

Gathering Food for Thought

First Nations Approaches to Peacebuilding and Peacemaking in Australia

January 2024



Dr Helen Bishop

Dr Alysoun Boyle

Professor Tania Sourdin

Dr Bin Li

Sally Prowse

We recognise and respect the intimate custodial relationships First Nations peoples observe in their lands, their waterways and the oceans that caress their lands. We are mindful that their cultural and spiritual affiliations are healing ongoing colonial harms, and hope that this project creates healthy pathways for recording, recognising, and restoring their ancient ceremonies, and for supporting ancient and contemporary peacebuilding practices.

We respect the significant role of Elders and are committed to reconciliation among all people.

Warning for First Nations readers: apart from listing its own members, the members of the Project Advisory Group, and specific authors of referenced materials, the Project Research Team has taken care to limit the naming of individuals in this report. First Nations readers are warned that, in some places, this report does contain the names of people who have died.

Acknowledgements

The Research Team thanks all those who have provided materials for this project, in particular **Robin Thorne** who agreed to our use of his various papers and articles.

Dr Helen Bishop

This project has relied heavily on having access to valuable, historical materials from the personal archives of Dr Helen Bishop. To inform the project, Dr Bishop has selected materials from her archive and enabled members of the Research Team to read and analyse them, making these materials pivotal to this research project.

We acknowledge the valuable work of **Lorraine Bridger** in her preliminary analysis of the Commissions of Inquiry, and identification of whales.

About the artwork



Funding and support

The Research Team thanks the Mediator Standards Board for its grant funding of this project, and the University of Newcastle, College of Human and Social Futures under its Matched Industry Scheme. There is enormous value in the ongoing support for research in two areas that struggle to gain such support: dispute resolution and First Nations approaches to conflict



Cite this report

H. Bishop, A. Boyle, T. Sourdin, B. Li, and S. Prowse, *Gathering Food for Thought: First Nations Approaches to Peacebuilding and Peacemaking in Australia* (Report to Mediator Standards Board, Australia, January 2024).

Gathering Food for Thought:

First Nations peoples' approaches to peacebuilding and peacemaking in Australia

Cultural Responsiveness Statement

This statement recognises the University of Newcastle's Cultural and Intellectual Property Protocol (2023) and the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research. The Project Research Team encourages referral to these important documents for they intertwine with Cultural Responsiveness.

Introduction

In Australia, many First Nations peace building systems, ceremonies, and practices remain largely unrecognised, unknown, and misunderstood within the mainstream context. These ceremonies and processes were established and practised long before terms such as “mediation” and “restorative justice” were coined, and this project is designed to contribute to a greater understanding of them.

The collected materials and exhibits convey culturally and spiritually embedded stories of First Nations Ancestors' practices in war, punishment and peace, healing and renewal, forgiveness and apology. They include ancient and contemporary practices, speaking to the many systems and practices for the benefit of First Nations peoples and to all Australians seeking to learn and understand.

This research explores the cooperative nature and endurance of First Nations peoples, for they are ancient systems and may still be in practice, or may continue to influence contemporary approaches. We recognise that ancient peacemaking ceremonies and practices may continue to influence how First Nations groups manage conflict, restore peace, and enable cooperation, particularly in maintaining cultural responsibilities, kinship systems, and in mending and sustaining their networks of interconnected relationships.

Project objectives

The Research Team includes First Nations and non-First Nations people whose aim is to amplify and shed light on First Nations practices, purposes, and processes, beyond what might be assumed by Western principles or processes. The primary objective is to locate significant materials and create digital records that are readily accessible to First Nations people. By cataloguing this culturally significant information, we aim to contribute to a more comprehensive understanding of First Nations practices, and to support the development of a national body of knowledge recognising and incorporating First Nations perspectives on the full scope of conflict and its management in this country.

The researchers do not seek to own or possess these important records of First Nation conflict management practices.

Cultural responsiveness

Cultural responsiveness in this project requires a solemn respect for the authentic works of the corresponding Ancestors, who designed effective social systems and blueprints to strengthen relationships, wellbeing, and the longevity of their uniquely, distinctive peoples. To be culturally responsive the team will also respond to advice and feedback from the First Nations members of the Project Advisory Group and community members.

We acknowledge that in some instances, records may not have been retained or practiced by a language group for an extended period. Some ancient ceremonies and events often contain profound cultural activities and hold deep meaning within their respective language groups, and provide critical links to the ancient observances and obligations of their Ancestors.

Project commitment

Our team is committed to working gently and respectfully with these sensitive cultural materials, ensuring that our first priority is to do no harm. We will approach the handling of materials, records, and documents with respect, thoughtfulness, and great care.

