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# Community mediation services: towards good practice mediation for Aboriginal people

Loretta Kelly

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# ADR bulletin

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Volume 8 Number 10

## Using ADR cross-culturally

# Community mediation services: towards good practice mediation for Aboriginal people

**Loretta Kelly**

General Editor



**Laurence Boule**

Professor of Law,  
Bond University, Queensland

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*The publication of this article comes at a prescient time in light of the recent outcry about family violence and sexual abuse in central Australian Aboriginal communities. Unfortunately these tragedies are not limited to central Australia. Holistic, vigorous interventions are required to address this disaster, and ADR must be part of the disaster relief package. We mediators can try to patch up our patients, but we only have a first aid kit. Intensive, co-operative care is required, one can't expect mediation alone to work miracles.*

### Introduction

This article<sup>1</sup> will provide an overview of my research on the current operations of the Aboriginal service-delivery arm of the State government operated community mediation agencies in New South Wales, Queensland, Victoria and Western Australia. My research involved interviews with 15 Aboriginal mediators for these agencies.<sup>2</sup> I also spoke to, or corresponded with, the relevant person in management for each of these agencies.

I will briefly discuss what constitutes 'good practice' ADR service delivery to Aboriginal communities,<sup>3</sup> based on the experience of Aboriginal mediators interviewed, information from the managers of the agencies, and my own experience.<sup>4</sup>

### State government-operated mediation services

Each of the agencies described in this article offer specific Indigenous services, in addition to their mainstream mediation service. My research looked at both published information from the agencies as well as information that I have solicited from the managers of these agencies. I examined the Aboriginal service delivery of the following State government-operated mediation agencies:

- Community Justice Centres New South Wales (CJCNSW);
- Dispute Resolution Branch Queensland (DRBQ);<sup>5</sup>
- Dispute Settlement Centre Victoria (DSCV); and
- Aboriginal Alternative Dispute Resolution Service Western Australia (AADRSWA).

Other Australian jurisdictions are not included.<sup>6</sup> However, it should be noted that there are moves to establish programs in South Australia, the Northern Territory and the Australian Capital Territory.<sup>7</sup>

### Dispute Resolution Branch Queensland

The DRBQ, part of the Queensland Department of Justice and Attorney-General, operates Dispute Resolution Centres across the State. In regional areas where there is no Dispute Resolution Centre, staff at the local magistrates court act as mediators.<sup>8</sup>



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Currently there are 12 Aboriginal and Torres Strait Islander sessional mediators practising with the DRBQ,<sup>9</sup> as shown in Table 1.

**Table 1. Indigenous casual mediators employed by DRBQ at January 2006**

Dispute Resolution Centre	Total Aboriginal and Torres Strait Islander mediators
South-east Queensland	2
Wide Bay (Hervey Bay)	4
Rockhampton	1
Mackay	0
Townsville and Mt Isa	1
Cairns	4

The number of Aboriginal and Torres Strait Islander mediators in the DRBQ has halved since the time the agency operated a specific Indigenous program. In 1994 there were 24 Aboriginal and Torres Strait Islander mediators. The Aboriginal Mediation Project Officer ran the Aboriginal program. This project was piloted for two years from 1991.<sup>10</sup> However, it continued on an annually-funded basis until it was abolished in mid-2003.<sup>11</sup>

From 1999 until the end of 2005 Dispute Resolution Centres handled 537 cases involving Aboriginal and Torres Strait Islander parties, as shown in Table 2.

**Table 2. Indigenous cases opened by DRBQ from 1999 to 2005**

Dispute Resolution Centre	Total cases involving at least one Aboriginal and Torres Strait Islander party
South-east Queensland	146
Wide Bay (Hervey Bay)	11
Rockhampton	84
Mackay	28
Townsville and Mt Isa	123
Cairns	145

These cases were managed by a variety of ADR processes, including mediation and facilitation.

