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Developing a 'nuther way' through ADR

Working collaboratively on discrimination issues

Tom Stodulka

As I started preparing for the 2005 Australian Peace and Conflict Studies Conference I found a very inspiring article in the Brisbane Courier Mail about the Deputy CEO at the Royal Blind Foundation of Queensland, Mr Gerrard Gosens, who is blind and is currently preparing to climb Mt Everest.

He said, 'For me it's not about standing on top of the mountain, it's

democratic pursuit of a fair go and being able to walk away having been listened to and heard.

Let me use an example: an Aboriginal lady complained that police had pushed her around because she was sitting in a city park. She had before her a candle, which she was burning as a mark of respect for a close relative who had died. I brought in a very senior police officer,

resolution programs, based on communications skills and mediation practices.

In the Territory in 1997 we adopted the NSW Ombudsman minor complaints resolution program to deal with minor complaints against the NT Police. Over the next two years 100 police officers across the Territory were trained to become conciliators to put the program

into effect. It is extremely rewarding to play an active role in a program which achieves major changes to the culture of organisations, be they large institutions like the police or just small community organisations.

Against this introduction let me talk about a serious consumer issue affecting many thousands of Aboriginals living in remote communities. As Anti-Discrimination Commissioner

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about the journey and working with teams'. And I can say, very humbly, that every day in the Northern Territory over a period of five and a half years was about working collaboratively with teams.

Shortly after my arrival in the Territory, as Deputy Ombudsman, I felt complaints would not invariably be resolved in a restorative manner, but rather in a traditional adversarial way. There was no opportunity for a meaningful communication between the party complaining and those about whom they were complaining.

I felt there must be a better way and proposed that we get all the parties together and, where an apology and acknowledgement were appropriate, that this could be done face to face.

I felt it was of concern that we were a part of the problem and just another hurdle for genuine complainants to jump, another barrier in a person's

Bruce Wernham, who is now the Deputy Police Commissioner for the Northern Territory, to sit down with her. It was quite unusual to have everyone getting together in a restorative sense and actually have a complainant and a senior member of the Police Service sit down over a glass of water and a cup of tea and reconcile with each another. It was an important step in the right direction. There was a chance that some trust and respect could be factored in when working with community members who often had no faith in a system that showed little understanding of a person's cultural needs and sensitivities.

We are talking about the latter part of the 1990s and beyond, and more and more people could see the benefit of sitting down and talking with one other, coming face to face and doing things in a 'nuther way'. It was a time when jurisdictions across Australia were introducing improved complaints

in the NT I became acutely aware of enormous disadvantage and inequity in many Aboriginal communities throughout the territory. Specifically consumers were being taken for a ride and many stores were poorly run and charging customers hugely-inflated prices. The problems were not limited to the Territory – it was a national issue which was bigger than just inflated prices and involved access to credit, which was of course a banking matter.

Although we had in the NT the Consumer Affairs Commission and the national consumer watchdog, the Australian Competition and Consumer Commission (ACCC), the problem was enormous. I was receiving an increasing number of complaints of inappropriate behaviour by local taxi drivers from a number of Aboriginal residents in Alice Springs. These complaints were not new and were dealt with on an individual basis, rather than being addressed as a

wider systemic problem. While complainants might end up with an acknowledgment and an apology, and in some cases compensation, the systemic nature of the problem was not being addressed.

At least five Government agencies and three Aboriginal communities had also become involved. How would the problem need to be dealt with? The media, particularly the ABC, were very interested and the problem was just not going away. I was concerned that if all the agencies and the community representatives continued to deal with it in the same way in which we had been dealing with it, we were never going to make a real difference in resolving the matter in the long term.

What followed was a facilitation, or a strategic conversation, engaging with all stakeholders or their representatives. This included the consumers, community groups, the taxi industry and the respective government agencies. As we all know, nothing is ever easy or simple, particularly when emotions are running high and the problem has endured for a long time. Why should something like this be so difficult? We are starting to move into the psychology of conflict and we all know that when problems are allowed to fester, parties take their positions and things get personal as the people, rather than the problem, are attacked.

In addition to a number of individual meetings, we all met as a group on three occasions over a period of 12 months. The media showed interest and ran a story every time we met. They played a part in helping attain an outcome and achieve necessary reform. Who attended the meetings? We always tried to have the most senior representatives present, but we would also occasionally have aggrieved parties on both sides present at the meetings. You are playing with a range of dynamics with a group as large and diverse as this. It was important that the same people with authority showed up at the three meetings.

Individuals will move at a different pace and some just want to use the occasion to keep on pushing past grievances, without being prepared to move to future solutions. They too need to be heard. Not everyone will be

comfortable with the process and you need to be sufficiently flexible not to lose people along the way.

I mentioned the media earlier, and working with them can be both challenging and rewarding. I was fortunate that one journalist ran with the story from the beginning and was in Alice Springs for the whole year. In an environment like the Territory the population is transient, with people moving regularly, whether as public servants or community members. The seasons have their impact, and there are also serious health and cultural issues. You get caught up in inter-agency politics and budgetary matters. Then there are the territory, local and federal government issues to be factored into most situations. The local Chamber of Commerce and the Federal Human Rights Commission were interested observers. I held the meetings on relatively neutral ground, at the Alice Springs Council.

