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Aboriginal ADR

# Aboriginal ADR Service in WA

Helen Bishop

The Aboriginal Alternative Dispute Resolution Service (AARDS) is a Western Australian initiative developed as an outcome of the Special Government Committee on Aboriginal-Police and Community Relations (SGC) in 1991. Its establishment preceded the recommendations made by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The following RCIADIC recommendations reflect the objectives of the AARDS, principally to reduce the incarceration of Aboriginal people.

- To improve the interaction between Aboriginal people and the criminal justice system;
- To reduce the unacceptable rate at which Aboriginal people were being arrested and imprisoned in the state;
- To redress Aboriginal disadvantage in all spheres of life, including health, education, housing and economic development; and
- To increase Aboriginal involvement in the design and delivery of services provided to cater to their needs.<sup>1</sup>

This overview will describe the evolution of the AARDS and the range of services and issues particular to it. In addition, it will cover one of the broad initiatives aimed at the prevention of and early intervention for disputes.

### Focus

The focus of the AARDS in its early life was upon three goals: first, to focus on inter-family feuds between Nyungar cultural groups in the South West of Western Australia; second, to identify and train a network of local Nyungar people to be used as mediators; and third, to address disputes known as 'feuding' rather than any other conflicts between families.<sup>2</sup>

In 1995 the AARDS began to deliver statewide services to Indigenous people across Western Australia. Between 1991 and 1995 the AARDS assisted Aboriginal individuals, communities and families to develop conflict management strategies and delivered education and

training, including culturally effective ADR services such as mediation, negotiation and conciliation.

### Services

Since 1999 the AARDS has been delivering a more comprehensive range of ADR services and processes that include mediation, negotiation, conciliation, consensus building, shuttle mediation, teleconferencing, elder arbitration and service brokering among others, with options to provide video conferencing. The AARDS has not yet used video conferencing; while it is practical and cost effective there have been no occasions that have arisen where its usefulness could be employed.

### Negotiation

Negotiation has proven particularly useful when shaping realistic agreements between parties. Such a process is employed where parties seek to commit to matters concerning supervised access and proportional caring between parents and the extended family.

### Arbitration

In cases where parties have explored options for an agreement but are not able to reach consensus, elder arbitration is offered. Elder arbitration uses cultural and social principles of the extended family. Parties identify elders whose opinion and fair-mindedness are recognised and respected, nominating their preferred and mutually accepted elders — usually one male and one female. The AARDS approaches selected elders to seek their support and involvement in facilitating a resolution of the issues. Our experience is that in each matter where this option is offered parties have accepted the role of elders as arbitrators.

The elders, parties and mediator meet together to discuss the issues and why consensus cannot be reached. Elders may call upon the mediator to explore the issues in dispute. Further, they rely

upon the mediator to assist them develop options that meet cultural and social requirements as well as the needs of the parties. The process may require a number of meetings with parties for the elders to determine the needs of all parties rather than make a decision that unnecessarily protracts the building up of family relationships. When elders provide their thoughts (decision) it is offered to parties to accept as a 'final word' on the matter. In the three cases where these processes were applied parties continue to comply with the consensual thoughts of the elders. Groups in the central desert and far north communities have used this model.

### Mediation

Among the Aboriginal population, community feuds and inter- and intra-family conflict regularly present with historical multi-party issues with the possibility of consequential criminal justice involvement. Such cases frequently require a broad definition of mediation by AADRS practitioners so that the ADR processes can include the cultural dynamics of Indigenous dispute behaviours and mechanisms. A definition of mediation that best describes the involvement of AADRS mediators to Indigenous feuds is from Folberg and Taylor, as follows:

Mediation is an alternative to violence, self help, negotiation and arbitration. It can be defined as the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. Mediation is a process that emphasises the participants' own responsibility for making decision that affect their lives. It is therefore a self-empowering process.<sup>3</sup>

### Other services

The AADRS aspires to resolving conflict without violence or threat, through the use of restorative and therapeutic mediation processes. These processes include brokering social, psychiatric, community and counselling services as agreed between the parties.

### Growth

The momentum for the evolution of AADRS has been threefold: to accommodate an increase in demand for services; to recognise that conflict for Indigenous people influences criminal justice contact; and to provide alternative prevention and intervention strategies to reduce Aboriginal people's contact with the criminal justice system. As statistics continue to indicate, Aboriginal people are grossly over-represented in the prison population throughout Australia and in contact with the criminal justice system generally.