The DRBQ now manages Indigenous clients through their mainstream

service, with Aboriginal and Torres Strait Islander mediators available when requested by parties.

**Community Justice Centres  
New South Wales**

Historically, Aboriginal and Torres Strait Islander mediators were recruited and trained through the community justice centre *mainstream* process. In August 2002 there were 16 accredited Aboriginal and Torres Strait Islander mediators who had been recruited through this mainstream system. However, having regard to the volume of referrals received by CJCNSW that involved one or more Aboriginal and Torres Islander parties, CJCNSW management agreed that there should be a separate recruitment and training process for Aboriginal and Torres Strait Islander mediators, which would address the differing needs of Indigenous communities.<sup>12</sup>

As a result CJCNSW now has 68 Aboriginal and Torres Strait Islander sessional mediators,<sup>13</sup> as set out in Table 3.

**Table 3. Indigenous casual mediators employed by CJCNSW at December 2005**

Region	Total Aboriginal and Torres Strait Islander mediators
Northern	18
Western	16
Southern	18
Sydney	16

The existing program for Aboriginal and Torres Strait Islander people still operates within the mainstream model. That is, Aboriginal mediators are attached to Regional Centres, which are managed by (usually non-Aboriginal) Co-ordinators. Aboriginal disputants wishing to undertake mediation are processed through the mainstream Regional Centres. At the time of writing non-Aboriginal intake officers located in regional offices were responsible for the intake procedures of Aboriginal parties, which presents the possibility of cultural miscommunications.

Between June 2004 and June 2005 there were 320 disputes dealt with by CJCNSW that involved at least one



Aboriginal person. These statistics relate to any ADR sessions – they include mediation, conflict management and facilitated meetings.<sup>14</sup> According to the CJCNSW Annual Report 2004–2005, 5 per cent of all ‘referrals’ were from ‘Aboriginal parties’<sup>15</sup> – precise figures are not provided.

**Dispute Settlement Centre Victoria**

The DSCV commenced operations in 1987, although it has existed in various guises since that time.<sup>16</sup> Table 4 sets out the gender breakdown of the 16 active sessional Aboriginal mediators.<sup>17</sup>

Table 4. Indigenous casual mediators employed by DSCV at November 2005	
Number of DSCV Aboriginal and Torres Strait Islander mediators	
Men	10
Women	6

A total of 35 Aboriginal mediators have been trained in mediation since the establishment of the DSCV. The Aboriginal mediators cover Melbourne metropolitan areas as well as regional/country areas.<sup>18</sup>

According to the DSCV between 1 July 2003 and 30 June 2005 there have been 120 Dispute Advisory Service (telephone) calls where the party calling was Aboriginal. During this period the DSCV opened 30 files involving Aboriginal clients where invitations to mediate have been extended to the other party/parties (this number includes some large group disputes). The actual number of mediations conducted involving Aboriginal people for this period was 18. Statistics are not available as to the number of people attending each mediation session. According to the DSCV the agreement rate at mediation for Aboriginal parties is 80 per cent.<sup>19</sup>

The DSCV still conducts training for the Koori community. They continue to run specific Koori training, both for mediation and conflict management, and there is interest in the Koori community and among Koori organisations for further training.<sup>20</sup>

**Aboriginal Alternative Dispute Resolution Service Western Australia**

The AADRSWA has been in operation since a pilot program was conducted

in 1991.<sup>21</sup> As the name suggests, the service offers dispute resolution services to Aboriginal communities throughout Western Australia. In its initial inception it was established to assist Noongar communities with family feuding and therefore only offered a service to Noongar people (Noongar territory covers the south-west region of the State). However, the reputation of AADRSWA ‘led to a heavy focus on referrals of large scale disputes which can be classified as inter-family or community multi-party disputes, from across the state’.<sup>22</sup> The AADRSWA currently operates a state-wide service.

