

NADRAC RECOMMENDATIONS TO THE ATTORNEY-GENERAL OF AUSTRALIA – INDIGENOUS DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

FOREWORD FROM THE CHAIR



It is with pleasure that I attach the recommendations NADRAC has submitted to the Attorney-General in relation to this very significant research report.

NADRAC was a project sponsor for the Indigenous Dispute Resolution and Conflict Management Case Study Project undertaken by the Federal Court of Australia, with the Australian Institute of Aboriginal and Torres Strait Islander Studies. NADRAC welcomes the Project report *‘Solid work you mob are doing’ – Case studies in Indigenous Dispute Resolution and Conflict Management in Australia.*

NADRAC is impressed by the depth and breadth of the case studies. It was glad to be able to formulate recommendations that are so strongly supported by research.

In its own 2006 report *Indigenous Dispute Resolution and Conflict Management* NADRAC noted the conventional research methods may be quite misleading in the context of Indigenous dispute resolution and conflict management. It pointed out that ‘[i]ndividual case studies may provide more useful information but these can be quite resource intensive’ (p. 16).

With that in mind, I would like to take this opportunity to express NADRAC’s gratitude to the Chief Justice of the Federal Court, the Hon Michael Black AC, and the members of the Court’s Project Team, for the excellent work they did in bringing this Project to fruition. In particular I would like to mention Mr Warwick Soden, Chief Executive Officer, Ms Louise Anderson, Deputy Registrar, Mr Ian Irving, Deputy District Registrar, the then Project Manager and Deputy Registrar, Ms Juanita Pope, and finally and importantly, Ms Toni Baumann, Research Fellow, Australian Institute of Aboriginal and Torres Strait Islander Studies

NADRAC would also like to express its thanks to the case study authors, David Allen, Margaret O’Donnell and Rhian Williams, the members of the reference group that so ably supported the Project and the many Indigenous people and others who contributed along the way.



Professor Murray Kellam AO
Chair

4 September 2009

NADRAC RECOMMENDATIONS

The Attorney-General is invited to note that:

- 1.1. A coordinated approach to Indigenous Dispute Management Service delivery, at both a federal and state level, is critical to the implementation of many of the findings of the Report.

It is recommended to the Attorney-General that:

- 1.2. A National Indigenous Dispute Management Service be established and funded by the Federal Government to work in collaboration with the States and Territories towards a national coordinated approach to Indigenous dispute resolution and conflict management.
- 1.3. The National Indigenous Dispute Management Service be created and developed through a ‘staged process,’ initiated and coordinated by the Federal Government, involving roundtables or workshops at regional, State/Territory and national levels. The Invitations to participate should be extended to:
 - (a) national policy makers and advisers including relevant staff in the Attorney-General’s Department, FaHCSIA, Department of Employment, Education and Workplace Relations, Federal Court of Australia, Family Court of Australia, National Native Title Tribunal, AIATSIS and NADRAC;
 - (b) service deliverers in each State and Territory (including those who are federally funded) and State and Territory policy makers, such as representatives of the relevant Indigenous affairs and justice departments, community mediation centres, police, ‘mainstream’ service providers, family relationships services, Magistrates Courts, and community justice organisations; and
 - (c) Indigenous mediators and facilitators.

Participants at these forums should be asked to take into account the following recommendations.

- 1.4. The National Indigenous Dispute Management Service operate with regional service infrastructure and networked panels of trained practitioners – including in particular Indigenous practitioners – who can be engaged locally, regionally or nationally as appropriate.
- 1.5. The National Indigenous Dispute Management Service be staffed by culturally competent and well trained personnel who have expertise in community engagement, coordination, dispute management and training in the Indigenous context.
- 1.6. The primary aims of the National Indigenous Dispute Management Service be to:
 - (a) support and promote Indigenous dispute management and conflict management;
 - (b) develop and deliver innovative education and awareness raising packages for Indigenous communities, policy makers and service deliverers;
 - (c) facilitate effective co-operation and coordination between and amongst government agencies and Indigenous organisations;

- (d) promote greater accountability amongst service providers and governments who provide or resource dispute management services;
- (e) develop a national Indigenous training curriculum and a range of practitioner training packages;¹ including:
 - (i) mentoring, ‘peer modelling’ and supervision following training;
 - (ii) for the exchange of experience and knowledge; and
 - (iii) monitoring and evaluation procedures.
- (f) develop common standards, accreditation and recognition of prior learning schemes which complement the National Mediator Accreditation Scheme (NMAS);
- (g) coordinate the delivery of the national Indigenous training curriculum and training packages to practitioners working with Indigenous communities, recognising and incorporating the existing skills and experience of local practitioners as appropriate;
- (h) establish itself as a Recognised Mediator Accreditation Body in order to accredit those practitioners who wish to become mediators under the NMAS;
- (i) develop specialist services, such as in the areas of family or community disputes, native title, and housing;
- (j) coordinate research as requested or agreed to by Indigenous communities; and
- (k) establish processes for matching expertise with community needs.