We also commit to respecting the social conditions inherent to uncolonised versions of these ancient restorative practices, noting that they have the potential to empower existing language groups who may wish to revitalise them in the future.

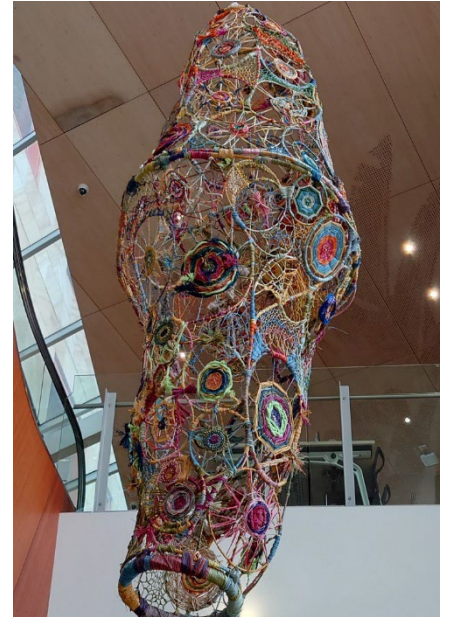
Table of Contents

Acknowledgements	3
About the artwork	3
Funding and support	4
Cite this report	4
Cultural Responsiveness Statement	5
Summary of the report.....	11
Part One – Introductory Matters	16
Overview of this Report.....	17
Knowledge revealed in this Project.....	18
Funding and Support.....	18
First Nations researchers	18
Project Advisory Group	19
Research approach	19
Methodology.....	19
Collecting and collating materials and other information	19
First Nations context	20
Cultural responsiveness.....	21
Research methods.....	22
Annotation and content analysis	22
Terminology and key concepts.....	23
Data and information collection	23
Selected thematic analysis	24
Targeted Reviews.....	25
Overview of this report	26
Part Two – Terminology, language, and conceptual framework	29
Overview	30
First Nations knowledge perspectives.....	31
Critical aspects of First Nation Language and Communication	32

Terminology use - A First Nations perspective	36
Place	38
Targeted review of key concepts.....	39
Limitations	39
Postcolonialism and cultural relativism	42
Collectivism-Individualism and social interdependence theory	45
Links between cultural connection and wellbeing.....	50
Culture	50
Wellbeing	54
Conclusions	55
Part Three – First Nations peoples’ approaches to peacebuilding and peacemaking	57
.....	58
Introduction	58
Solid Work You Mob Are Doing	59
Contemporary descriptions of First Nations peoples’ systems to managing conflict.....	60
1986 Customary Law	62
Types of conflict	64
Reported influence of conventional legal system.....	64
Royal Commission into Aboriginal Deaths in Custody (RCIADIC)	65
Other Material – Dadirri and Yarning circles.....	67
Historical descriptions of First Nations ceremonies for managing conflict.....	68
Atninga ceremony (Arrernte peoples of Central Australia)	70
Makarrata ceremony (North East NT)	70
Nathagura fire ceremony (Central Australia)	71
Prun ceremony (North Queensland)	72
More Recent descriptions of First Nations ceremonies for managing conflict.....	72
Participatory research	72
Conclusion.....	73
Part Four – Selected thematic analysis and targeted review of case studies.	75
Data and information gathering	76
Limited thematic analysis.....	76
Key findings	77
Analysis	78
Targeted review of selected evaluations and case studies	86

Key findings.....	89
Measuring effectiveness	92
Community and stakeholder engagement – empowerment and participation.....	94
Findings.....	97
Conclusions	100
Part Five – Next Steps.....	102
Overview	103
First Nations researchers.....	105
Knowledge gaps	106
The role of Elders	108
First Nations peacebuilders and peacemakers	109
Government policies, legislation, and institutions	110
Appendices.....	113
Appendix A	114
Consolidated Bibliography.....	114
Appendix B	130
Targeted review of selected evaluations and case studies	130
Appendix C	162
Commissions of Inquiry – relevant extracts	162

Summary of the report



One aim of this project has been to create records that are readily accessible to First Nations people, including peacebuilders and peacemakers, as well as members of First Nations communities. Although the Research Team has wanted to retain “plain language” in its reporting and to avoid complex jargon where possible, within this report, there are many descriptions in which we could not avoid using specialised research language and academic jargon. We have decided to break with convention and, instead of including a formal “Executive Summary”, we have written this less formal summary which gives an overview of what we did and what we found. The body of the report includes greater detail.