All staff employed by the AADRSWA are Aboriginal.<sup>23</sup> All positions have been created so that Aboriginality is a genuine occupational qualification under s 50(d) of the *Equal Opportunity Act 1984* (WA).<sup>24</sup> Table 5 lists these positions.

Table 5. Indigenous permanent employees of AADRSWA at January 2006	
Position title	Total Indigenous people employed
Manager	1
Senior Mediation and Training Officers	2
Mediator	1
Administration Assistant	1

The 2003 review of the AADRSWA raised the issue of employing non-Aboriginal mediators.<sup>25</sup> If the AADRSWA wishes to mediate disputes involving a non-Indigenous party/parties, this is a desirable, perhaps necessary, proposal.

The AADRSWA Annual Report for 2004–2005 states that there were 57 active case-managed clients. As at the end of January 2006 there were seven active files. Although this may appear to be a small number of active cases it must be noted that each file may involve large numbers of family and community members.<sup>26</sup>

**Elements of a ‘good practice’ Aboriginal mediation model**

The following section sets out my view of the elements of good practice mediation service-delivery for Aboriginal communities. Although not exhaustive, it provides a useful checklist of important elements of an Aboriginal mediation

model, based on my experience and the experience of the Indigenous mediators interviewed.

**A specific Aboriginal program**

Good practice in Aboriginal dispute resolution service-delivery requires that the program be Aboriginal-specific. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) believed that the first preference for service-delivery to Aboriginal communities is that the program be run by Aboriginal organisations.<sup>27</sup> Charlie Watson, an Aboriginal mediator for the DRBQ, shares this view.<sup>28</sup>

The second preference, outlined by the RCIADIC in the above recommendation, was that Aboriginal people should be employed who have a role in the design and management of the process adopted by the agency.

As I said above, there was once a specific Aboriginal mediation program in Queensland, administered by the DRBQ. The reason for the abolition of the program appears to be that of lack of funds; at least, that is the perception of its longstanding Aboriginal mediators, Daisy Caltabiano<sup>29</sup> and Charlie Watson.<sup>30</sup>

Watson is deeply concerned about DRBQ’S lack of community development and education about conflict management, which is in great demand from communities with which he has had contact: ‘Because you see so many people going into that dirty criminal justice system, it’s ridiculous. They just go so far but they won’t really commit to have it being an effective process to stop a lot of the shit happening.’<sup>31</sup>

A related issue is the ‘mainstreaming’ of Indigenous people, of which Daisy Caltabiano is critical. Caltabiano’s experience highlights the sore point of non-Aboriginal practitioners being appointed to Aboriginal disputes – especially so when the non-Aboriginal practitioner is not ‘culturally competent’.<sup>32</sup>

All staff of the AADRSWA are Aboriginal, so arguably Aboriginal staff have involvement in the ‘design and management of the process adopted by the agency’.<sup>33</sup> But this is not necessarily the case, according to former manager of the AADRSWA, Helen Bishop. According to Bishop, the fact that Aborigines and



Torres Strait Islanders are employed in the agency does not necessarily mean that they have any real say in the design and management of the agency.<sup>34</sup>

The CJCNSW'S Aboriginal and Torres Strait Islander Network (the Network) consists of all Indigenous mediators and administrative staff of CJCNSW. Although having no formal structure, the Network has committee-type positions, such as a chairperson, and 'executive' positions. Its influence on Indigenous policy, however, is hampered by its lack of formal status, according to Aubrey Cora, Aboriginal mediator for CJCNSW.<sup>35</sup>

None of the programs explored in this article are determined by, and in the control of, Aboriginal communities. They are services administered and controlled by agencies within the bureaucratic structure of each State's department of justice or attorney-general. Such an approach, in my view, is not good practice Aboriginal service-delivery.

### **Access to Aboriginal and Torres Strait Islander mediators**

Aboriginal mediators are often not appointed to resolve disputes involving an Aboriginal party. The reasons for this are varied; however, it has been argued that a major reason is simply because the Aboriginal and Torres Strait Islander disputants *request* a non-Aboriginal mediator.