1.7. The National Indigenous Dispute Management Service also serve to:

- (a) develop vocational and career pathways and selection processes and protocols for male and female trainees;
- (b) provide a clearing house to ensure that Indigenous practice issues are communicated effectively, including the sharing and review of debriefing and other tools, and the production of audio-visual resources which show how local services operate;
- (c) ensure the appropriate recognition, support and remuneration for Indigenous practitioners;
- (d) build a national profile for the use of Indigenous dispute resolution processes, for example by:
 - (a) establishing a national award (or ‘peace prize’) which recognises achievement in Indigenous dispute management; and
 - (b) promoting the publishing of ‘success stories’ in the media; and
 - (c) implementing a scheme for recognition of outstanding work by government officials in the areas of dispute resolution and conflict management promotion and advocacy.

1.8. The National Indigenous Dispute Management Service be resourced to develop and deliver education packages targeting referral pathways from those who interface with Indigenous clients, including in the areas of health and social and emotional well-being, legal aid, substance abuse, family violence, interpreting, education, policing, law and justice, night patrolling, and income support. Packages should:

¹ Note: Recommendation 3 of NADRAC’s report on Indigenous Dispute Resolution and Conflict Management (2006), which recommended that the Government consider the design, development and funding of a curriculum and training package for those engaged in dispute resolution and conflict management involving Indigenous people. The recommended training package was to include strategies for: appropriate consultation; adoption, management, continued implementation and ongoing evaluation of the training package; and formal accreditation and certification of trained practitioners.

- (a) promote and encourage the use of conflict management processes as a means of asserting Indigenous independence and strength in resolving conflict in the understanding that solutions need to be negotiated rather than imposed;
 - (b) encourage the employment of regionally based Indigenous facilitators and mediators to manage consultation processes; and
 - (c) raise awareness of the corrosive effect of violence and conflict on families and communities.
- 1.9. The National Indigenous Dispute Management Service coordinate the employment of Indigenous education and community development workers within ‘mainstream’ services (for example by secondments and internships).
- 1.10. The Attorney-General’s Department, in consultation with FaHCSIA:
- (a) develop procedures to identify communities or regions where pilot projects in service delivery and/or training are wanted by and would benefit the communities involved;
 - (b) coordinate a series of service delivery and training pilots, review their evaluations and facilitate the implementation of findings.
- 1.11. The recommended roundtables or workshops consider, among other things, the following key items:
- (a) how to identify and assess practitioner competencies and recognise prior learning (drawing on recent work by AIATSIS in the area of Indigenous family relationships qualifications and competencies);
 - (b) how to best promote and foster inter-agency cooperation and coordination between the Indigenous Dispute Management Service and other agencies;²
 - (c) how to build on existing networks;³
 - (d) how to engage with communities as to whether they wish to develop local services and how this might be achieved;
 - (e) how to establish and support regionally based community engagement facilitators and local and regional justice forums or committees;
 - (f) how to direct institutional responsibility and funding for Indigenous conflict management to local and regional Indigenous organisations;
 - (g) ways of ensuring that dispute management services are accessible to all Indigenous peoples;
 - (h) how to foster relationships between senior government staff and Indigenous communities to ‘champion’ Indigenous dispute management services.

² Note: Recommendation 6 of NADRAC’s report on Indigenous Dispute Resolution and Conflict Management (2006), which recommended that Australian governments foster the coordination of ADR services for Indigenous peoples at the Commonwealth and State levels through appropriate agencies and consultative forums.

³ Note: Recommendation 4.1 of NADRAC’s report on Indigenous Dispute Resolution and Conflict Management (2006), which recommended that Australian governments consider, as part of a consultative framework, how to involve the proposed national network into relevant service deliver areas including Family Relationship Centres, Indigenous legal aid services, Family Violence Prevention Legal Services, community night patrols, native title, service delivery agreements, community development programs and restorative justice programs.