
TWO WAY LEARNING & CULTURALLY APPROPRIATE MEDIATION TRAINING IN REMOTE COMMUNITIES

by Will Crawford and Rohan Thwaites

The potential benefits of training Indigenous people living in remote and regional communities in the skills of mediation, negotiation and facilitation has been recognised by a number of reports and discussion papers on alternative dispute resolution (‘ADR’) and Indigenous people.¹ These benefits have been said to include a likely decrease in long-term disputation through the creation of culturally effective dispute resolution services and the strengthening of governance and decision-making structures. However, there have, to our knowledge, been relatively few instances of mediation and other ADR training occurring in remote communities in the Northern Territory (‘NT’).

The North Australian Aboriginal Justice Agency (‘NAAJA’) was funded by the Healing Foundation to deliver mediation training in the remote Northern Territory communities of Gunbalanya/Oenpelli and Lajamanu in September to November 2012, in collaboration with the NT Government’s Community Justice Centre (‘CJC’) mediation unit.² The training in Gunbalanya, which was delivered in nine days over three separate trips in September, October and November, was designed to meet the requirements for accreditation under the National Mediator Accreditation System.³ The Lajamanu project involved delivering two days of introductory training for community members, in addition to continuing professional development for two community members who had previously completed mediation training.

The aim of the project was to promote greater awareness of mediation as a way of responding to conflict and build practical skills in mediation to complement and support traditional dispute resolution mechanisms. It is envisaged that effective, local and culturally tailored mediation of issues by community members will lead to a reduction of violent conflict and the resolution of long standing disputes, with a corresponding reduction in interaction with the criminal justice, health and child protection systems.

While there was no scope for an independent evaluation of this project, the project team conducted an evaluation

with assistance from an external expert. The preliminary outcomes of this evaluation indicate that providing mediation training to people in remote communities has the potential to lead to a reduction in long term disputes and encourage the creation of local dispute resolution initiatives. Additionally, the project team’s experience in running the project adds to knowledge about best practice methodologies for delivery of mediation training in remote Indigenous communities.

PREVIOUS RECOMMENDATIONS FOR INDIGENOUS DISPUTE MANAGEMENT AND DECISION MAKING SERVICES

As noted above, research in Australia has led to recommendations for the training of Indigenous people in mediation, facilitation and negotiation for the purpose of creating Indigenous dispute resolution services.

The National Alternative Dispute Resolution Advisory Council (‘NADRAC’) published a report in January 2006 on *Indigenous Dispute Resolution and Conflict Management*, in which it recognised a need for local dispute resolution services that can be flexible, take account of local needs and that are more likely to be utilised than mainstream services provided by non-Indigenous people.⁴ The report emphasised the need for Indigenous-specific services that reflect the contemporary needs of the communities in which they operate. These findings were backed up by the Federal Court of Australia’s *Solid Work You Mob Are Doing* Report, which examined several case studies of Indigenous mediation practice around Australia and found that:

given the significance of understanding local and regional situations, the training of regional panels of Indigenous practitioners ... would significantly enhance the delivery of effective services to Indigenous communities.⁵

The Report called for locally and regionally based services that would be supported by a national Indigenous dispute management service which would ensure effective practice in the delivery of services. The Report recognised that effective dispute management needs to be able to reflect local circumstances to ‘match the unique characteristics

of each situation' and that as a result dispute management will necessarily vary between different cultures, including within different Indigenous cultures and communities.⁶

The wider benefits of developing Indigenous decision-making and dispute management structures were outlined by the AIATSIS Indigenous Facilitation and Mediation Project ('IFaMP'). This project recommended the creation of a 'national fully supported and accredited network of Indigenous facilitators, mediators and negotiators to provide prompt and timely local assistance'.⁷ It noted that this form of training would foster Indigenous capacity to work with and respond to government requirements and improve governance structures by ensuring they were driven by sound decision making and dispute management processes.⁸ The IFaMP noted that, while these processes need to be community based, their effective implementation requires national and state coordination within a whole-of-government framework. In this sense, mediation training occurs within the wider context of fostering capacity for local decision making and dispute management processes that provide communities with increased agency and ownership over their operations.

PRE-TRAINING SCOPING TRIPS

NAAJA and the CJC's training project commenced in July, 2012, when the project team undertook the first of its three scoping visits to each community. The scoping trips were conducted to introduce the concept of mediation, discuss current community dispute resolution methods, explore the need for and interest in mediation training and to identify and develop relationships with interested senior leaders. The deliberately mixed gender scoping and training teams comprised NAAJA and CJC staff, who were also accredited mediators and mediation trainers.

The project team wanted to ensure that, as far as was possible within the constraints of the time and resources available, relationships were built with key people and a broad cross-section of the community was informed about the training. This was considered particularly important in Gunbalanya where the project team had limited pre-existing relationships with community members, but was less of an issue in Lajamanu where NAAJA had developed strong relationships through, amongst other things, its work with the Kurdiji (the Law and Justice Group comprising senior leaders and elders). The concern was that without established relationships in Gunbalanya and an understanding of the community there was a risk the project team may unwittingly only invite certain families or clans and thereby cause offence and potentially division.