Twelve months sounds like a long time to conduct a facilitation – there are obvious risks, such as maintaining people's interest and commitment to the process and whether the same people would still be around. Did you have all the stakeholders involved, how did you deal with the politics and power imbalances, how much time did you devote to preparation and were the larger organisations given more attention than the smaller ones? Could the meetings have benefited from having two facilitators, with a gender and cultural balance? What about interpreters? Did you get feedback whether the parties were heard and sufficiently empowered? Was there sufficient respect and trust within the

group, for the parties, for the facilitator and for the process? How were these measured? If a facilitator flies in from a city 1500km away can there be sufficient confidence within the community that he or she can sufficiently engage with all the stakeholders? What could have been done to improve the system? Just because many other bureaucrats commute such distances within the Territory does not automatically justify the practice. I often pushed for the establishment of an Alice office and am glad to say that one has since been established.

Well, after three joint meetings, the exchange of much paper work, a number of private meetings and continued media interest and reports the following outcomes were achieved:

- The establishment of a Taxi Industry handbook and protocols
- A commitment to the development of a cultural awareness and training program for all taxi drivers
- A commitment to work together
- A greater understanding and awareness of people's needs and issues
- An acknowledgment of the benefits of a collaborative approach
- A sense of empowerment was achieved for affected persons and groups
- Recognition that the consumer had both rights and responsibilities.

I too felt empowered – if we could make a difference in this case why not tackle the bigger systemic problem of the management and conduct of community stores, many of which were being run without any scrutiny or accountability. While this was not a task for the Anti-Discrimination

contributions

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Commission, we could take on the co-ordination and facilitative function. I believed we needed to start by getting all the stakeholders, including community, local, State and Federal Government agencies around the table.

I should mention we had also benefited from the visit to Australia of a famous American futurist, Robert Theobald. He believed it was not his role to preach or even find answers, as these, he said, lay within the community. At a time when his own life was drawing to a close he was still able to engage in a frenetic lecture tour and

Interpreter Service with an injection of \$5 million of Federal Government funds on an annual basis for four years, the 'Nuther Way' conference on mining and land rights had been held, and a new Labor Government would shortly be elected in the Northern Territory after 26 years of CLP rule. The Stolen Generation's compensation claims against the Federal Government and the challenge to the Territory Government's appointment of the Chief Magistrate were being fought out in the courts.

On my many visits to remote communities I experienced first hand the

Department of Industry and Business on board, and we hooked up in teleconferences and face-to-face meetings. I think the key part of our project was linking the bureaucrat with the community and those most affected by the problem.

We engaged with the Alice Springs office of the Aboriginal and Torres Strait Islander Commission (ATSIC) and they organised our collective visit to three central Australian communities. We were accompanied by the Council Chair of the Papunya Regional Council and, through his membership of our group,

were not seen as just another bunch of bureaucrats. We followed up with a similar tour of communities in the north of the Territory, many telephone hook-ups and national video conferences. ATSIC (the Aboriginal and Torres Strait Islander

Commission) were on board, as were individual ATSIC Commissioners. We also had the support of the ACCC Chair Professor Alan Fels, who would ultimately launch the community stores charter in Alice Springs in 2002.

I think the most important ingredient for a project of this nature is recognising that many organisations, communities and individuals are often involved with one issue. Each person and group has ownership and wants recognition of that ownership. There is a need for their engagement every step of the way, and this is particularly important when projects are carried out over a long period of time. It is a huge role for any facilitator or co-ordinator and requires a special set of skills. Patience, passion, understanding, commitment, engagement, perseverance and determination are useful ingredients.

There is great truth in the lyric 'from little things big things grow'. May we take every opportunity to promote team-building and recognise that the power to make a difference is held by every one of us. ❖

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have an enormous impact through his books and articles. Janet Holmes a' Court, in an introduction to one of his new Australian works, *Visions and Pathways for the 21st Century*, wrote that his strength lay in being able to mesh the larger global shifts with the smallest, most pragmatic steps that a person, a company or a country town might take to achieve their goals. I can commend his writings, and also Anne Deveson's compelling book *Resilience* in which she shares very personal experiences with and about an amazing person, Robert Theobald.

Deidre Macken of the *Australian Financial Review* wrote of him:

[t]he most extraordinary aspect is that it is taking him from the most powerful in the country to the least powerful, from the richest companies to the poorest towns, from ballrooms full of suits to picnics with the poor. Theobald has been invited to address almost every major interest group in the country ... This tour touts neither script nor scripture but ideas for the future, centred on values, ecological integrity, equality in communities, better decision-making and quality of living.

We were living in interesting and challenging times. The Senate Inquiry into Mandatory Sentencing had been finalised, Restorative Justice and Victim Offender Conferencing had been introduced along with the Aboriginal

exorbitant prices people were paying for basic foods – the price of alcohol and motor vehicles was also phenomenal.

I was encouraged by what had been done in NSW, where a strategic alliance had been formed between the NSW Anti-Discrimination Commission and the State's Consumer Affairs Department. Conveniently I worked in the same building as the ACCC and approached the Rural and Regional Outreach Program Manager, Fiona Macrae, who was as concerned as I was that people were being exploited by a system that was badly in need of reform. We formed a strategic alliance and knew we had to pull in the heavies on a local and national level and so our Committee was formed. I was quoted in the April 2001 edition of the Koori Mail: 'If systemic issues of discrimination can be identified we need a bigger network to tackle them'.

I have never underestimated the power of good networks and solid relationships. Yes, they can be hard work, but worth every bit of effort and I believe they can and do make the difference. I started ringing around and very quickly found there was enormous interest. The Ralph Nader in us was activated and we knew we could make a difference if we tackled this as a team. Within no time we had the Banking Ombudsman, very senior members of the ACCC in Canberra and Melbourne, and the Head of the Northern Territory