



# TOWARDS A COMMUNITY OF PRACTICE

**By Toni Bauman, Rodney Carter, Mick Harding, Tony Kelly, Sally Smith, Austin Sweeney, Brendan McKeague, Michael Meegan & Jayne Weepers**

Since the 2013 AIATSIS national native title conference in Alice Springs, a group of us, energised by the synchronicity of our presentations, have been holding regular teleconferences. These teleconferences are aimed at building a community of practice in native title engagement and community development processes which are reflective and participatory, and which acknowledge the impact that processes have on outcomes. We are interested in 'how' things are done: how people are engaged in the first place to participate; how their intentions are identified; how their emotional, procedural and substantive interests are accounted for; how relationships are built and sustained; how agendas are developed and issues are explored and communicated; and how decisions are made and disputes managed to ensure outcomes are reality checked and owned.

This process work is at the centre of effective governance not only for native title holders and traditional owners but also for Native Title Representative Bodies and Service Providers (NTRBs/NTSPs) and governments. There is a need for a

paradigm shift which moves beyond viewing 'big meetings' as the only mechanism for engaging Aboriginal and Torres Strait Islander people. In many instances these have become the modus operandi and can be unhelpful without effective preparation and forms of prior engagement as the views of participants may go unheard and decisions and agreements fall apart. New and innovative approaches are required which engage not only participants but also other decision-makers and which minimise harm, engage complexity successfully, build on the wisdom of the entire group, foster ownership of the process by participants and recognise the potential in conflict for growth and creativity and as an agent for change.

Each of the approaches taken in process-related presentations at the conference was in one way or another based on such principles. Michael Meegan, Principal Legal Officer at Yamatji Marlpa Aboriginal Corporation (YMAC) in the Pilbara region and Brendan McKeague, an open space facilitation consultant, described their approach in 'The Emergent Way: Engaging the power

of collective wisdom within Indigenous organisations.' For them the need to change processes was obvious: trust funds had been languishing for many years in the face of disputes hindering the realisation of community development aspirations. Their 'open space' practice involves creating circles of co-learning; acknowledging complexity and living with ambiguity and paradox; engaging collective wisdom and mutual respect; stating intentions and purposes transparently; participating by invitation; opening opportunities for self-organisation; collaborative learning; carefully planned individual and family meetings and modelling nonviolent methods of community development which begin within one's own circle of influence. The work began by developing YMAC's legal team's community of practice, then expanding insights within the organisation and beyond to client groups.

For Sally Smith, Tony Kelly and traditional owners Rodney Carter and Mick Harding from the Right People for Country Project funded by the Victorian government, processes should be 'imaginative' in the Lederach sense



of imagining processes grounded in current challenges yet able to create something new and different from the status quo. Right People for Country supports traditional owners to reach agreements about group composition and boundary issues and aims to provide government with greater certainty about who to talk to about land issues. In 2012 it supported three pilot projects with traditional owner groups in Victoria. Each aimed to empower traditional owners and build collaborative relationships. As relationships developed, trust increased and more mature collaborations emerged. An evaluation of the pilots identified five dimensions of effective agreement making processes: traditional owner leadership; collaborative partnerships; co-ordinated and tailored support; capacity building from the beginning including negotiation training for traditional owners; and the use of independent facilitators. For governments and industry, in particular, the most provocative finding of the evaluation lies in its cost benefit analysis. The Central Land Council (CLC) has a long history of consultative and engagement processes with communities in central Australia.

Since 2005, it has had a dedicated Community Development Unit (CDU) and framework with clear processes for progressing community initiatives across the CLC region (<http://www.clc.org.au/articles/cat/community-development/>). Jayne Weepers outlined issues the CLC is confronting in developing a meaningful and systematic policy and implementation strategy around dispute management, following an AIATSIS workshop of senior CLC staff and Executive members in 2012. The CLC's draft Dispute Prevention and Management Framework sets out a three-tiered approach: prevention of disputes; recognition and assessment of disputes; and dispute management. Fundamental premises are that Aboriginal people should be supported to manage their own disputes rather than relying on the CLC or other third parties, but also that in some cases external expertise in the form of independent facilitation may be needed. Critical challenges include clarifying how and when the CLC will be involved in dispute management and how to systematically build staff capacity.