The team overcame this by consulting with other organisations and government agencies that work in the community to obtain recommendations on who to speak to about the training prior to the three scoping trips. During the three preliminary scoping trips the team conducted dozens of meetings with community members and others working in the community to explain the training and further gather names of community members. The project team began by meeting with traditional owners and community elders to tell them about training and seek their recommendations on who should be invited to attend. The team developed a list of the names provided and showed this list to those they spoke to, to ensure they represented a cross-section of the community. In both Lajamanu and Gunbalanya the conversations that were had with people served to build relationships and an understanding of the community and existing dispute resolution structures.

The majority of the people the project team met with during the scoping phase had not heard of mediation. The project team was conscious to explain mediation in a way that made it clear that it was not trying to introduce a dominant-culture practice to replace existing legal and cultural systems, but rather complement existing dispute resolution systems. This was done by a process of two-way learning in which the project team explained mediation and also demonstrated its genuine interest in learning more about local forms of dispute resolution.

DELIVERY OF THE TRAINING

'I learnt both ways – Bininj and Balanda [non-Indigenous people]. I learnt how Balanda mediate their way and how Bininj mediate our way.' – Gunbalanya training participant

The project team designed the training to maximise the participants' involvement in its structure, content and delivery. The team took a mixed elicitive and prescriptive approach to the delivery of the training, which they believed to be the best approach when conducting mediation training in a cross-cultural context.⁹ During the scoping and training sessions, the project team facilitated discussions on culturally effective dispute resolution mechanisms and discussed ways to tailor western mediation to suit local conditions without undermining existing authority structures. The project team adopted adult, bi-lingual and Aboriginal learning methodologies by using narrative based scenarios and role plays developed by participants, seeking active two way sharing of knowledge and drawing on participants' experience and understanding of kinship and culture to direct how and who should conduct mediations.¹⁰ Participants created the

scenarios for the role plays then acted and mediated them. Some of the role plays were conducted in English, some in local language and some in a mixture of the two. The approach was validated both by the active participation in the role plays and the overwhelmingly positive feedback given by participants about the role plays as a way of learning. In the words of one participant, ‘the best part of the training was the role plays. Because now we have practiced it and if it happens in real life we will know which way to go, which steps to take to help people.’

One of the many benefits of this approach was that it provided the participants with an opportunity to increase their knowledge of traditional and existing forms of conflict resolution within their culture. An example of this occurred in Lajamanu during a session at which the senior law man in Lajamanu was present. The group was discussing who would be the right mediator for a dispute between two people in Lajamanu. This led to the senior law man explaining in Warlpiri to all the participants how the skin system and the matri-moieties that shape it provide a structure for peacemaking in Warlpiri culture. Similarly in Gunbalanya, the regular attendance at the training of three senior women was seen by participants as essential to their learning and understanding of dispute resolution and was valued by the senior women as an important way of passing on culture.

The involvement of these senior figures in the training paved the way for rich discussions about the similarities and differences in western and traditional forms of dispute resolution. This included discussions about who should attend mediations, where they should occur and the appropriateness of concepts of impartiality and confidentiality in Aboriginal societies. It also included discussions about the skills, attributes and knowledge that a person needs to have to be respected and recognised as a mediator in their community.

OUTCOMES

‘When I first came to this training, I wondered what I was doing here. But then I kept coming back and day after day it got better and better and it clicked that it’s really important for me to be doing this for my community.’ – Gunbalanya training participant

There were numerous positive outcomes from the training sessions in both Gunbalanya and Lajamanu. The retention of participants was excellent with 9 participants from the original 13 in Gunbalanya completing the training and over 12 participants attending both days of the training in Lajamanu. As has been noted above, the engagement of participants through role plays and

discussions regarding dispute resolution methods was excellent. The Night Patrol in each community was well represented, as were the Kurdiji in Lajamanu who sent seven representatives each day.

In Gunbalanya the training prompted much discussion about the formation of a local group with representatives from all three camps in the community to mediate disputes using a hybrid traditional and western model. Throughout the training the participants said that Bininj people should be resolving disputes in their community rather than being reliant on the police or other external organisations. The participants were also eager to involve more Gunbalanya residents in the training, both so that they would understand the value of what they were learning and so that any group formed had the respect of the community and the authority to respond to future conflicts. In the words of one participant this reflected a need to find, ‘a way to help Bininj people to understand what mediation is about and how to live in peace and harmony in this community— [by using] both Balanda and Bininj mediation.’

TOWARDS EFFECTIVE INDIGENOUS DISPUTE-MANAGEMENT SERVICES

Although the successes of this small project do not themselves warrant the mass resourcing of mediation training in all remote Northern Territory communities, we believe this project adds to an increasingly strong body of evidence outlining the need for and benefits of mediation and other ADR related training, in Indigenous communities, on the development of effective local dispute resolution and decision making services.