According to Charlie Watson, the reason that an Aboriginal party may prefer a non-Aboriginal mediator is because: 'sometimes things get a bit personal maybe, in different areas they prefer to have people from out of country you know ... They might be afraid of confidential information getting out.'<sup>36</sup>

My experience as an ADR practitioner does not support the suggestion that Aboriginal and Torres Strait Islander parties often prefer non-Aboriginal mediators. Rather, in a minority of cases, Indigenous disputants would simply prefer *someone* from outside their region. In research conducted for my doctoral thesis,<sup>37</sup> I interviewed 17 native title claimants. In my pre-interview survey to these claimants, I asked whether having Aboriginal mediators would have improved their experience of native title mediation. All claimants

responded in the affirmative. The Indigenous Facilitation and Mediation Project published similar findings.<sup>38</sup>

I have found that Aboriginal parties may request non-Aboriginal mediators for any or all of the following three reasons:

- *fear* that an Aboriginal mediator may not respect confidentiality
- *shame* regarding the nature of the dispute
- *embarrassment* about the situation.

These reasons (for *prima facie* preference of a non-Indigenous practitioner) can be teased out in an effective intake session. Typically, this preference arises in highly sensitive family disputes, such as those involving sexual abuse and incest. I have found, in my experience, that once the family are informed that a competent Aboriginal mediator from outside the community can be brought in to mediate (or co-mediate), the Aboriginal family (most of the time) changes their preference to an Aboriginal mediator.

I have been faced with the issue of Aboriginal parties requesting a white mediator in many instances over my nine years as a mediator. When such a request is made, I reassure the party that arranging a white mediator is 'not a problem at all'. I then (sensitively) tease out the reason for their preference. If, after having explained the confidentiality requirements in detail, the party nevertheless declines the offer of an Aboriginal mediator from outside the community, I arrange a white mediator. This has only happened twice in more than 100 disputes (where at least one party was Aboriginal) that I have mediated over the past nine years.

### **Appointing the right mediator**

In an Aboriginal community the mediator might be related to both parties; but if that mediator is respected by the parties and is seen by them to be the best person to mediate the dispute, the mediator should be permitted to do so.

### **Fairness rather than neutrality**

Charlie Watson is highly critical of the non-Aboriginal concept of neutrality being applied to Aboriginal disputes. He says, 'I find it very hard to be neutral, but I always try to be fair and even in how I conduct myself.'<sup>39</sup>

Similarly, Elizabeth McEntyre, Aboriginal sessional mediator for CJCNSW, has said: 'I have never excluded myself from mediation because I knew the people. What can I do, I know so many. It would be silly, I may as well not work.'<sup>40</sup>

### **Trust and credibility**

An Aboriginal party is unlikely to be honest and open in mediation unless he or she trusts the mediator/mediators. Charlie Watson says that if *the mediator* is trusted by the disputants, the disputants will also trust *the process*.<sup>41</sup> Chrissiejoy Marshall, an Aboriginal mediator for CJCNSW, says: 'it's more about respected people who have a good reputation and credibility in the community. They are the best dispute resolution practitioners in our communities.'<sup>42</sup>

Mainstream mediation services need to be open to the possibility of allowing, or even encouraging, mediation to proceed where the Aboriginal mediator is connected to the party/parties. In some instances, the parties may even be family.

### **Aboriginal mediator controls the process**

The mediation services discussed in this article all use a co-mediation model. The Aboriginal mediators interviewed acknowledged that working with a non-Aboriginal co-mediator could be a challenge at times.