Part One

This Report discusses a project called 'Gathering Food for Thought,' exploring how First Nations peoples handle conflict. It aims to fill gaps in understanding these approaches. The report reviews existing literature and hopes for wider consultation and further research later on. The project seeks recognition for First Nations' conflict practices, and plans for future research and pilot programs to evaluate new systems. It was funded by the Mediator Standards Board and the University of Newcastle.

The advisory group, mainly comprising First Nations members has helped guide the research. The Research Team has adhered to ethical protocols and created its own guidelines to respect and include First Nations perspectives. They collected a variety of materials and developed a system to organise and annotate these resources.

Issues of intellectual property and data sovereignty regarding First Nations' materials surfaced, prompting a future need for community-led initiatives to protect these resources. The team also focused on cultural responsiveness, aiming to respect and respond actively to cultural considerations.

The research approach included content analysis and thematic reviews, as well as looking at specific case studies, program evaluations, and inquiry reports. The researchers acknowledge the complexity and diversity of approaches among different Indigenous communities.

The report is divided into five parts and includes thinking about terminology and key concepts; First Nations approaches to conflict; data collection methods; and insights from First Nations contributors.

It emphasises a responsibility to involve First Nations perspectives in understanding and addressing conflict resolution in their own communities and among their own people.

Part Two

The Report talks about how First Nations research methods and First Nations' languages are really important. Research needs to focus on understanding history, culture, and how First Nations people see the world.

The languages of First Nations people hold a lot of knowledge about traditions, identity, nature, and ways of living that are deeply connected to the land. Language is not just for talking; it helps to preserve and pass down stories and cultural values, too. These languages are deeply linked to the land and help keep cultural identities alive.

The Report also shows how some older research from Western perspectives wasn't fair to First Nations people. It often portrayed them in a bad light. Some later studies have started to understand and respect the richness of First Nations cultures. The Report also talks about using respectful terms when talking about First Nations people and places and being aware of the history behind certain words.

This Report explores how different cultures view the balance between individualism and collectivism, focusing on First Nations' perspectives and their interconnectedness.

The Report explains that collectivism centres around the community while individualism focuses on personal goals and autonomy. Different societies have varying degrees of each perspective. For example, Western cultures tend to emphasise individualism, while non-Western cultures often prioritize mutual obligations within a group. However, it's not always a clear divide. Research suggests that people can display traits from both perspectives, depending on the situation and relationships.

There is some criticism of research that leans heavily on an individualistic viewpoint, leading to biased results and stereotypes about collectivist cultures. On the other hand, recent studies have highlighted the benefits of maintaining collectivist values, showing a positive impact on well-being and health.

The Report also introduces social interdependence theory, which aligns with collectivism. It explains how people's actions affect each other in social situations, either promoting joint goals or hindering them.

Despite the belief in separate worldviews, some research suggests these boundaries are becoming less distinct, influenced by mixed cultural settings and situations. Studies emphasise that cultural connection significantly impacts well-being for First Nations communities, while the loss of such connections has severe consequences, including mental health issues and social problems.

The Report emphasizes the importance of understanding different cultural perspectives and the interplay between individualism and collectivism. It highlights the value of maintaining cultural connections for the well-being of First Nations communities and the role that this can play in conflict resolution and management.

Part Three

This section of the report talks about how First Nations people manage conflicts and seek peace. It's a bit short because there aren't many details about these approaches in the materials they've looked at. The team thinks this is a good starting point but suggests there need to be more conversations with First Nations people as part of a bigger project.

The descriptions here are divided into "historical," "contemporary," and "current." Historical ones, from the early 1900s, talk about intricate community ceremonies. The contemporary ones, from the 1980s and 1990s, mention formal processes and how First Nations and Western systems sometimes interact.

One detailed report, called "Solid Work You Mob Are Doing," explores conflict resolution in Indigenous communities. It highlights specific techniques used in different regions and the need for better support for these processes.

The report also mentions Commissions of Inquiry that included information about First Nations approaches. Some included direct input from First Nations people, while others had very little.

For instance, the 1986 Law Reform Commission report describes structured conflict management systems in three Indigenous communities. These systems involved protocols for resolving disputes, like public declarations and meetings to address grievances.

The report discusses how Indigenous communities manage conflicts and maintain order, looking at historical and recent practices. The Royal Commission into Aboriginal Deaths in Custody includes observations from different First Nations communities.

