

2017

Indigenous Mediation: Is That Different?

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Indigenous Mediation: Is That Different?

Abstract

On Mornington Island, far away from places where such lofty words carry their meaning, what we do is simply called “mediation”. That term is used to describe the process, the people involved and the objectives. On Mornington Island, the word “mediation” simply means sorting out whatever issue exists, with whomever is involved and doing this through some form of assisted communication.

This article is based on the speeches prepared for the National Mediation Conference 2016, and it is not included in the print version of volume 29 issue 1.

Indigenous mediation

Is that different?

Louisa Roughsey
Frank Watt
Berry Zondag



Indigenous mediation – is that different?¹

Introduction by Berry Zondag

On Mornington Island, far away from places where such lofty words carry their meaning, what we do is simply called “mediation”. That term is used to describe the process, the people involved and the objectives. On Mornington Island, the word “mediation” simply means sorting out whatever issue exists, with whomever is involved and doing this through some form of assisted communication.

We have structured this presentation as follows.

Community Elder and mediator Louisa Roughsey, who is also the chair of the Justice Group, will introduce Mornington Island and some of its history to you. She will discuss the perilous state of affairs in the community at the time the mediation program was proposed.

After that introduction, I will talk about the origins of our project, about the initial consultation and how the community was engaged in developing the service. This also involves the cultural context.

Next I will discuss developments in our service that we have seen over the past eight years. Frank Watt, one of our mediators, will address you as part of this discussion to present our work with young people.

¹ This article is based on the speeches prepared for the National Mediation Conference 2016

We then turn to a more quantitative approach and present some statistics, which will underpin the more anecdotal observations.

By then you will probably be interested in what the costs of the project are, and whether there are any measurable economic benefits, so we'll present such an analysis to you.

We had promised to provide those interested with a "toolbox" to start a project like ours, so that's what we'll do as well.

We also suggested that mediation can be a vector for community development, which is what we'll discuss then.

Finally, we will come to the question included in the title of our presentation, is indigenous mediation different?

Presentation by Ms Louisa Roughsey



My country is on Mornington Island, in the Gulf of Carpentaria, in North West Queensland. Mornington is the largest of the 23 islands that are called the Wellesley Islands.

The total population is about 1,200 people and now they all live in the township of Gununa.

The islands have been the home of the Lardil, Yankaal and Kaiadilt peoples for thousands of years. These tribes are related to each other.

They are also related to the tribes on the nearby mainland, especially the Gangalida. But historically contact between them was limited. All tribes had their own language and customs.

This all changed rapidly after white people came. Especially after the Mission on Mornington was established in 1914. Robert Hall, the first Missionary was killed in 1917. This was something of an uprising by a fellow who had lived on the mainland for a few years.

The first missionaries set out to remove the influence of traditional culture and to bring our peoples into the society of the white man.



Separation of children from their parents was one way of doing that. This was the dormitory system. Another way was by bringing in people from other areas, such as the Northern Territories, Palm Island and Aurukun. These places also had missions. Half-caste children, mostly girls, were taken from their country and placed in other missions. The “stolen generations” are one result of that.

Moving people between missions was also used as a way of dealing with troublemakers and people who resisted these changes.



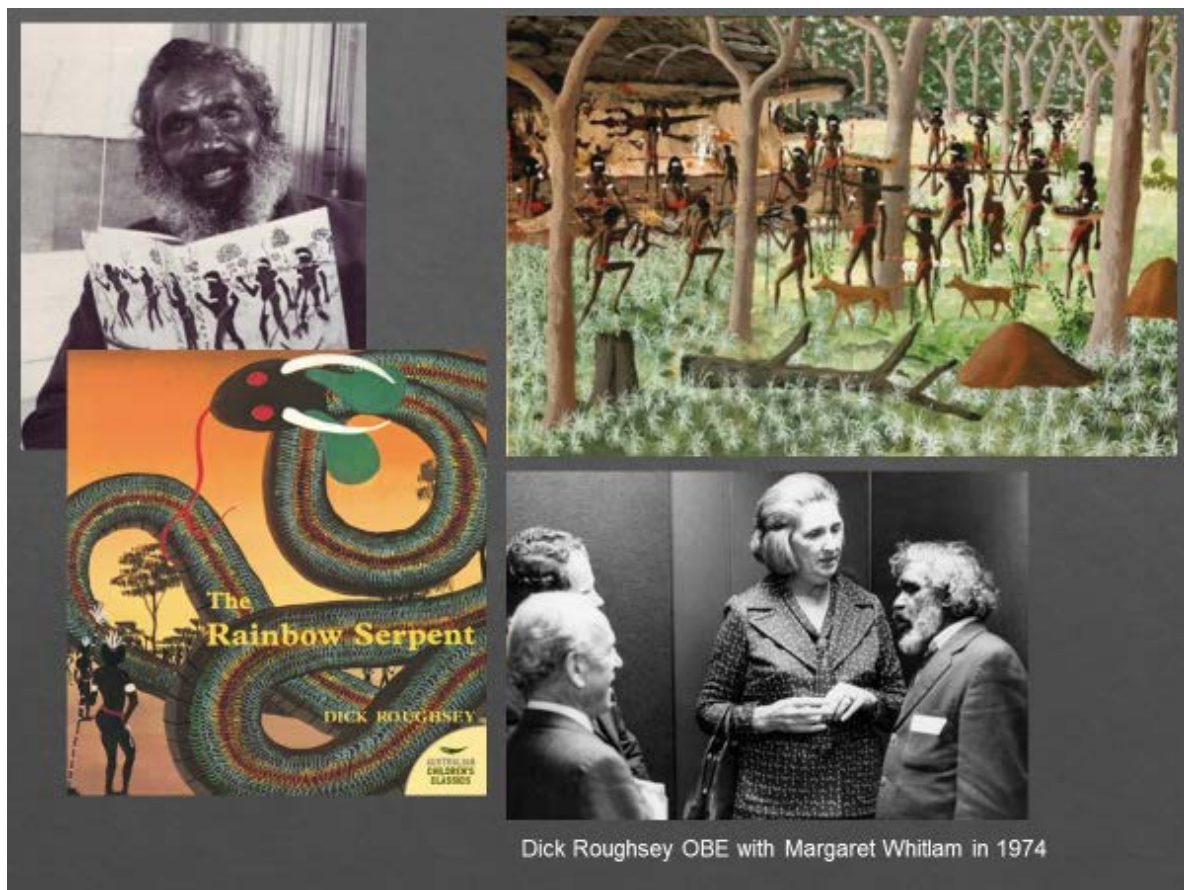
My mother was a half-caste girl, the daughter of a Waanyi mother and an Afghan immigrant who worked on the cattle stations. She is the tall woman in the centre of this photograph.

She married with a local Lardil man. I am one of their 10 children, and have lived all my life on Mornington Island.

Most people from my age have similar histories, and we all share the background of having been raised in the dormitory system. There we were educated and brought up with the teachings of the church and the customs of the white Australian society.

When I was 18 I was sent to work on the cattle stations. Two years later I married a Lardil man and we had 5 children.

My husband was a nephew of the famous Dick Roughsey. Dick was one of the first recognized Aboriginal artists and writers. He even became an officer of the British Empire.