Aubrey Cora believes that the Aboriginal mediator needs to lead on cultural issues, and he is concerned when non-Aboriginal mediators who, because they have been mediating longer than him, lead the session, even where both parties are Aboriginal.<sup>43</sup>

Charlie Watson notes that non-Aboriginal mediators can often be uncomfortable with the heated emotions of Aboriginal parties in mediation.<sup>44</sup>

There can definitely be problems when Aboriginal mediators co-mediate with non-Aboriginal mediators in all-Aboriginal dispute sessions. However, if the non-Aboriginal mediator allows for the Aboriginal mediator to lead on cultural issues and does not interrupt, then the mediation can run smoothly.

### **Cultural appropriateness Involvement of Elders**

A culturally appropriate mediation



process does not replace the existing dispute resolution mechanisms that a community may use to resolve disputes. If Elders are used as conflict managers within a particular community then this needs to be respected and reflected in the dispute resolution service. This could mean that the community mediation service recruits and trains Aboriginal Elders. It should mean that when parties request the participation of an Aboriginal Elder as a conflict manager, the mediation agency is willing and able to respond. In such cases, Elders should be paid for their work.<sup>45</sup>

#### *Flexibility of stages of mediation*

Aubrey Cora comments that the (mainstream) mediation model taught to Aboriginal mediators can be too rigid.<sup>46</sup> Charlie Watson similarly disapproves of a rigid step-by-step model, instead preferring to get the Aboriginal party/parties to advise him of how the process would work best for them.<sup>47</sup>

Daisy Caltabiano agrees that it is essential to modify the mainstream mediation model when mediating with Aboriginal communities.<sup>48</sup>

Aboriginal mediators warn us not to insist on using private sessions, especially where the dispute involves an Aboriginal family or is an Aboriginal community dispute. Aubrey Cora argues that in several disputes he mediated, holding private sessions would have been unhelpful.<sup>49</sup>

It is interesting to note that the AADRWA process does not include a private session (or 'caucus') during the actual mediation process.

If a mediation process provides for a private session, and in this private session other issues are raised, this may cause the Aboriginal disputants to lose faith in the process. As argued below, good practice Aboriginal mediation requires effective pre-mediation.

Aboriginal disputants in pre-mediation can agree to the issues to be mediated and, that way, any sensitive issues that the party does not want mediated will be agreed upon in pre-mediation.

#### *Draw upon customary practice*

Elizabeth McEntyre believes that, as Aboriginal mediators, we approach mediation based not only on flexibility and cultural sensitivity, but based on

a spiritual dimension to mediating Aboriginal disputes: 'When I look at it from the holistic, it must be a connecting ... it's nothing new, we just need to harness that cultural thread.'<sup>50</sup>

Charlie Watson sees mediation as part of our cultural ways.<sup>51</sup> Daisy Caltabiano also perceives mediation as having a foundation in traditional dispute resolution.<sup>52</sup>

#### *Early and holistic intervention*

Viewing conflict in a holistic manner is common from an Aboriginal perspective. Charlie Watson says that he is well aware that if the dispute is not resolved, it can have serious consequences for the community.<sup>53</sup>

Aubrey Cora makes the timely observation that if the underlying causes of a dispute are not addressed in the early stages, violence can result.<sup>54</sup>

Late intervention means that parties have already experienced many negative manifestations of the conflict and become entrenched in their positions, especially following the intervention of police. In my experience, mediating these disputes is very difficult, but not impossible. Dispute resolution services need to be more culturally appropriate and community-specific, which would make early intervention an attainable objective.