That Royal Commission describes some Communities' structured reciprocal rituals with the whole community participating, and everyone, even the audience, having a key role in making sure no-one gets out of hand. Kinship relationships were crucial in maintaining social order, ensuring vigilance when intervening in conflicts. The Commission also talked about other forms of social control, like 'tjunparni' – where a key person, under cover of night, expressed dissatisfaction about wrong-doing – and shaming practices that enforced community norms.

The Report also talks about practices like yarning circles used in courts for conflict resolution, and 'dadirri,' a traditional deep listening practice for improving communication, managing conflict, and listening to the land. The report notes the importance of Elders in conflict management and suggests more inclusive research involving First Nations researchers.

Part Four

This part of the report talks about examining conflict management services that are used now by First Nations peoples, and looking at materials from various sources. The researchers did this by doing a limited analysis of specific publications and of case studies related to dispute resolution in some communities. They wanted to explore the themes and ideas in these materials and how they affected the way the services were working.

They couldn't review everything, so they picked a smaller selection to get an idea of what the larger collection was about. They found that traditional First Nations culture was not a big focus in these materials in contrast to the focus on Western legal systems. They also found three other important things: there are different ways of managing conflict; culture influences how it's done; and there are specific types of conflict that keep getting mentioned, like land rights and intergenerational trauma.

The Report mentions that the researchers randomly selected twelve documents to analyse, and these documents covered various geographic locations and types like reports, articles, and presentations. From these, they found seven main themes that fit into those three areas they identified earlier.

They discussed how First Nations peoples are often not deeply involved in designing and assessing dispute management programs, except for a few cases like the Ponki Victim Offender Mediation Program in the Tiwi Islands, which showed success due to strong community involvement. They highlighted the importance of early community engagement in program design for its successful implementation. Also, they stressed the need for evaluations to involve affected communities for better accuracy and community ownership of the process.

Lastly, they emphasised that trust within the community is crucial for successful program implementation and community participation in conflict resolution initiatives.

Part Five

This part of the Report talks about how many programs for conflict management may not align with First Nations values and methods. Some programs, like mediation, might not consider important cultural dynamics or involve community Elders effectively. They may also not consider the changing ideas about leadership.

We know this report is only a start and there needs to be a lot more discussion with First Nations peoples and First Nations peacebuilders and peacemakers.

Future research is suggested to seek community consent for continuing publication of descriptions of their historical ceremonies, to involve more First Nations researchers, to delve into leadership and Elder roles, and to explore diverse peacebuilding approaches across communities. It also highlights the need to encourage governments in re-examining their role as key funders and supporters of programs and services in Indigenous communities, and to examine government policies' impacts on conflict and conflict management in these communities. The researchers underscore the importance of diverse voices, cultural awareness, and community involvement in any research in this area in the future.

Part One – Introductory Matters

Part One – Introductory matters



Overview of this Report

1.0 This Report ('Report') describes the initial outcomes of a project examining First Nations peoples' approaches to conflict and its management. The title of the project is 'Gathering Food for Thought' ('the Project') and is derived both from a practice common to many communities and groups: collecting foods for communal nurturing and sustenance, and from the practice of providing information intended to promote thought about and encourage the re-examination of existing ideas.

1.1 The Report is designed to inform future research activities that could build on the information base described in this Report to support a Disputes System Design approach, in which this Report would be a first step.¹ This initial stage of the Project received some funding to examine relevant existing "systems" and processes through a review of existing literature. It is intended that later work will take a broader and inclusive approach to consultations with key stakeholders². An extended project would include commentary about dispute system options as well as further consultation to engage with potential proposed system pilot projects (preferably in a pilot location) with culturally inclusive evaluation of any pilot system.

1.2 The project purpose and aims are set out in both the original grant application, and in the project's own Project Information Sheet:

The research team notes the gaps in knowledge about and recognition of First Nations' approaches to conflict and its management in the Australian context, and that the [National Mediator Accreditation System] NMAS does not provide professional recognition or the basis for effective professional support to First Nations peacebuilders and peacemakers, reflecting a broader lack of recognition of their practices and skills. The team also notes that this project would be a significant

¹ The information about dispute system design is based on: David, J., 'Designing a Dispute Resolution System' (1994) 1(1) *Commercial Dispute Resolution Journal* 26; Sourdin, T., *Alternative Dispute Resolution* (Thomson Reuters, Australia, 2020).