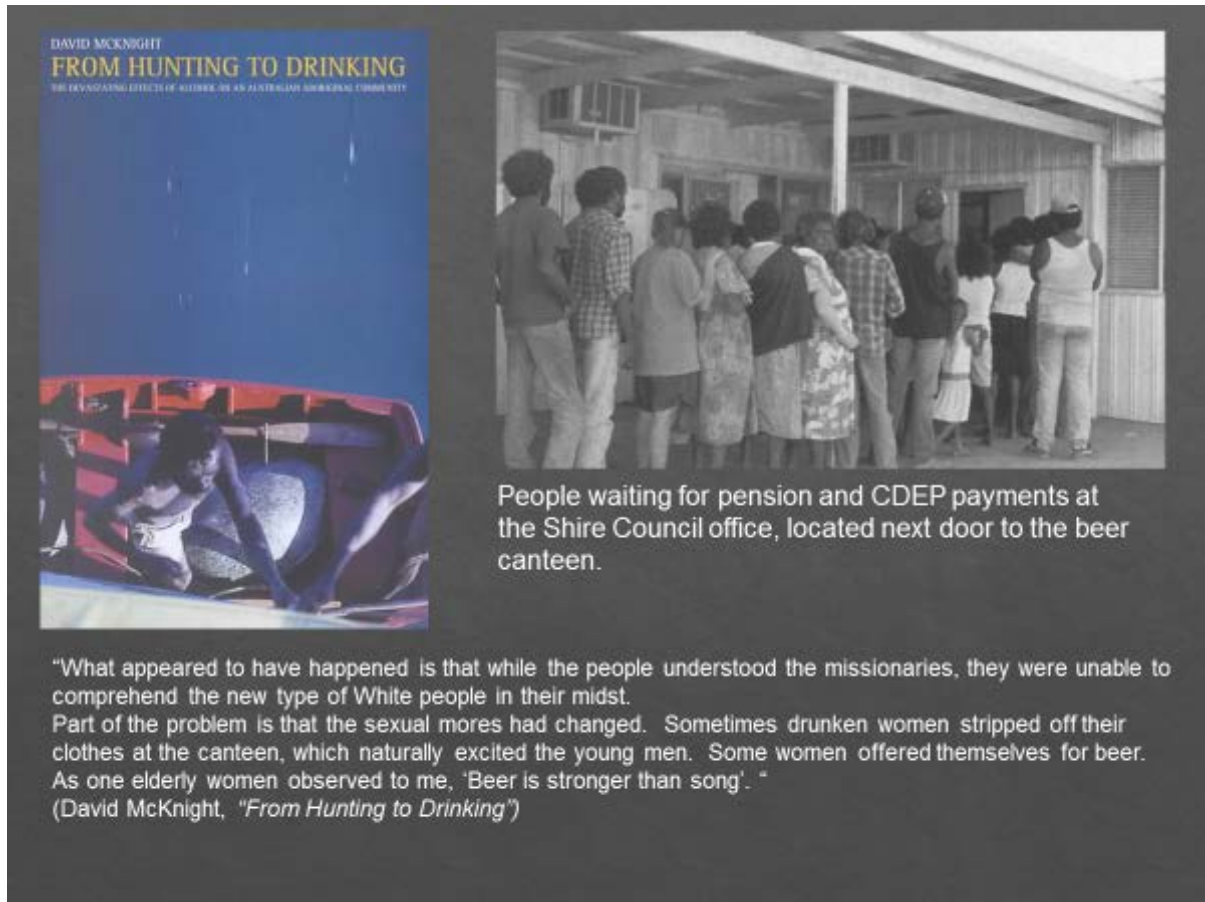


Dick Roughsey OBE with Margaret Whitlam in 1974

You can point to many negatives of the Mission system. But I am telling you this because it was not all bad. From my time as a young woman I remember our small community as peaceful and quiet. Most people had their tasks in the community and attended church. Of course there were problems from time to time. But these were normally dealt with by the Mission superintendent.

Things really changed with the removal of the Missionaries and the start of local government in the late seventies and early eighties.

This change brought the introduction of white council administrators. They did not have the dedication or Christian objectives of the Missionaries. An important problem was also that local government came to rely on the “beer canteen” to supplement its funding. This created the strange situation that it was in the council’s interest to sell as much alcohol as possible to bring peoples’ CDEP income and pensions into the council’s hands.



This started a decline in the social wellbeing of our community. People stopped marrying properly and neglected their jobs and families. Within years our community became ill and started to fall apart. Problems that would normally be resolved by our Elders or the Missionaries were left to fester.

Arguments between families would continue for years, always under the surface and coming up when people were affected by alcohol.

Respect for Elders disappeared, and we increasingly had to rely on Police from outside. Despite growing Police numbers violence and criminal behaviour increased. The ongoing fights tore families apart and made our community very unpleasant to live in.

I've seen manslaughter and suicide, terrible fights, child neglect and horrible domestic violence. My own grandson died in jail when he was only in his twenties.

Alcohol restrictions, and later a total ban, did not stop the problems. A judge visiting the Island at the time of the land claims, described Mornington to his colleagues as the “Middle East”.

I have been a member of the Justice Group from when it started, and we were desperate. What could we do? Sending more and more people to jail had very little impact. The alcohol ban only resulted in people making their own alcohol. Parents stopped sending their children to school. Fights were the order of the day. People felt unsafe and unhappy. This was shown in high suicide rates. Promising people left the Island to find their luck elsewhere. In 1999 a plane crash killed some of our remaining leaders.

This was the situation when in 2008 the Government proposed that we should think about using mediation. This started in 2009, and has been going ever since. In 2011 the Justice Group took over the mediation project.

Since then we have achieved a lot. The community has become peaceful and much quieter. We haven't had a violent death since 2011 and no suicides since 2012. We have less people in jail and it is safe again to walk the streets at all times. Going to the store on a Saturday morning is something to enjoy, and you don't have to walk there through crowds of fighting people.

There is still a long way to go and much to do, but we have turned a corner, there is a bright light at the end of the tunnel. Mediation has played a big role in that.

With God's help we will turn our community into a beacon of hope for our people.

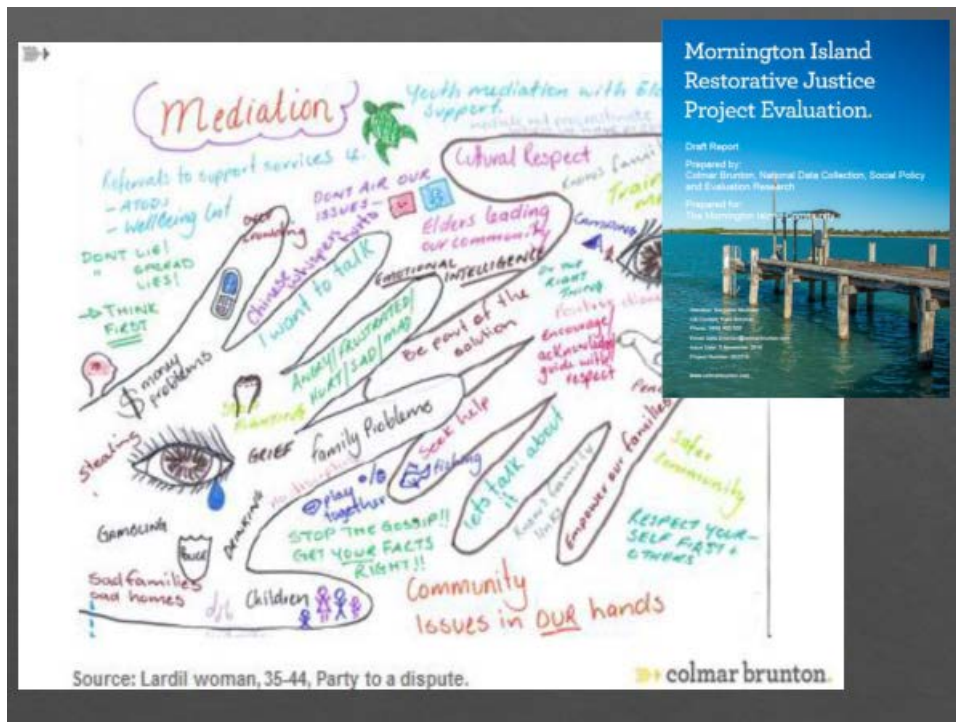
Presentation by Berry Zondag continues....