#### *Family violence must be addressed*

One of the challenges to mediation in Aboriginal communities relates to the issue of mediating domestic violence. The application of holistic intervention in Aboriginal communities means that family violence *will* become an issue in many disputes. Yet mainstream mediation services often refuse to mediate at the mere mention of family violence, as Charlie Watson has commented.<sup>55</sup>

In my experience, I have found it quite common for both the victim and perpetrator to request mediation on issues surrounding family violence. I have certainly felt my ethics challenged in this regard. If I am mediating for CJCNSW, I always comply with its policy. However, I am more flexible when conducting private mediations or mediating for the Aboriginal Family Wellbeing Service.<sup>56</sup> In any event, I have always ensured that safeguards

are in place for the victim, if we do decide to mediate. In such instances, I have adopted a restorative justice approach – using a process more like victim-offender mediation – and have an Elder facilitate the family conference with me. I also ensure that appropriate Aboriginal service-providers are present (or informed afterwards) in order to support the victim and to educate the perpetrator.<sup>57</sup>

#### *Pre-mediation and post-mediation*

If the mediator spends time with the parties before the actual mediation session, this not only assists relationship-building, it helps to determine the best approach to take in the session. For instance, how would a mediator know whether to use the whiteboard as a tool in the session unless literacy levels of the parties are known? Such a personal issue could only be sensitively ascertained in pre-mediation.

Aubrey Cora believes that culturally appropriate mediation involves both pre-mediation and post-mediation. He is very critical of the notion that the mediation process involves only what happens when everyone is in the room together.<sup>58</sup>

#### **Conclusion**

Some agencies appear to be increasingly sophisticated in their service-delivery to Aboriginal communities, while others are treading water. The DRBQ used to be promoted as one of the leading services that operated a unique and specific service to Aboriginal communities. It now seems that Aboriginal people are being mainstreamed, creating some issues for Aboriginal communities.

Agencies such as CJCNSW have recruited new staff and are attempting to create a more culturally appropriate service-delivery model. But this will take time. In the frank words of Bill Pritchard, the evaluation of the current operations of CJCNSW demonstrates that: 'Remote communities are not being adequately serviced. Non-Aboriginal pre-mediators were being used. They weren't identifying Aboriginal clients early enough in the stage and not asking if they want Aboriginal mediators.'<sup>59</sup>

However, according to Pritchard, CJCNSW is very keen to address



these issues and to see an Aboriginal service created that truly meets the needs of Aboriginal people, families and communities.<sup>60</sup> One such service-delivery model is to have an additional (non-geographic) region: an Indigenous region.<sup>61</sup>

The DSCV, while having relatively small numbers of Aboriginal clients, are in a strong position to enhance their program, as they have a guaranteed Aboriginal Project Officer position under the Victorian Aboriginal Justice Agreement.

In any case, just because a service is Aboriginal-specific does not necessarily mean that it will achieve self-determination and meet the needs of local communities. A bottom-up, or grassroots, approach to service-delivery is the key. Upper management should support dedicated, community-oriented Aboriginal people in designing, managing and delivering ADR services. <sup>61</sup> ●

*Loretta Kelly BA, LLB (NSW) is a Gumbaynggirr and Danggadi woman from the north coast of New South Wales. She is a Lecturer in the School of Law and Justice at Southern Cross University and can be contacted at [lkelly@scu.edu.au](mailto:lkelly@scu.edu.au).*

## Endnotes

1. I wish to thank those mediators who participated in this research project. As many remain anonymous, I can only name those who did not request anonymity (in any event, I have not included quotes from anonymous mediators). These Aboriginal mediators are (in alphabetical order): Helen Bishop, Daisy Caltabiano, Aubrey Cora, David Farrall, Chrissiejoy Marshall and Charlie Watson. I also wish to thank the managers of the services for kindly providing me with updates and information: Kirsten Eades, Practice Manager, Dispute Resolution Branch, Department of Justice and Attorney-General (Qld); Bill Pritchard, Senior Aboriginal Programs Officer, Community Justice Centres, Attorney Generals Department (NSW); Teresa Zerella, Manager, Dispute Settlement Centre, Department of Justice (Vic); Peter Donovan, Business Manager, Aboriginal Policy and Services, Department of the Attorney General (WA); and Debra Rose, Manager, Aboriginal Alternative Dispute Resolution Service (WA).

This article is a summary of a larger paper that will be published elsewhere shortly.