² In the larger project, "stakeholders" includes First Nations peacebuilders and peacemakers, people associated with First Nations programs and services, First Nations communities, key members of the litigation and incarceration systems, and other influential people.

contribution to creating understanding about the practice, process and systems of First Nations peacebuilding and peacemaking in Australia.^{3 4}

This research project has been developed in response to the significant mainstream knowledge gaps and lack of recognition of Australia's First Nations peoples' approaches to conflict and its management. The very limited professional recognition and effective professional support for First Nations peacebuilders and peacemakers reflects a broader lack of recognition of their practices and skills. Our project aims to fill these gaps and foster understanding about First Nations peoples' practices, processes, and systems.⁵

The project timeframe was twelve months, and a draft written report was presented to the Mediator Standards Board ('MSB') in September 2023.

Knowledge revealed in this Project

1.3 This project set out to note and to commence filling gaps in mainstream knowledge about Australia's First Nations peoples' approaches to conflict and its management. The project is designed to foster greater understanding of these practices, processes, and systems as many dispute resolution experts and policy makers have a limited understanding of First Nations systems and processes. It is likely that the collection of this information will support professional recognition and become the basis for professional support, perhaps in association with the existing NMAS (or its future replacement).

Funding and Support

1.4 This research project has been funded by a modest grant from the Mediator Standards Board (MSB), as well as from funding from the University of Newcastle, College of Human and Social Futures ('the University') under a Matched Industry Scheme. The researchers gratefully thank the MSB and the University for funding this project.

First Nations researchers

1.5 When the original grant application was submitted, the Research Team comprised four people, Professor Tania Sourdin, Dr Helen Bishop, Dr Alysoun Boyle, and Dr Bin Li, of whom Dr Bishop is the sole First Nations person ('the Research Team'). The Research Team actively sought First Nations students from the university who could assist us; however, despite some interest, it proved difficult for students to commit to the project and not have their studies unduly interrupted. During 2023, Sally Prowse, a student at the University of Newcastle, joined the Project Research Team. The

³ Grant application to Mediator Standards Board, *The ways in which First Nations approaches to peacebuilding and peacemaking can be recognised in association with the NMAS*, July 2022, 2.

⁴ At the time of writing this report, the NMAS is under review and a revised set of standards, the AMDRAS, is being proposed. It is not yet clear to what extent, and in what ways, a new national system of standards would acknowledge First Nations peoples approaches to conflict and its management.

⁵ Gathering Food For Thought, *Project Information Sheet*, 2022, 1.

Research Team's work was also supported by Lorraine Bridger in a volunteer capacity, whose research and research management experience assisted in uncovering and reviewing a significant collection of historical records.

Project Advisory Group

1.6 The Project Advisory Group was appointed early in 2023. It has a majority of First Nations members and supports the overall approach to the research with our stated protocol and approach. Advisory Group members: Maureen Abbott, Robin Thorne, Deen Sanders, Nathan Towney, Lola Akin Ojelabi, Toni Bauman, Jared Sharp and Peter Condliffe.

Research approach

1.7 The Project Information Sheet outlines a research approach that is informed by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) *Code of Ethics for Aboriginal and Torres Strait Islander Research*,⁶ and the University of Newcastle's *Aboriginal and Torres Strait Islander Cultural and Intellectual Property Protocol*.⁷ In addition, the Research Team developed its own written protocol, outlining the ways in which it would approach its tasks. This included an active consideration of cultural sensitivity; collaboration; respect; and inclusion.⁸ The aim of that protocol was to ensure that First Nations' perspectives informed our work, and that what we did would benefit First Nations peacebuilding and peacemaking.

1.8 In addition, the role of the Project Advisory Group has been to provide:

*ideas for the Research Team from time to time, drawing from their own expert knowledge and experience; and direction and advice relating to cultural awareness and sensitivities in the context of First Nations peoples.*⁹

Methodology

1.9 The key work of this project has been to (1) collect a wide range of relevant materials, and (2) conduct a sequence of desktop reviews and analyses of those collected materials. This section describes the work undertaken to achieve both those tasks.

Collecting and collating materials and other information

1.10 In terms of gaining some understanding about current knowledge of the approaches, techniques, and skills of First Nations peacebuilders and peacemakers, we decided to collect as much background material as could be accessed from late 2022 to mid-2023. In particular, the researchers

⁶ Australian Institute of Aboriginal and Torres Strait Islander Studies, *Code of Ethics for Aboriginal and Torres Strait Islander Research*, *Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS, 2020), available on <https://aiatsis.gov.au/sites/default/files/2022-02/aiatsis-code-ethics-jan22.pdf>.

⁷ University of Newcastle, *Aboriginal and Torres Strait Islander Cultural and Intellectual Property Protocol* (2023), available on <https://www.newcastle.edu.au/our-uni/indigenous-collaboration/indigenous-cultural-and-intellectual-property-protocol>.