The project's Genesis lies with the Federal Department of Justice and Attorney General. This was at a time that ADR received a lot of attention, and a visionary in that department suggested that an alternative approach might be able to address some of the difficulties that prevailed, and continue to prevail, in many remote Aboriginal communities, especially the disruptive nature of community-wide fighting and unrest.

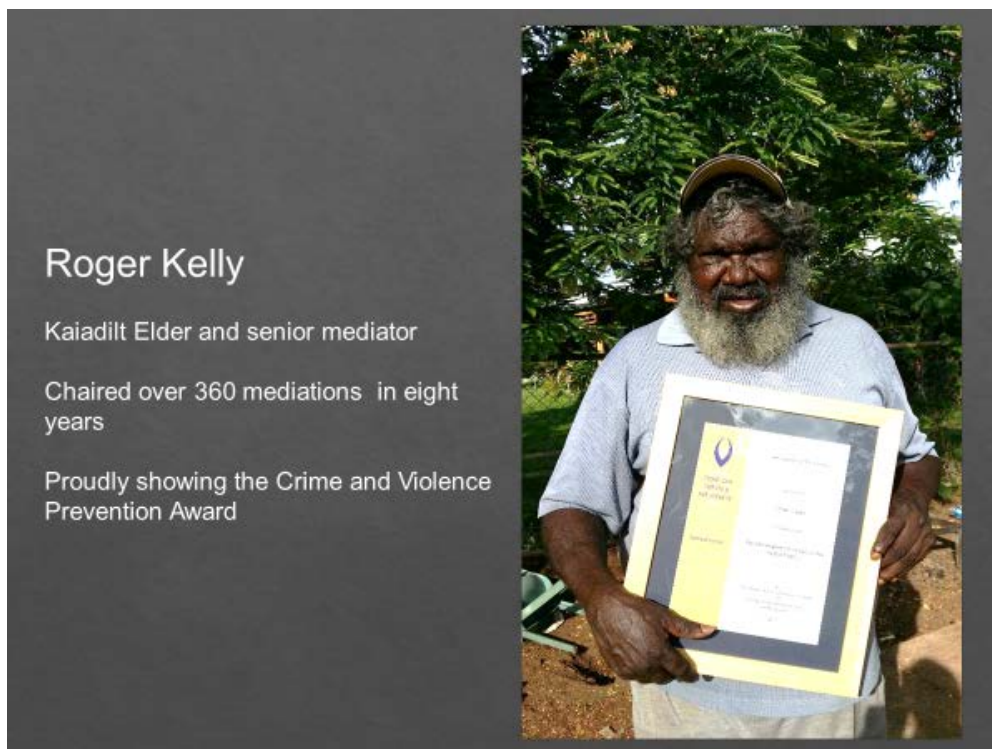
Trials were proposed and the Queensland Department of Justice tendered for such a trial. Initially a number of locations were suggested, but in the end Mornington Island was the selected site in Queensland. The project formally started in 2008.

Eight years on we can say that the project has been successful in achieving its objectives.

A formal evaluation requested by the Federal Government, and undertaken by Colmar Brunton in 2014 interviewed almost a third of the adult population on the Island. One of its findings was that more than 90% of the respondents thought that the project was directly responsible for strongly improved peace on the Island, and a similar percentage opined that mediation stops people getting in trouble with the police and the courts.



Louisa already mentioned the absence of violent deaths and suicides for many years. Sure, we still have violence and crime, and the numbers of offences remain high, but their seriousness has reduced significantly. People now have a means to deal with issues and conflict. This means that the large community-wide fights that were so common, have virtually disappeared. We still undertake some 160 mediations annually, but they deal with very different disputes, more on that later.



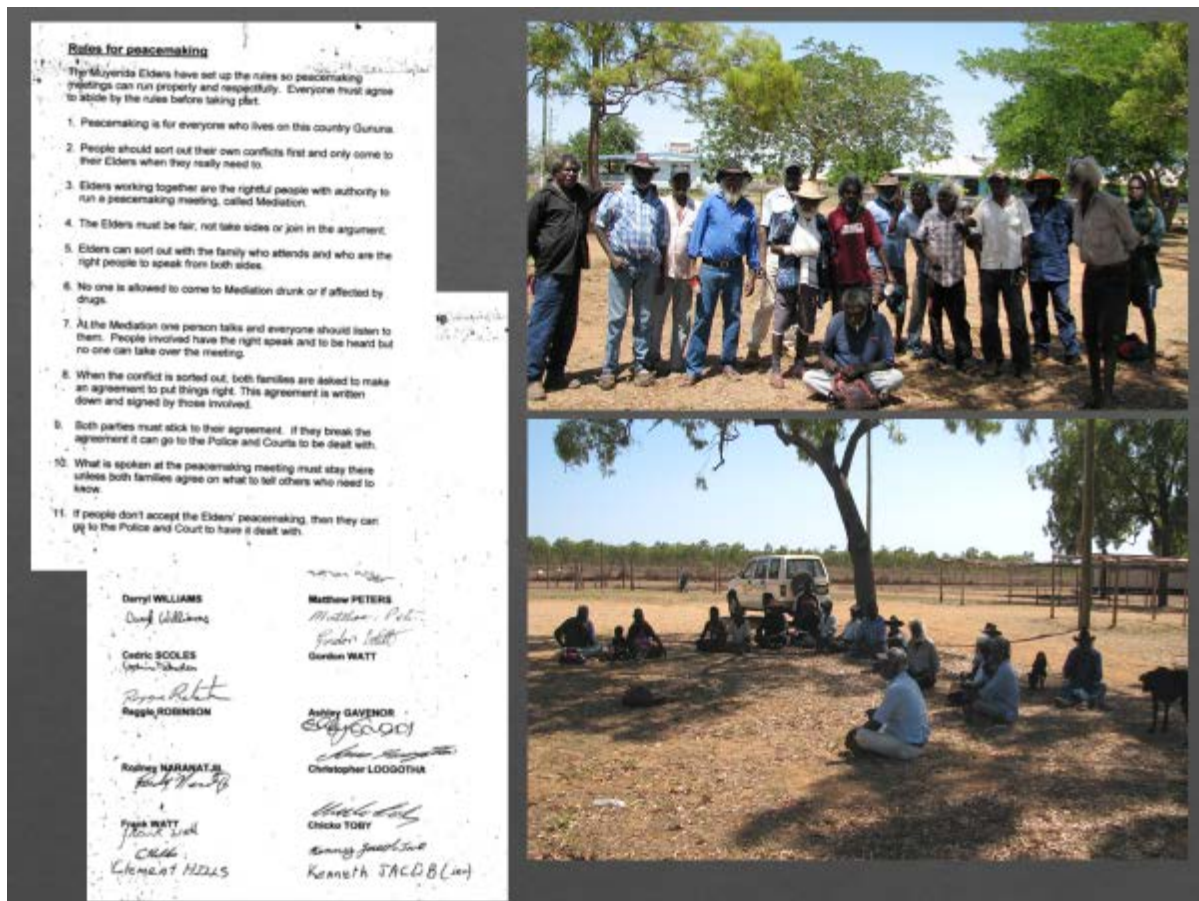
Our efforts have been recognized formally as well, most recently as a winner of the National Crime and Violence Prevention Awards.