2. Aboriginal mediators were interviewed as part of my research funded by the Australian Research Council and NSW Law Society, some of which is contained in my PhD thesis. This number (15) does *not* include the current service managers interviewed, some of whom are also mediators.

3. Only Aboriginal mediation is examined here, not Torres Strait Islander. This is because Torres Strait Islander communities are unique and culturally distinct.

4. I currently conduct mediations for Community Justice Centres New South Wales and the Aboriginal Family Wellbeing Service (a division of Many Rivers Administrative and Legal Services Ltd), located in Coffs Harbour.

5. The Dispute Resolution Branch (DRBQ) operates Dispute Resolution Centres across the State.

6. There is a lack of public information across *all* jurisdictions. However, I was unable to access sufficient information privately for the remaining states and territories in order to provide any substantive analysis for this article.

7. See Department of Justice Northern Territory, *Strategic Plan 2005 – 09*, 24 August 2005, <[www.nt.gov.au/justice/graphpages/general/strategic\\_plan\\_1.shtml](http://www.nt.gov.au/justice/graphpages/general/strategic_plan_1.shtml)> (13 March 2006); Conflict Resolution Service, *The Mediation Times*, (CRS Newsletter) September 2005, p 3, <[www.crs.org.au/pdf/themediationtimesseptember2005.pdf](http://www.crs.org.au/pdf/themediationtimesseptember2005.pdf)> (14 March 2006); Department of Justice South Australia, *Aboriginal Justice Strategic Directions 2004-2006*, undated, <[www.justice.sa.gov.au/Abl\\_Justice\\_StratDir.pdf](http://www.justice.sa.gov.au/Abl_Justice_StratDir.pdf)> (26 May 2006), p 5. Tasmania does not appear to have any Indigenous-specific ADR program.

8. Department of Justice and Attorney-General (Queensland), 'Mediation', 30 May 2005, <[www.justice.qld.gov.au/mediation/](http://www.justice.qld.gov.au/mediation/)> (13 March 2006).

9. Solicited email from Kirsten Eades, 6 January 2006, email to Loretta Kelly.

10. Noble K 'Aboriginal and Torres Strait Islander Initiatives – Part I' paper presented at the *LEADR 3rd International Conference in Australasia on Alternative Dispute Resolution*, 1–2 October 1994, Surfers Paradise, Queensland, p 1.

11. Solicited information from Kirsten Eades, 5 January 2006, email to Loretta Kelly.

12. Community Justice Centres New South Wales 'Aboriginal and Torres Strait Islander Mediation', <[www.lawlink.nsw.gov.au/](http://www.lawlink.nsw.gov.au/)

[lawlink/community\\_justice\\_centres/ll\\_cjc.nsf/pages/CJC\\_atsi\\_mediation](http://www.lawlink.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/pages/CJC_atsi_mediation)> (8 January 2006).

13. Telephone interview with Bill Pritchard, 16 December 2005, by Loretta Kelly.

14. Above note 13.

15. Attorney-General's Department of NSW *Community Justice Centres 2004–2005 Annual Report* Sydney, 2005, p 3. <[www.cjc.nsw.gov.au/lawlink/community\\_justice\\_centres/ll\\_cjc.nsf/vwFiles/Annual%20Report%202004-2005.pdf](http://www.cjc.nsw.gov.au/lawlink/community_justice_centres/ll_cjc.nsf/vwFiles/Annual%20Report%202004-2005.pdf/$file/Annual%20Report%202004-2005.pdf)>, (13 March 2006).

16. Mandalla Consulting Service Pty Ltd *Review of the Dispute Settlement Victoria Koori Program* Dispute Settlement Centre of Victoria, 2002, p 6.

17. Solicited information from Teresa Zerella, 9 November 2005, email to Loretta Kelly.

18. Above note 17.

19. Above note 17.

20. Above note 17.

21. Thorne R 'Incorporating ADR into Contemporary Aboriginal Society' paper presented to *The 2nd International Mediation Conference*, Adelaide, 18–20 January 1996, p 4.