⁸ Gathering Food For Thought, *Working Together – Written Protocol*, 2023.

⁹ Gathering Food for Thought, *Project Advisory Group* (2023), 1.

sought original documents, including reports, that describe or refer to the approaches, techniques, and skills of First Nations peacebuilders and peacemakers.

We gratefully acknowledge the contribution of Dr Helen Bishop who has provided valuable access to her extensive personal archive of publications, documents, videos, recordings, and other materials.

1.11 As documents became available, they were stored electronically in a secure online cloud-based facility overseen by the University. The Research Team commenced detailing the permission of the authors of unpublished papers and reports; however, this task is not yet complete. This approach presents some challenges for future curation of the materials (this is discussed in more detail in Part Three of this Report).

1.12 During the subsequent period, the organisation of the collected materials was adjusted and refined to reflect more accurately the categorisations that were developed. Ultimately, materials have been categorised according to the geographic location of their publication, and their nature (using bibliographic structure as a guide, the categories include journal articles; books; reports and discussion papers; reports of commissions of inquiry and government entities; speeches and conference presentations; program/service evaluations; and legislation and standards). For example, the *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) is stored in the folder entitled “Australia”, and in the subfolder entitled “Commissions of Inquiry”, “Royal Commissions”.

1.13 The researchers have created a bibliography of the collected materials, noting that it is a first step and can be expanded as more materials are added to the collection. It is anticipated that, apart from its formal necessity, collating a full bibliography of the materials would provide something of a user’s guide to the collection.¹⁰

First Nations context

Intellectual property, ownership, and data sovereignty

1.14 It became clear early in the project that conventional interpretations of intellectual property may not be adequate or appropriate to protect First Nations materials, such as those collected during this project, and to safeguard their data sovereignty.¹¹ In conventional terms and according to IP Australia, intellectual property concerns creations of the mind, including a brand, logo, invention, design or artistic work, or new plant variety.

1.15 The researchers were concerned that all aspects of First Nations ‘ownership’ of the materials we had collected would be protected according to law and respected according to custom. The researchers also wanted to ensure that any data we created (for example, through reviews and analysis) would be presented and stored in ways that accord with the principles of ‘Aboriginal data sovereignty.’¹² In a separate context, it has been recommended that evaluations in particular be designed to meet those principles which include that the affected First Nations peoples can have

¹⁰ The full bibliography is included in this report, at Appendix A; it is current to the date of this report.

¹¹ Throughout this report, the word “conventional” is used in association with Western or mainstream concepts and ideas, while “traditional” is used in association with First Nations values, ideas and concepts.

¹² The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022), 17.

control of the evaluation data; that the data itself retains its contextual setting; that it contributes to empowerment and self-governance; that it is accountable and accessible to First Nations peoples and Indigenous communities; and that it respects the interests of the affected communities.¹³ In part, the design of this Report is intended to demonstrate a commitment to those principles.

1.16 The issue of protecting data sovereignty remains largely unresolved in the broader context of research involving First Nations peoples and Indigenous communities and requires urgent consideration. In this regard, we note the significant steps undertaken by the University of Newcastle to protect intellectual property and this is explored further below. However, given the collection of material that has been gathered, there are now questions about who might have access and how material can be protected. In relation to the future of the data collection, the researchers note and agree with the following statement:

From the outset the project conceded that the best operator and the best entity to establish a permanent project in the future must be community led, community owned and community controlled.¹⁴

Cultural responsiveness

1.17 When conducting research that involves First Nations people and materials, it is important to ensure that the process, the materials, and the outcomes are treated with respect. Although the initial approach was to ensure a high level of cultural sensitivity, it became clear that a more pro-active approach would be represented by being culturally *responsive*, with its implication of having active responses to cultural issues. To this end, and in consultation with the Project Advisory Group, the Research Team prepared its own Statement of Cultural Responsiveness, as well as a written protocol for working together that incorporated a commitment to cultural sensitivity and responsiveness.¹⁵

1.18 The Research Team's own Statement of Cultural Responsiveness was designed to be read in conjunction with two key documents from the Australian Institute of Aboriginal and Torres Strait Islander Studies ('AIATSIS') and the University of Newcastle.¹⁶ A range of other documents were also considered in the development of the project's approach to cultural responsiveness.¹⁷

¹³ The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

¹⁴ One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020), 6.

¹⁵ The Statement of Cultural Responsiveness is included in this report's preliminary pages.