How was this achieved?

Right from the start an approach was chosen that was very different from the one commonly applied in most government programs. The service concept was not designed behind a desk in Canberra or Brisbane. Instead it was decided to ask the people on Mornington about their thoughts and ideas.

This consultation with the community was not undertaken in the common token fashion, but was approached genuinely and with respect for the pace and culture of Mornington Island.

This meant that the consultation phase was much, much longer than anticipated. Against the pressures from the “bean counters” the project team recognised that proper consultation means talking a lot and talking with the right people.



Anthropologists familiar with the local culture were consulted and through talking with many community members it became clear that the proper forum was something that had not functioned for some time. It was a gathering called the “Moyenda”, consisting of the senior male elders in the community. Attempts to revive this forum had been undertaken in the eighties in the context of an attempted cultural resuscitation, but that had since been smothered in the problems of the community.

From anthropological studies, and especially when talking with members of this forum, it became obvious that there was a clear cultural precedent for conflict resolution. It was an event called the “Junkuri”.

This of course could not be a surprise. How else could a culture survive for thousands of years, where its entire population of some 300-400 people lived together on an Island of less than 60 by 20 Kilometres? There had to have been some way of dealing with serious conflict, even though the population used to live in small family groups, mostly along the coastline. These groups had to interact, even if it was only for genetic and other resource sharing. Logically they would have had some way of resolving conflict.

There it was, the Junkuri, a ritualized but very real form of fighting, where Elders determined at what point the seriousness and consequences of the fight were commensurate with the issue at hand. They would then call off the fight, and a great reconciliation followed. There would be a shared feast and all issues were buried in a show of kinship.

The premise of the Junkuri was taken as the starting point in talking about a process where conflicting parties were brought together with their families, and where elders took an intermediate role as arbiters and leaders of the debate. Of course the fighting element had to be replaced by less physical means of communication. This was achieved through the development of the “11 Moyenda rules of mediation”, a document that was eventually signed by those male elders and several young community leaders.

Having thus obtained a culturally appropriate legitimacy a start could be made with organising mediation meetings. As the typical issue at that point involved the results of escalated problems between often large groups, the mediations in the first years could be large affairs, involving dozens of people. A system was developed whereby selected elders would sit with their families as “advisors”. Elders who were more neutral to the conflict chaired the process, assisted by the non-indigenous project members, who are formally trained mediators.

Arranging for a mediation could be an intricate affair involving many discussions with the parties, before they would agree to mediation. The parties had to be prepared and informed about the process and its objectives before they could be brought together. Referrals for mediation would come from family of the parties and from the Court, if the issue had already given rise to formal charges, typically public order offences and various forms of assault.

In those early mediations it was often difficult to work out what, if any, the underlying issues were. People fought often over what appeared to be relatively minor matters, which had triggered long standing feuds between groups and families. In keeping with historical patterns, tensions would increase where there was a death in the community, or where unusual events gave rise to allegations of black magic, something that remains as a strong influence to this date.

Most mediations were successful, right from the start. No doubt this was possible because the process was seen as something that belonged to the community, and was driven by community members.

Although mediations could be heated, and at times appeared to get out of hand, there almost always was someone coming forward as a catalyst to resolution. The heated emotions during the mediation also seemed to evoke strong emotions at the conclusion. Parties wept openly as they apologised to one another and made tearful pleas about improved relationships. The process was a means to let emotions out, to express grievances and to then talk about family relationships and the need to let bygones be bygones.

As an outsider, witnessing and assisting in such mediations was something of an emotional roller coaster, especially where the issues were unclear, where people reverted to using language or specific cultural concepts. The role of the indigenous elder mediators was essential to keep the process on track, and to make it possible to understand the conflict in its context of family relationships and cultural sensitivities.

One would be curious to know how this compares with historical conflict resolution. We actually have a good source of data about the issues in conflict in the past and the way they were dealt with. David McKnight, a British anthropologist wrote four books about Mornington Island. His book "of marriage, violence and sorcery" contains a large number of case studies of disputes going back to pre-mission times. Reading McKnight's stories and comparing them with the case notes we make about current mediations, we find a striking similarity, not only in the issues, but also in the way they are ultimately resolved, often with people emphasising family relationships.

It is no real surprise therefore that the mediation approach that was chosen had a good chance to succeed, there was a precedent which could be put to good use.

As said, the introduction of the service was careful and certainly not rushed. Regular mediation did not occur until the project was into its third year, with some 50 mediations started in 2010. In 2011 the management of the project was handed over to a local organization, Junkuri Laka, which is also responsible for the Community justice Group.

This brought a direct connection between the mediation project and criminal and justice issues, whilst it enforced the role of the elders who made up the Community Justice Group, and who were all involved in mediation in one way or another. In this way the mediation project assisted in restoring the authority of the elders, which in turn meant they were better able to assist their families, which further improved their standing and so on. Unsurprisingly this resulted in a strong growth of the number of matters referred to the service.

Fortunately, the project also continued to receive ongoing support from the Queensland and Federal Governments, thus helping it survive the "funding cycles" that all too often end a project before it has a chance to germinate and thrive.



Mediation thus became established as a valid way to deal with conflict and disputes, and in the following years there was a rapid change in the type of conflicts the service is dealing with.

Initially the typical mediation was about dealing with the aftermath of serious conflict, often involving large fights. The sessions were as described before, at times with large, heated, and strongly vocal groups.

When mediation became accepted as providing an opportunity to deal with grievances in a safe and confidential environment, people became less likely to let matters escalate. They became more interested in dealing with problems before they grew in intensity and before whole families got involved.

This also meant that the actual underlying issues became much more prominent in the mediation. As a consequence, the typical mediation involves less people, and will take place much shorter after a grievance has arisen.

By successfully resolving issues in that way, people started to use the process in many other ways, for instance to refer a sensitive issue that has not yet arisen, but where a certain situation will likely give rise to conflict. Good examples are the return of serious offenders from jail, issues around funerals and estates, but also matters that would fit squarely within what we would consider "mainstream mediation" such as issues arising from dissolving relationships, neighbour problems, employment issues and financial matters. Mediation has also been used to effectively avoid problems with tensions arising from serious offending.

By way of an example of the latter category, in April 2014 the community was shaken by the rape of a 6-year old girl, allegedly by a group of teenage boys. The situation escalated rapidly as allegations were made and hotly debated between the families of the victim and alleged offenders.

As recent as 2009 a much lesser incident, essentially about children being taken from their parents, had resulted in a riot that required police reinforcements being flown in to quell the unrest, leading to many charges and later imprisonments, with some of the resulting issues making their way to the Supreme Court.

