Makarr Dhuni Forum</li> <li>• Liaison with Courts, Police, Corrections, Health and Shire</li> <li>• Madayin Law working with NT Law</li> <li>• Managing disputes with neighbours, strangers and traders</li> <li>• Promoting Mediation in Family Court disputes</li> <li>• Linking with other agencies and programs and promoting dialogue</li> <li>• Promoting the Rule of Law</li> </ul>
<p><i>Luku-romnga nhaltjan dhu ga djama njamakuliv Romgu mala</i></p> <p><b>(Law and Justice Resources)</b></p>	<ul style="list-style-type: none"> <li>• Liaison with NAAJA and other independent experts and advisors</li> <li>• Economic and employment opportunities</li> <li>• Sporting and other recreation resources, management and use</li> <li>• Town planning for community well-being</li> <li>• Housing and property management and use</li> <li>• Community health resources</li> </ul>