We also believe that improved dispute resolution services are likely to lead to a reduction in violent offending in Indigenous communities, as effective dispute resolution services will prevent the escalation of some disputes. Initiatives that lead to reductions in violent offending will result in significant savings to the criminal justice system. In the Northern Territory the incarceration rates are 8-10 times higher than the national average. The cost of imprisoning a defendant for a year in Australia is nearly \$100,000.¹¹ In addition to the costs associated with incarceration, there are also additional costs to the Northern Territory Government involved in policing as well as in prosecuting the case in court proceedings. Further, reduced offending and local disputation could potentially lead to improved community and family welfare which in turn would lead to a reduced reliance on child protection, emergency housing and the medical system.

Additionally, recent research indicates that the training of local mediators could be useful in responding to a significant and largely unmet legal need. The Indigenous Legal Needs Project ('ILNP') NT Report identified 'neighbourhood issues' as 'a significant legal issue for Indigenous participants'.¹² The ILNP found that 27 per cent of focus group participants consulted with in the course of their research identified that they had experienced a problem or dispute with neighbours.¹³ While Gunbalanya and Lajamanu were not part of the communities consulted by the project, these findings indicate that disputes over neighbourhood issues are a significant issue in some Indigenous communities.

Ultimately, the benefits of projects such as this are unlikely to be fully understood without properly resourced and evaluated whole-of-government programs that provide for the coordinated delivery of training and give support to the community-based dispute resolution initiatives that arise from them. It is hoped that the success of this training and the work of other Indigenous mediators, such as the Ponki Mediators in the Tiwi Islands,¹⁴ Sunrise East Arnhem Mediation Project, the Yuendumu Mediation and Justice Centre¹⁵ and peacemakers and graduates from the Mawul Rom Project,¹⁶ will encourage more investment in Indigenous communities to develop new Indigenous specific dispute resolution and conflict management services.

Will Crawford is a Senior Solicitor and Coordinator of Legal Education, Training & Projects with the North Australian Aboriginal Justice Agency ('NAAJA'). Rohan Thwaites is a Senior Project & Policy Officer with the NT Government's Community Justice Centre ('CJC') mediation unit.

- 1 See for example, Federal Court of Australia ('FCA'), *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, FCA Indigenous Dispute Resolution & Conflict Management Case Study Project, ACT, 2009); Toni Bauman, AIATSIS, *Final Report of the Indigenous Facilitation and Mediation Project July 2003 - June 2006: research findings, recommendations and implementation*, NTRU Report No 6 (2006) V.
- 2 For further information see the Healing Foundation <<http://www.healingfoundation.org.au/>>; NAAJA <<http://www.naaaja.org.au/>>; CJC <www.cjc.nt.gov.au>.
- 3 For further information see NMAS <<http://www.msb.org.au/mediator-standards/national-mediator-accreditation-system-nmas>>.
- 4 National Alternative Dispute Resolution Advisory Council ('NADRAC'), *Indigenous Dispute Resolution & Conflict Management*, January 2006, 6-10.
- 5 FCA, above n 1.

- 6 Ibid 99.
- 7 Bauman, above n 1, V.
- 8 Ibid 40-2.
- 9 The importance of involving Indigenous participants in the design and delivery of mediation training has been noted by several reports and practitioners in this area. See for example, FCA, above n 1; Serge Loode, 'Navigating the Uncharted Waters of Cross-Cultural Conflict Resolution Education' (2011) 29(1) *Conflict Resolution Quarterly*.
- 10 See for example, Malcolm Knowles, *The modern practice of adult education: from pedagogy to andragogy* (Association Press, 1980) 44; Canadian Literacy and Learning Network, *Principles of Adult Learning* <<http://www.literacy.ca/?q=literacy/literacyprofessionals/principle>>; Jill Byrnes, 'Aboriginal learning styles and adult education: is a synthesis possible?' (1993) 33(3) *Australian Journal of Adult and Community Education* 158; John Boulemetis, 'Characteristics of Adults as Learners are not Culturally Defined' (1999) 11(1) *Adult Learning* 2.
- 11 Australian Productivity Commission, *Report on Government Services 2009* (30 January 2009) 8.24 <<http://www.pc.gov.au/gsp/reports/rogs/2009>>.
- 12 Fiona Allison, Chris Cunneen, Melanie Schwartz and Larissa Behrendt, *Indigenous Legal Needs Project: NT Report* (ILNP, James Cook University, 6 November 2012) 69 <http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_113496.pdf>.
- 13 Ibid. There were 16 focus groups comprised of 149 Indigenous community members in eight communities.
- 14 ABC RadioNational, 'Law Report', *Ponki Mediation*, 19 July 2011, Damien Carrick <<http://www.abc.net.au/radionational/programs/lawreport/ponki-mediation/2924532>>.
- 15 Lauren Fitzgerald, '142 days of peace at Yuendumu', *ABC Alice Springs* (online), 21 January 2013 <<http://www.abc.net.au/local/stories/2013/01/21/3673457.htm>>.
- 16 Mawul Rom Project <<http://mawul.com/>>.

Kathy Maringka