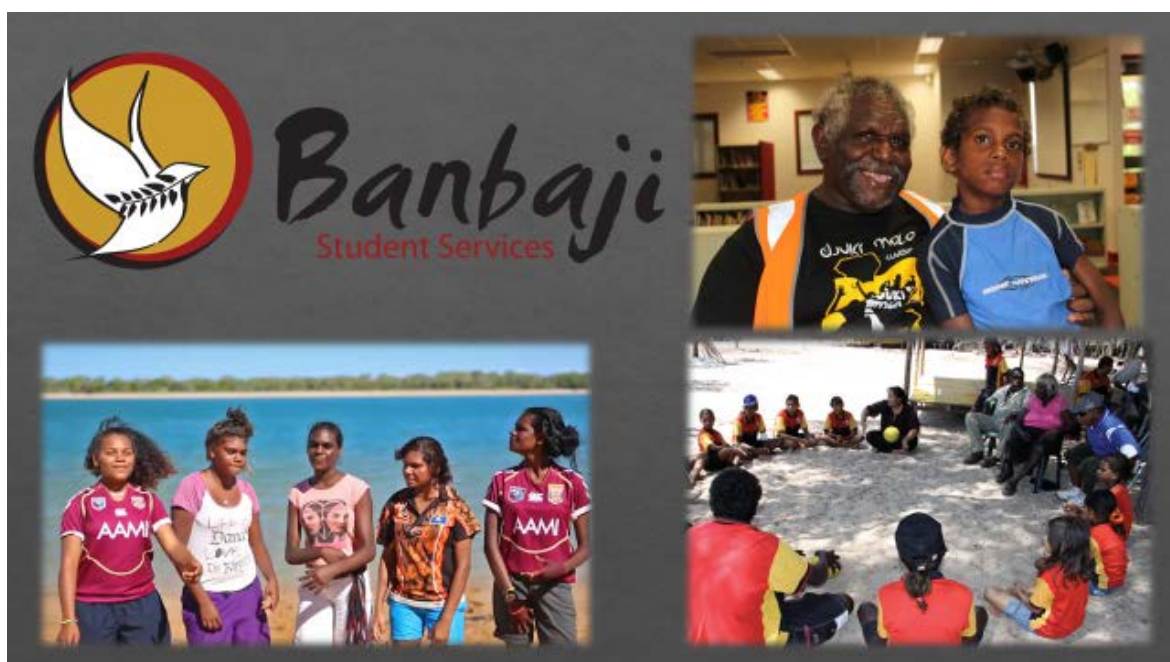
In the rape case a mediation between large groups of representatives of the families involved was quickly organized. This managed to keep the peace in the community without the need for law enforcement intervention. The criminal charges took many years to be processed, but there has never been any associated unrest out of the matter. This would have been impossible without the mediation efforts.

And so mediation continued to spread. In 2012 a start was made with mediation of problems arising between children and teenagers, typically at the school and the PCYC. This type of issue had the tendency to quickly involve wider families, thus literally allowing a conflict in the sand pit to grow into a full blown fight between adults. This approach is a collaboration between Junkuri Laka, the PCYC and the school. In later years a mediation training was organized for school children, along the lines of “peer mediation” as it is used in some jurisdictions.

By way of an intermezzo, I would now like to introduce Frank Watt, one of our young community leaders and mediator, who specializes in dealing with conflicts involving juveniles and young people and their families.

Frank works as a police liaison officer, principally working for the PCYC. Frank is the main mediator in our Banbaji project. The word Banbaji is the local name for a small white dove, the bringer of peace, and as it conveniently happens to be the case, the Banbaji is also the totem of Frank’s family. Frank will provide you with a short study of the work we do with young people.

Presentation by Frank Watt



I will talk about sorting out problems between teenagers.

The main problems there are called Facebook and Divas Chat.

We always try to hammer those problems on the head as quick as possible. This is because they can spread rapidly.

We also keep an eye on Facebook and Divas Chat. But it not easy to always be up to date. Kids change their online names often. There also is a lot of traffic. So most times we deal with this as a problem comes up.

Kids come to me because they feel unsafe after having been bullied on Facebook. I listen to that story first. I then talk with each of the kids involved on their own. I try to get them to agree to sit down for a mediation. I also visit their parents and they normally also come to the mediation.

We get them together, and we start by making them feel a bit more comfortable by just having a chat. When they are a bit more confident we tell them the rules of mediation. These are confidentiality and respect.

We then talk about what happened. This is so that we can agree on the truth. We find out who said what and why.

Often we find that all the kids were sending nasty messages to each other. Also we find often that it is really not about much. It is name calling or just yarn karting.

We then talk about how the children are related to one another. This means talking about their grandparents and great-grandparents. Sometimes the kids just don't understand how they are family for each other.

I then normally have a bit of a yarn about growing up in this community. About how we need to have respect for one another. We explain that this swearing on Facebook and Divas has no place in that, it is not our culture.

Almost always the kids then want apologize to their parents and to each other. Often the parents have something to say as well. They will want to talk about their relation with the parents of the other children. The parents will tell their children that they want no argument and fighting. Parents are always afraid that things between children will start bigger problems.

After the mediation I keep an eye on the kids that were involved. For example if we have a disco at the PCYC, I make sure they are happy together.

We have been doing Banbaji mediation for 4 years now. It has worked. It stops problems between kids growing into arguments and fights between whole families.

We also ran a peer mediation group at the school for a few years, and that helped bringing down the problems between younger kids.



At the moment we do not have much problems with arguments between kids blowing up. I think it is because we are quick. We nip things in bud before they become hard to stop.

We have shown the kids that there are other ways to deal with problems. Most of them know when to seek help with this.

I think that sorting out problems between kids makes them feel a bit happier. This has helped with bringing problems with petrol sniffing down. And it certainly has made school attendance better.

Presentation by Berry Zondag continues....

Another novel way of using mediation is that of "police complaints", issues arising out of people being concerned with police conduct. This category obviously required an openness and willingness on the part of the Police Service to engage in this kind of discussion. Examples of outcomes in such matters are apologies between parties and some adjustment in police procedure, such as allowing family members to be in the watch house with relatives, or even allowing some cultural protocol to take place to relieve stress and anxiety. We have had "smoking ceremonies" when the presence of a "traveller" (a spirit being) was alleged in the police cells, and "ear blowing" by an elder uncle to settle a juvenile offender, who had to be detained for the night.

With people thus having become familiar with and comfortable in using mediation, we also saw an increase in matters dealing with very sensitive cultural issues, often involving allegations of Purri Purri or black magic. Mediations therefore that deal with issues that can only be understood against their cultural background, and which would make very little sense outside that context.

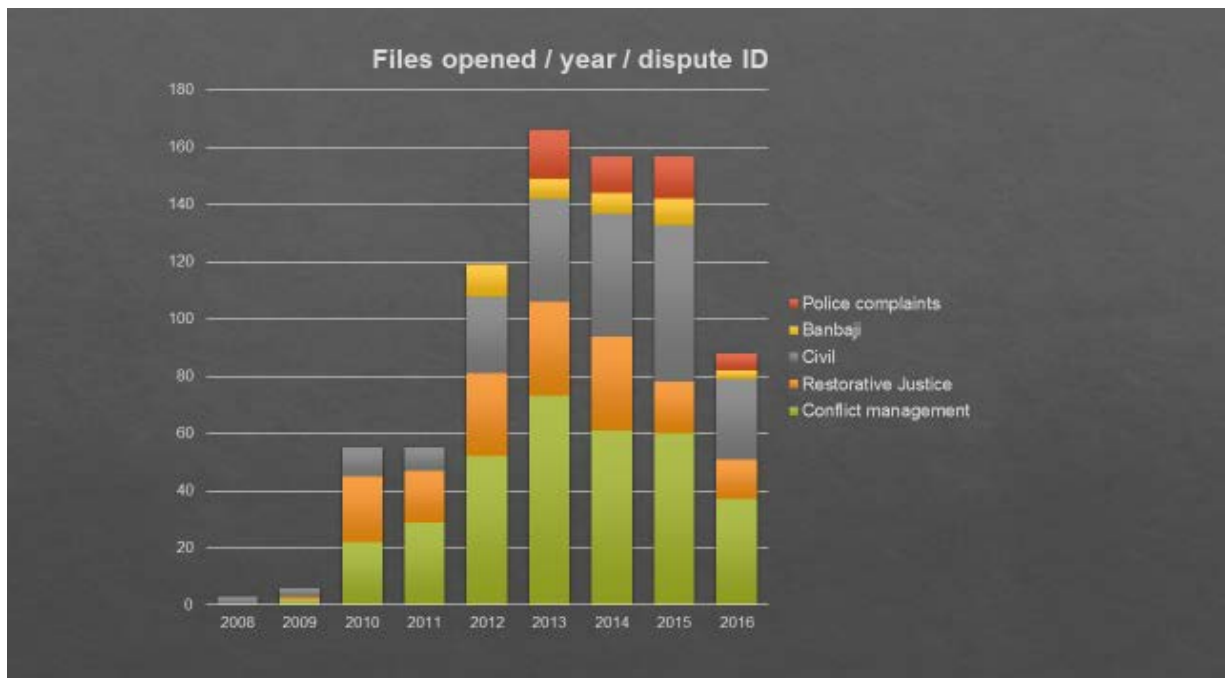
In order to place what I have discussed so far in some context, I would like to present some statistics around our project. These statistics are based on our proprietary case management system, in which all mediations are confidentially filed.