To think in the ways the conference presentations suggested and to reflect this thinking in daily practice requires a paradigm and organisational cultural shift to ensure that every aspect of an engagement process is seen as an opportunity. Some common themes we have identified suggest the need for: a strong intention to build both client and staff capacity in designing and facilitating meetings; frameworks which strengthen relationships and build consensus while respecting difference; recognition of the significance of independent facilitation as it takes pressure off lawyers and anthropologists and other professional staff from having to lead processes as well as addressing content; creating opportunities for Indigenous facilitators; designing processes according to context; identifying stakeholders and inviting them into

collaborative processes early; and ongoing critical reflection. There are many models and approaches that may be employed to build community consensus and arrive at durable outcomes – forms of dialogue, open space, evaluative, facilitative and transformative mediation and interest-based and deep democracy facilitation for example - and many practitioners may combine elements of a number of these. The key is designing processes in collaboration with the parties with an understanding that societies are dynamic and that meaning is being constantly negotiated in changing conditions.

Our shared concerns recognise that 'business as usual' may not be good enough. Native Title Services Victoria has begun a process of change by providing a significant number of staff with training in transformative mediation and these staff are now accredited mediators and can facilitate each other's meetings. Such a model could work amongst NTRBs and NTSPs nationally as each assists the other. The CLC's CDU with its eight years of



Top left: Sally Smith presenting Mediation and Dispute Resolution, Alice Springs, 4 June, 2013.

Top middle: Michael Meegan presenting Mediation and Dispute Resolution, Alice Springs. Bottom right: Right People for Country presenters, Sally Smith, Rodney Carter, Tony Kelly and Mick Harding. Credit: Matthew O'Rourke

experience and annual monitoring and evaluation is becoming increasingly skilled in facilitating complex planning processes with Indigenous people including the use of funds from land use agreements. Right People for Country is building a network of Indigenous facilitators in many ways mirroring the recommendations of the 2003-2006 NTRU AIATSIS Indigenous Facilitation and Mediation Project (IFaMP) for a small national co-ordination service which links regional services, acts as a clearing house of best practices and develops national training and curriculum. There are also implications for the kind of training that the Aurora Project delivers.

We invite traditional owners and native title holders, NTRB and NTSP staff and government policy and decision makers to create opportunities for exploring new models of engagement, participation and decision making in what is a growing area of practice nationally and internationally. This will require cultural and institutional change which is cost efficient, attracts the interest of all stakeholders and provides real and tangible benefits for Indigenous people.



Top left: Toni Bauman Chair of Session, Mediation and Dispute Resolution.  
Top right: Rodney Carter, Mediation and Dispute Resolution presenter.  
Middle: Mick Harding, Mediation and Dispute Resolution presenter.  
Credit: Matthew O'Rourke.

# REVIEW OF ROLES AND FUNCTIONS OF NATIVE TITLE ORGANISATIONS

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Image: Courtesy of Living with Native Title

Are you interested in finding out more about what native title claimants and holders, independent lawyers, Aboriginal organisations and mining interests had to say about the issues raised in the Discussion Paper of the Review of the Roles and Functions Native Title Organisations? AIATSIS' substantial submission is included, along with 42 others from interest groups as diverse as

the National Native Title Council, Indigenous Business Australia, native title representative bodies, the Western Australian and Victorian state governments, the Association of Mining and Exploration Companies and the Law Council of Australia. Collectively these submissions tell us a lot about the current state of the native title system and the strategic challenges facing native title holders into the future.

You can find all non-confidential submissions  
to the Review online at

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