22. Above note 21, p 7.

23. Solicited information from Peter Donovan, 30 January 2006, email to Loretta Kelly.

24. Above note 23.

25. Elliot R *Aboriginal Alternative Dispute Resolution Service: Evaluation of the direction, management and operations – Summary Report* Competitive Edge Services, July 2003, slide 58 (PowerPoint presentation).

26. Above note 23.

27. Royal Commission into Aboriginal Deaths in Custody *National Report: Overview and Recommendations* AGPS, Canberra, 1991, pp 73–74.

28. Telephone interview with Charlie Watson, retired casual mediator, South-east Queensland Dispute Resolution Centre, DRBQ, 11 January 2006, by Loretta Kelly.

29. Telephone interview with Daisy Caltabiano, casual mediator, Cairns Dispute Resolution Centre, DRBQ, 2 January 2006, by Loretta Kelly.

30. Above note 28.

31. Above note 28.

32. Above note 29.

33. Above note 27.

34. Telephone interview with Helen Bishop, former Manager, AADRWA, Hocking (WA), 22 December 2005, by Loretta Kelly; and solicited information from Helen Bishop, 17 February 2006, email to Loretta Kelly.



Helen Bishop is an Aboriginal peacemaker, Koongurrukun woman, private mediator, and former member of NADRAC.

35. Face-to-face interview with Aubrey Cora, casual mediator, CJCNSW, Tweed Heads (NSW), 10 December 2005, by Loretta Kelly.

36. Above note 28.

37. Kelly L 'Stumbling block to stepping stone: learning from our experience of native title mediation in the development of a model of Aboriginal dispute resolution' (thesis submitted in completion of PhD at Southern Cross University, June 2006).

38. Williams R and Bauman T *Directions, Priorities and Challenges: Final Report NTRB Workshops – Outcomes and Findings, Indigenous Facilitation and Mediation Project* Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, November 2004, p 17.

39. Above note 28.

40. Telephone interview with Elizabeth McEntyre, casual mediator, CJCNSW, Cessnock (NSW), 8 December 2005, by Loretta Kelly.

41. Above note 28.

42. Face-to-face interview with Chrissiejoy Marshall, casual mediator, CJCNSW, Granville (Sydney), 26 October 2005, by Loretta Kelly.

43. Above note 35.

44. Above note 28.

45. This issue (parties requesting an Aboriginal Elder as a conflict manager) has been raised in a number of mediator fora in which I have been involved. Some agencies have responded that appointing an Elder is too complex a procedure, citing training and employee requirements. My response is that these concerns can be overcome with good policy (for example, the Elder co-mediating with a trained mediator); this should not present a barrier to Elders fulfilling this important role.

46. Above note 35.

47. Above note 28.

48. Above note 29.

49. Above note 35.

50. Above note 40.

51. Above note 28.

52. Above note 29.

53. Above note 28.

54. Above note 35.

55. Above note 28.

56. The Aboriginal Family Wellbeing Service covers the area from the Clarence Valley to the Nambucca Valley on the north coast of NSW. It was established with funding from the Federal Department of Family and Community Services' Indigenous parenting and family wellbeing initiative in 2002, and operates under the auspices of Many Rivers Administrative and Legal Services Ltd – which also operates the Aboriginal legal services in the former ATSIC region of Many Rivers/ Coffs Harbour. The Service operates under a holistic ADR model, offering counselling, mediation, facilitation and client advocacy.

57. See Kelly L 'Using restorative justice principles to address family violence in Aboriginal communities' in Strang H and Braithwaite J (eds) *Restorative Justice and Family Violence* Cambridge University Press, Cambridge (UK) 2002, Chapter 11.

58. Above note 35.

59. Above note 13.

60. Above note 13.

61. Above note 13.

62. Above note 27.