We also record a range of parameters describing the type of conflict, the way it is mediated, the people involved and so on. This database was constructed in 2011. Records of all mediations from the start of the project have also been entered. This collection of data thereby provides a quantitative means of analysing our project over its 8-year life span to date.

Let's first have a look at the numbers of mediations in each year, and the type of issue they are dealing with.

In this graph I have collapsed some of the finer distinctions we make into key categories.

As you can see, after a careful start, we now consistently perform some 160 mediations annually. Since the start of the project, we have opened just over 800 files.



We are looking here at 5 distinct main categories, represented by the segments of these bar graphs. These categories, which we call “dispute ID’s” can be described as follows:

“Conflict management” are mediations that result from heated issues that have the potential to escalate (or may have already escalated) into public displays of animosity. As the term suggests, the first objective is to manage the conflict, to contain it, and to get the central antagonists around the table to resolve the matter. Obviously, a successful result here will prevent such issues from ending up in the criminal system.

“Restorative Justice” are interventions in the shadow of the criminal justice system. These are conflicts that are about to result, or have already resulted in criminal charges. We further subdivide these into sub-categories that reflect at which phase of the court process we intervene, but I have left that distinction out of this graph. Our objective is to keep matters

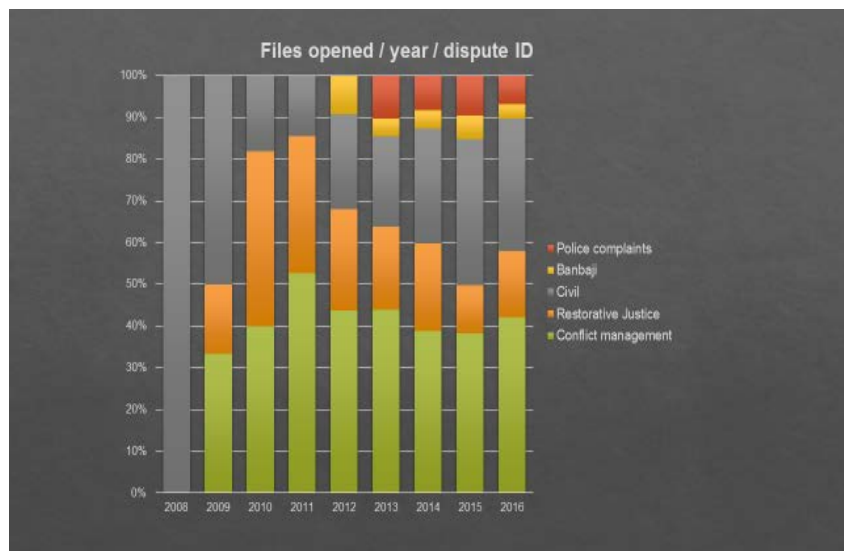
out of the justice system, get them out of the justice system by having charges dropped, or to reduce the impact of the criminal system, for instance by charge reduction or sentence mitigation.

“Civil mediation” is your garden variety of dispute, and captures issues that you are all familiar with, from family dispute to employment matters, and increasingly also, relationship matters. In respect of the latter, at times we are entering into what some would almost consider relationship counselling. We find that these interventions are particularly helpful when dealing with domestic violence issues.

“Banbaji mediation” is the type Frank just told you about. I have to add that we have here only include the cases that have made it into our case management system, i.e. the more significant cases, involving larger groups. We do not record brief interventions in the course of PCYC work.

“Police complaints” are the type of matters I described before, and these have really helped to improve the relationship between formal law enforcement and the community.

When we look at these categories as percentages of all the mediations in each year, we can see a clear trend, in that ‘conflict management’ is fairly consistent, but that mediation in the context of criminal procedures has reduced significantly. In their place we see an increase in “civil matters”, i.e. we are trending towards “mainstream



mediation” if I may call it that, and less conflicts make it into the criminal jurisdiction.

As I mentioned before, the scale of mediations has decreased over time. Mediations with relatively large groups have become less of a feature of our work as a proportion of all mediations. The last mediation with more than 25 people was in January this year, following problems on New Year’s Eve. More than half of our mediations now involve less than five people.

This then perhaps also raises the question of how many members of the community participate in mediation.

Some statistics about participation:

Adult population of Mornington Island :	700
Distinct individuals who have participated 2009- 2016:	741
Number of appearances:	3506
Largest number of appearances/individual (senior mediator):	363

Outcomes of mediation:

Mediations /process ID / outcomes	Outcomes from start of project to 31 August 2016								Total
	Case open	No engagement	Resolved at intake	No show	Walk out	Inconclusive	Settlement	Reconciliation	
Process ID									
Conflict management	10	41	61	3	0	15	105	102	337
Restorative Justice	1	18	11	0	0	2	52	85	169
Civil	3	22	27	1	1	6	104	49	213
Banbaji	0	6	4	0	0	1	7	19	37
Police complaints	3	7	17	0	1	2	19	2	51
	17	94	120	4	2	26	287	257	807

As the participation statistics show, virtually the entire adult population has been involved in mediation, on average on 5 occasions. Some people attend more often of course, especially our elder mediators.

In the table above I have summarized process outcomes by the different mediation categories we discussed before.

Looking at those outcomes, we recognize different ways a process can conclude. I don't think I need to explain what we mean by "case still open" and "no engagement". The categories "no show" and "walk out" will be familiar to you as well, and fortunately they don't happen often.

Looking at the matters that do conclude, first we have "resolved at intake". This where the discussions with the parties and typically a level of "shuttle diplomacy" resolves the matter. This approach is also helpful where it is inappropriate to bring parties together, for instance following a death and before the funeral is held. This often assists in ensuring that the funeral is peaceful, where that traditionally was certainly not always the case.

We then have "settlement" which can be best compared with the outcome of more mainstream mediation. The dispute is laid to rest and some compromise has been achieved.

Reconciliation is where the parties fully restore their relationships following the mediation. These are often events where people show their emotions, cry and embrace one another with pleas of not getting into conflict with one another again.