¹⁶ Australian Institute of Aboriginal and Torres Strait Islander Studies, Code of Ethics for Aboriginal and Torres Strait Islander Research, *Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS, 2020), available on <https://aiatsis.gov.au/sites/default/files/2022-02/aiatsis-code-ethics-jan22.pdf> ; University of Newcastle, *Aboriginal and Torres Strait Islander Cultural and Intellectual Property Protocol* (2023), available on <https://www.newcastle.edu.au/our-uni/indigenous-collaboration/indigenous-cultural-and-intellectual-property-protocol> .

¹⁷ Australian Psychological Accreditation Council, *Accreditation Standards for Psychology Programs* (2019); Australian Psychological Accreditation Council, Annexure to the APAC evidence guide: Standard 3.8 Program of Study, criterion 3.8 (2023) [cultural responsiveness]; Australian Psychological Society, *Apology to Aboriginal and Torres Strait Islander People* (2017), available on https://psychology.org.au/news/media_releases/15september2016; Dudgeon, P., H. Milroy, and R. Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*

1.19 The Research Team’s final Statement of Cultural Responsiveness, provides a clear outline of our commitment:¹⁸

*Cultural responsiveness in this project requires a solemn respect for the authentic works of the corresponding Ancestors, who designed effective social systems and blueprints to strengthen relationships, wellbeing, and the longevity of their distinct people. To be culturally responsive the team will also respond to advice and feedback from First Nations Advisory Group and community members.*¹⁹

Research methods

Annotation and content analysis

1.20 Early in the project, time was put aside for annotating the collected materials. This is an ongoing task, with its completion being beyond the scope of the current project grant.

1.21 The Research Team viewed annotation as key to both this project and to longer-term curation of the materials. Each item is given two pieces of annotation: a) a full citation; and b) a brief summary of its contents. Most items include both annotations in a single document and that document has been uploaded to the secure online storage facility where it is stored in association with the original item. Annotations have been completed using a template that includes the following categories:

- Full citation of the item;
- Whether the author/s include First Nations people (including an option where this is not stated);
- Year and place of publication;
- Whether the item draws on empirical/theoretical research;
- Key words (see below, Selected thematic analysis, for development of key words);
- Summary of the item; and
- A selection of quotes likely to be useful for this project.

1.22 Two examples of annotations:

- Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, 2000); the summary includes that the Task Force included all First Nations people; the year (1999) and place (Queensland) of publication; that the item incorporates theoretical and empirical research; a summary of relevant contents (including pin-point references); and some quotes that might be useful for this project; the item’s key words are: processes; colonisation/colonialism; law and legal systems; intergenerational trauma and historic loss; land/property ownership/custodianship; cultural connection.

(Commonwealth of Australia, 2014); Edwige, V., and P. Gray, Significance of Culture to Wellbeing, Healing and Rehabilitation (Report to *The Bugmy Bar Book*, Public Defender NSW, 2021).

¹⁸ A copy of the Statement is included in the preliminary sections of this report (page 5).

¹⁹ Gathering Food for Thought, *Statement of Cultural Responsiveness* (2023), 1.

- Cowlshaw, G., 'Mythologising Culture Part 1: Desiring Aboriginality in the Suburbs' (2010) 21 *The Australian Journal of Anthropology* 208; the summary includes that the author is not a First Nations person; the year (2010) and place (Australia) of publication; the item includes empirical research and theoretical analysis; and a summary of the article's contents (including useful quotes); key words: colonisation/colonialism (romanticism/romanticisation), voice.

Terminology and key concepts

1.23 While working on this project, it has become clear that the many terms used in association with First Nations peoples' peacemaking and peacebuilding, and their approaches to the management and resolution of conflict, make consistent interpretation quite difficult. Part Two of this report aims to clarify approaches to language and terminology, as well as some key topics, from both First Nations and non-First Nations perspectives.

1.24 Importantly, Part Two includes a First Nations perspective on key relevant terminology, and on the importance of language for cultural continuity. As a targeted review, this provides unique and valuable insights that have informed the overall approach to this project, as well as the ways in which we have conducted and reported the research.

1.25 Part Two also includes a targeted review of five key concepts in the context of First Nations and Indigenous communities, drawing on the fields of anthropology and psychology to explore postcolonialism and cultural relativity; collectivism-individualism and social interdependence theory; and the links between cultural connection and wellbeing. In this latter review we have identified that one of the key characteristics of the seminal literature is its geographic and cultural depth, as well as the limited inclusion of specific references to Australia's First Nations peoples.