Far from providing Aboriginal Australians with a just and respected means of social control and protection, appropriate to their needs, the Australian criminal justice system remains an alien and discriminatory instrument of oppression, through which Aborigines are harassed, subjected to unfair legal procedures, needlessly jailed, and all too often die while in legal custody.<sup>4</sup>

### Empowerment

The majority of AADRS involvement is with individuals and groups who are affected by conflict. It is therefore essential that AADRS provide an effective service with processes that empower Aboriginal people to take responsibility to define the dispute, to retain ownership of the dispute and to develop options and solutions to their problems. Importantly, the AADRS is designed to enable direct negotiation in a manner that suits cultural practices and social structures.

### Recognition

Aboriginal people have close kinship ties, both social and cultural, and with these obligations and observances they are better able to capture those people recognised as co-parties and key players to a dispute. Certainly it is an inclusive process and is best defined by those associated culturally and socially to the core and peripheral issues.

### Family violence

It is the experience of staff at the AADRS that Aboriginal people are frequently before the courts as a consequence of family violence and inter/intra family feuding. For many clients contact is made with the AADRS

at a point nearing crisis, having experienced and reported an escalation to their conflict. The frequency of criminal justice contact is high, with conflict erupting into violent episodes often leading to court appearances.

Subsequently, Aboriginal people may be penalised via a restraining order, community service order, or a period of incarceration. The AADRS experience is that following such orders clients indicate a serious breakdown in communications or relationships and that many encounter emotional and physical fragility resulting from and perpetuating the crisis.

### Vision

The AADRS envisages having a future impact in the Magistrates Courts system, where magistrates have an option to offer mediation prior to hearing evidence on an application for a restraint order. AADRS evidence suggests that Aboriginal people offered such an option are willing participants in the process and find mediation in this particular area dignified, inclusive and empowering at all levels. In all cases where mediation was offered to parties before court, both applicant and respondent accepted mediation as an option, meeting and developing realistic codes of conduct. Applications before the court are dismissed once the court has been informed that an agreement has been made. Parties are encouraged to lodge their agreements with the court, to be held on file. The agreement is informal and not lodged as restraint orders per se. In each case where this option has been offered the agreements remain intact.

### Training

In addition to collaborating directly with Aboriginal people affected by disputes, the AADRS has developed a mediation and conflict resolution training package that is nationally accredited. The package is a TAFE unit, 'Facilitating Effective Communication in the Workplace' and can be credited towards a TAFE Certificate III in Business. AADRS trainers/assessors are qualified and participants are assessed in-house. The AADRS had the package nationally accredited so that people could take it anywhere in Australia.



The training package has the capacity to empower communities with skills that assist in focussing on solving issues at the grass roots level. It is the intention that this will divert Aboriginal people from the criminal justice system.

The AADRS commenced training with Aboriginal people in August 2002. Each participant has been assessed as competent in mediation and conflict resolution processes. The participants have the ongoing support of the AADRS in their ADR growth and practice. It is envisaged that training continues throughout Western Australia with the next training session commencing in October 2002.

Overall the benefits Indigenous people can expect to experience in using the AADRS's range of services are as follows:

- an ethical standard of practice;
- empowerment to solve problems peacefully;
- less contact with the criminal justice system;
- a reduction in applications and breaches to restraint orders;
- fewer violent disputes;
- better communication;
- opportunities to build stronger families;

- conflict resolution skills and conflict resolution management;
- the ability to speak in a non threatening environment; and
- the opportunity to develop relationships by building realistic agreements. ●

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### Endnotes

1. *Royal Commission into Aboriginal Deaths in Custody National Report Vol 1 AGPS Canberra 1991.*
2. Chadbourne R *An Evaluation of the Aboriginal Alternative Dispute Resolution Project* International Institute of Policy and Administrative Studies Edith Cowan University Perth 1992.
3. Folberg J and Taylor A *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* Jossey-Bass Oregon 1984.
4. McRae H, Nettheim G and Beacroft L *Aboriginal Legal Issues: Commentary and Materials* Law Book Co Sydney 1991 p 238.