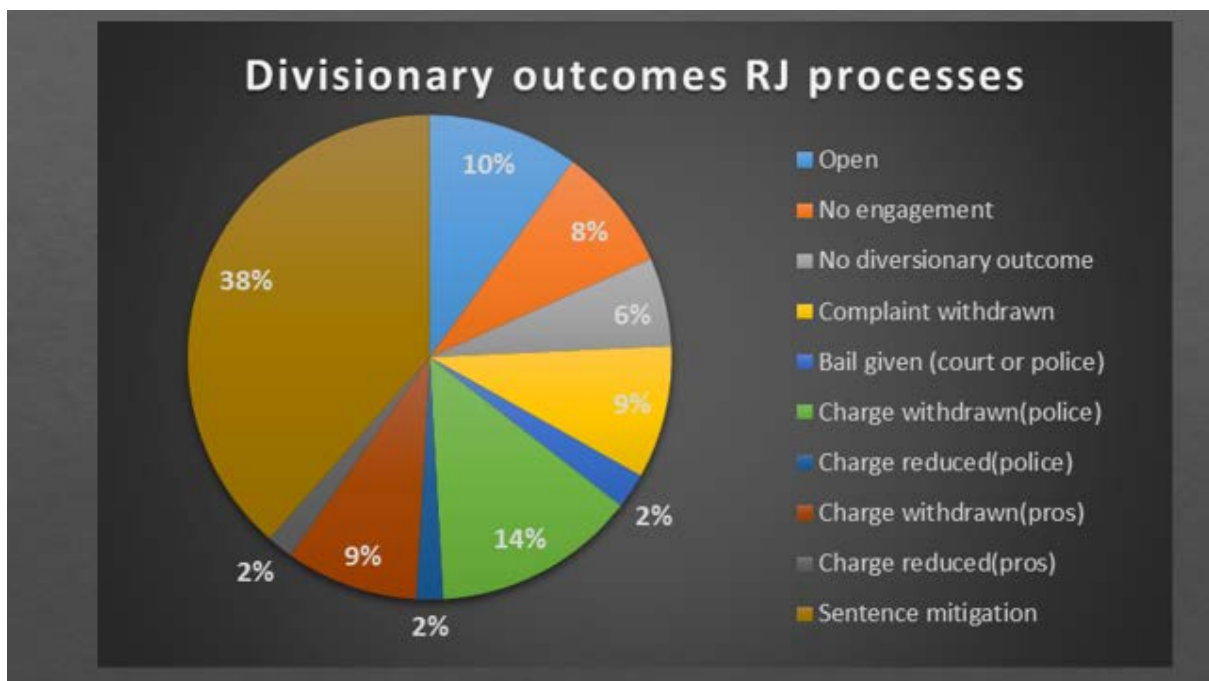
Those of you with quick arithmetic (or calculators) will have worked out that from the 807 cases that were opened until 31 August this year, 690 proceeded to a resolution process, with 664 resulting in a positive outcome, or a success rate of 96%.

If one would take more of a “glass half empty” view of things, the success rate for all referrals is 84%.

You will note that “no engagement” and “resolved at intake” are fairly evenly distributed across all matter types.

As you will also observe the highest rate of reconciliation is in restorative justice matters which is a positive result, as these matters tend to be the more serious transgressions, because they have made it into the criminal justice system.

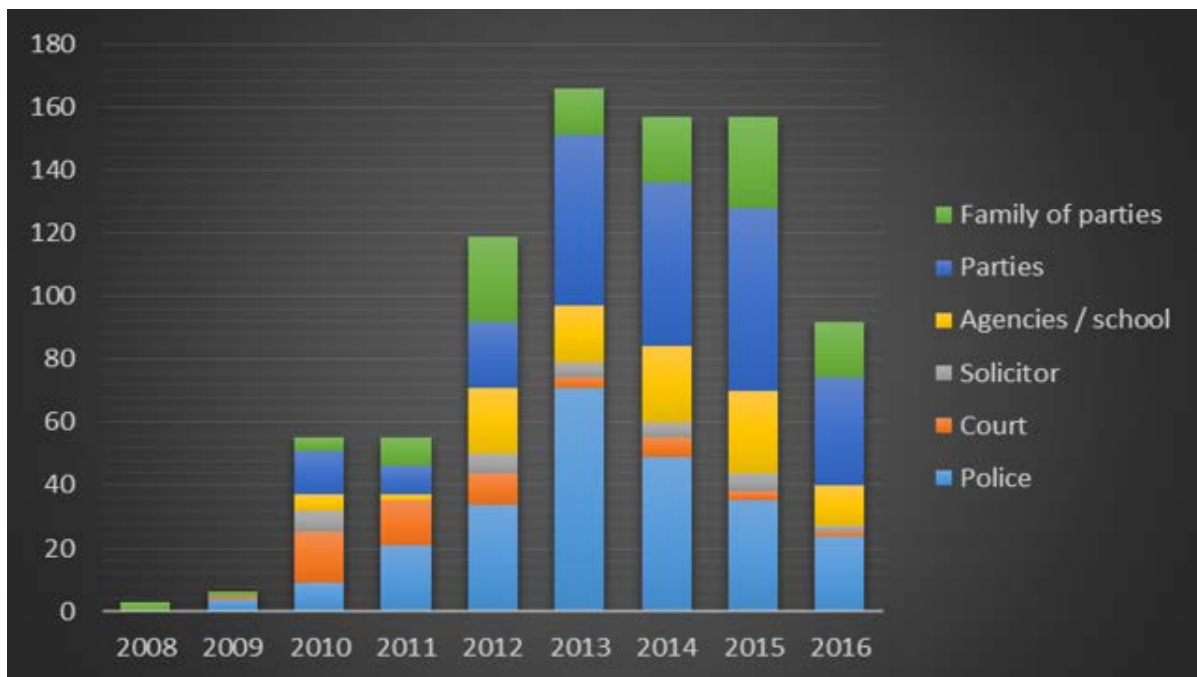
In those restorative justice cases we also record the diversionary outcome, or in other words, what effect the mediation result had on the criminal process, that had already started. The way whereby we typically intervene in the actual criminal process is by communicating with Police, or by providing submissions to the Court via our role as a Community Justice Group.



You will note that the largest category here is “sentence mitigation” and these are typically very significant in impact, such as the suspension of a prison sentence, or an immediate release on parole. In this way we keep people out of jail through our efforts.

Now we’ll take a look at referral sources. Again I have collapsed some of the categories that we use.

What can be seen is that referrals from parties and their families continue to increase in nominal and relative sense, which supports our assessment that mediation has been embraced by the community as something that belongs to the people. Its effect is that matters are resolved at that point, and do not continue on to become issues that enter into the formal system, thus leading to referrals by police, the court or other agencies.



At the start of this talk I mentioned the formal evaluations of our project, most notably the Colmar Brunton research, which very thoroughly investigated the use of the program, and which came to very positive conclusions. I have also mentioned the recognition through awards, and mention here the praise heaped upon us by members of the judiciary, senior police officers and the representatives of our community in State and Federal parliaments.

This then perhaps raises the question what the costs of a project like ours are, and whether the benefits actually outweigh those costs. In order to answer that question, an economic analysis of the project has very recently been undertaken by researchers associated with the faculty of economics at the University of Canberra. They had experience with such an analysis for a mediation project in Yuendumu, of which you may have heard.

These researchers undertook their analysis by determining the economic effects on the basis of a “nett present value” approach, considering two questions.

“Has the project delivered value for money over the period 2008-2015?”

And:

“Will the project deliver value for money, in the future, on the basis of the cost and benefit prognosis, based upon extrapolation of trends for the coming years?”

In terms of the project costs, we have very accurate data, as the project has always been fully funded with all project expenses covered by grants and/or through the detailed service delivery agreement between the Government and Junkuri Laka. All participants in the project are recompensed for their efforts, including the Elder mediators. The costs of the project are therefore well known and can be appreciated and valued completely and accurately. To give you some numbers, in the initial three years the annual costs were around \$300,000. Once the project was transferred to community management this decreased to some \$180,000. At

this point the program costs are about \$200,000 annually and this includes all costs, including the oversight through the Queensland Department of Justice.

In terms of benefits, the researchers used a well-tested method of determining costs that have been avoided as a result of the mediation project, such as costs associated with police and court intervention in conflicts that have avoided the criminal justice system. This type of assumptions can then be tested for robustness, using economic methods.

The cost-benefit analysis was undertaken for the project from its inception to 2015, and a separate analysis was made in respect of estimates for 2015 to 2025.

The researchers found that the benefit to cost ratio for the 2008-2015 period was 7 to one, whilst the expected ratio for the 10 years from 2015 is expected to be 11 to 1, meaning that for every dollar invested in the program, costs to Australia are avoided to the tune of 11 dollars, a very good rate of return, showing that a project such as ours has economic merit as well. We have produced a summary leaflet about this analysis to take with you, and I have also placed the entire evaluation report on the website for those interested in more detail.

In the conference materials we promised to provide something of a “toolbox” for those interested in establishing a similar project.

Let's start with some conditions we've learned to be essential:

- Do not rush, take time to do your homework, obtain all information that may be found about the community you are dealing with and find out who to consult in the community, what entities are suitably placed to inform the project, is there a cultural precedent, who are the key elders/leaders in the community. These are not necessarily the elected representatives, there may be a group of elders, this may be the matriarchs or patriarchs of the families, every situation will be different.
- Establish sound relationships in the community
- Obtain a long term commitment from the resource or funding providers. A one year budget is not going to allow you time to do things properly. We found that three years is about the minimum to gain the required momentum.
- Understand and accept that different cultures deal with conflict in different ways. There may for instance be very different thresholds and acceptance for physical interaction. Don't be judgemental in that respect. It's only a few centuries ago that extreme violence was quite common in the dominant white cultural domain and in its dealing with crime. Our current ethical standards in that respect are only very recent, especially when comparing that with cultures that have in many cases existed for much longer. Understand that in context and find ways around it. I am not advocating to accept or promote violent interaction, but it is a reality to be dealt with.
- Understand and accept that for many indigenous people a genuine apology and reconciliation is virtually always much stronger in effect than a punishment doled out by the invisible hand of the white fella justice system. As a lawyer I can see how that

may present a conundrum, but believe me, after being involved in some 700 mediations on Mornington Island I can vouch for that to be true.

Once in that mindset, and once one is talking with the community, one can begin to think about the format of an appropriate process. We've learned to study the cultural context carefully. Find everything that's available from the work of anthropologists and the missionaries that have interacted with so many of our remote communities. In our case it was surprising how much information was actually available, and I'm guessing this will be the case for just about every community. In our case this revealed there was a cultural precedent for a conflict resolution process. In other cases this research may reveal specific types of authority, the roles of certain family members, the impact of initiation procedures on individual standing, restrictions on communication between people and so forth. The history of the place may even assist in understanding some conflicts in context, such as historical tribal issues, or connections with other communities.

It is then time to very carefully start with mediation. This is a bit like jumping in the deep end of the swimming pool. In this stage one needs to rely heavily on people who already have standing in the community. It takes quite a number of successful mediations before people will trust that the process itself is the safeguard for the mediation environment. We found that lengthy and detailed intake processes assisted in getting people ready for mediation. A lot of this involves the management of expectations.

Once mediation gets established, one needs to be extremely flexible in approach and avoid too dogmatic use of procedure. Tailor the process to the issue at hand and the parties involved, but stick to the basic premises. In our case we have gradually reduced the original 11 rules for mediation to two core principles, confidentiality and respect. The process we use has developed into a number of different scenarios, varying from large sessions involving whole family groups to quiet conversations under a tree in someone's backyard. In our case this flexibility has also resulted in us dealing with matters that were never contemplated when the project was started.

Think about case management and administration. Good record keeping not only assists in the inevitable need to acquit funding, but it will prove to be invaluable in understanding how issues and their parties relate to one another. Of course this record keeping needs to comply with the basic premise of confidentiality, and this is where professional standards will assist.

With the project underway, it is a good time to look again at how the service can be really transferred to local management. For the project to be sustainable it will at some point need to attach firmly into local structures. Ongoing training and support for local mediators are part of these considerations.

Our experiences have been recorded in detail in a number of evaluation reports and these are all available to you.

There you have it, a "toolbox" to start and manage a project like ours.

In our presentation summary we talked about mediation being a vector for community development. Let's have a look at that. In our experience ongoing community wide conflict is just about the worst environment to work in when you want to deal with structural issues, such as alcohol dependence, poor economic conditions, structural unemployment, community health, welfare dependency, poor school attendance and achievement and so on.

That's unsurprising. In an environment where you cannot go to the local store without having to confront potential adversaries in a fight it is difficult to start working at improving your social or economic situation. Survival and safety necessarily remain your objectives, not the improvement of your social wellbeing, to apply Abraham Maslov's theory of human motivation.

The same goes for the efforts of all these well-meant government programs and interventions. They simply cannot be successful if the intended clients are too busy with unresolved grievances.

This is what we mean by mediation being a vector for community development. The term "vector" also reflects that mediation itself is not the solution to the underlying issues. That solution must come from elsewhere, such as sustainable economic development. We have seen that lasting peace, and absence of disruptive conflict create the environment in which other services can start to make a difference.

Finally, I'd like to address the question in the title of our presentation. Is indigenous mediation different?

If by "indigenous mediation" we mean our Mornington Island process of dealing with the disturbing effects of community wide feuding then, yes, there are aspects that at times contrast with "conventional mediation wisdom", for instance:

- Our mediators are not independent of the parties, they are closely related, and this is in fact important for their authority and standing. In our case, the mediator's standing is thus not entirely dependent on the process and the parties' agreement to it, as it is in your ordinary setting.
- The process involves large and at times very large groups, and in those cases it is more akin to peacekeeping work
- The process is very robust in terms of allowing the airing of emotions and grievances
- The process can involve attendees that are there solely for the purpose of making an outcome sustainable. We may introduce mediation witnesses to see that a matter has been laid to rest, or who have a role to support outcomes
- Mediation needs to operate within the cultural context, for instance by recognising that certain people cannot talk to each other, or cannot contradict certain others. This makes communication at times peculiar. As an example we cannot always ask parties to please talk to the other person, as they may not be allowed to do that in culture at all.

- Mediation can involve issues that can only be understood in their cultural context and that make absolutely no sense outside of that context. Mediation therefore where a non-associated independent mediator simply would not be able to assist.
- The process can deal with matters that are sometimes outside of what would be “acceptable” in mainstream mediation. We deal with serious violence, including domestic violence, and do that without necessarily requiring a pre-condition of acknowledged guilt.
- Mediation outcomes can at times contradict with outcomes or principles in the formal justice system. In the culture, things like certain forms of swearing are taken much more serious than physical exchanges.

Nevertheless, we have found that once you manage to work through the feuding and long standing historical grievances between groups in the community, and that once the process has been truly accepted, the type of issues we are dealing with start to trend towards the issues that are being dealt with in “mainstream” mediation. It would be impossible to say that “indigenous mediation” in those matters is different at all.

There are of course differences resulting from the fact that we are dealing with rather disadvantaged people. There are higher incidences of almost all the symptoms of that disadvantage, be that poor educational achievement, mental health problems, intergenerational welfare dependence, high crime rates, foetal alcohol syndrome, substance abuse etc. But those disadvantages apply across the board, not just in respect of dispute resolution. They are issues that affect and interfere with our work, but at the same time these issues can only be addressed after the debilitating effects of ongoing conflict are removed from the picture. This is what we can achieve with mediation.

The simple fact that we have gone from retrospectively dealing with the results of large disturbances to sitting down with parties to resolve “civil conflict” or even to prevent it, shows that this works in practice.

So is “indigenous mediation” different?

Or are we just using the same old mediation principles in a unique setting?

I leave that question to you.