Data and information collection

1.26 In order to establish what is known about First Nations peoples' approaches to peacebuilding and peacemaking, we have relied on desktop analysis and review of the materials we have collected. Key to any investigation was our understanding that the described and referenced approaches are likely to be as wide-ranging as is the number and types of Indigenous communities in Australia, necessarily placing caveats on our results and findings. In other words, although we have found that certain approaches are common in certain locations and among certain communities, it is not appropriate to extrapolate these to other settings and other communities.

1.27 Confronted by an extensive range of collected materials, as well as the limited scope of this project, we chose to review the literature broadly before narrowing our activities to three selection methods: for the selected thematic analysis, twelve items were selected randomly; for the review of case studies, fifteen program/service evaluations were selected to include a range of geographic locations; and, for the review of commissions of inquiry, we selected five landmark inquiries from the past 118 years. Using these selection methods, we collected three types of data that we anticipated would provide valuable information from a cross-section of key sources: from commentators and scholars (including First Nations writers), from expert evaluators, and from respected judicial officers and legal practitioners.

Selected thematic analysis

1.28 The Research Team selected thematic analysis as the methodology for analysing the material collected as part of this project. Although thematic analysis enables ready codification of ideas and patterns in a body of literature, its strength is recognised as being in not pre-determining any of those themes.²⁰ This protects the research information from having to align with the researchers' own preferences, interpretations, and ideas.²¹ Collected information is subject to codification; however, this is guided by the contents of the document itself, so the subsequent analysis and interpretation derives directly from the patterns in that original data. Our view was that thematic analysis would provide the best method for analysing a complex range of diverse materials, while maintaining respect for the original authors and their views.

1.29 It was anticipated that the key themes identified during the analysis could become key words to facilitate our annotation of the collected materials (see above) and would provide an indication of key themes and key words that could be applied in broader future analysis of the collected materials. Ultimately, this proved to be the case, and key words derived from those identified themes have been used in the annotations. Where gaps have been identified, additional themes/words have been incorporated.

1.30 Due to the limited capacity of this project, only 12 items were selected for in depth thematic analysis. To ensure selection of a broad range of materials for analysis, the selection included documents from more than one geographic location. Using the then secure online storage facility in its then iteration, twelve documents were selected simply by being the first document in each of the original twelve online storage folders.²²

1.31 The collected materials at the time included journal articles, reports, conference presentations, training materials, and policy documents. To best represent that range, the 12 documents include 3 reports; 3 presentations; 1 training manual; 1 policy document; and 4 journal articles. They derive from seven geographic regions/countries of origin, including six in Australia: Aotearoa New Zealand; Bougainville; Canada; Nigeria; Nicaragua; PNG; and Australia (ACT; NSW; NT; Qld; SA; Tas). The selected materials also provide a broad temporal scope, their publication dating from 1996 to 2022. Despite the number of included materials, the analysis includes some exploration of temporal issues, such as apparent changes in trends over time.

1.32 Each of the 12 publications was read in full, and those readings informed the development of a summary template which would enable the collection and retention of consistent information about each item, including the key ideas, topics, and issues raised in each document. Each of the templated summaries was uploaded to the secure shared drive. The thematic analysis is based on those summaries.

²⁰ For example, see Akin Ojelabi, L., and A. Boyle, *“Playing devil’s advocate”: Reality testing in the context of mediation in Australia* (Report to the Mediator Standards Board, December 2022).

²¹ Braun, V., and V. Clarke, *Thematic Analysis: A Practical Guide* (Sage Publishing, UK, 2022).

²² For example, in the folder “Aotearoa New Zealand”, the article by Maiava-Zajkowski was the first document in the folder “Aotearoa New Zealand”; however, in the folder “Canada”, the first document was a journal article and no training materials had yet been included in the selection – the training materials by Crooks et al (2010) was selected to ensure a cross-section of materials was included in the selection.

Targeted Reviews

1.33 The materials collected as part of this project make clear that issues relating to First Nations peoples' approaches to conflict and its management have deep cultural roots and are interwoven with many other aspects of their lives, and their interactions with so-called mainstream society. In order to clarify some of these complex issues, members of the Research Team have also undertaken four targeted reviews, two of which are mentioned above, and two are described below. The targeted reviews are of the First Nations context (Part Two of the report); of key concepts (Part Two of the report); of commissions of inquiry (Part Three of the report); and of selected case studies and program evaluations (Part Four of the report)..

Commissions of Inquiry

1.34 Among the project's collected materials are several reports of inquiry, including reports from Royal Commissions,²³ from Law Reform Commissions,²⁴ from Human Rights Commissions,²⁵ and from specific Task Forces and committees.²⁶ Due to the limited scope of this project, only a selection of these reports has been subjected to review, with the intent that the reviewed reports are representative, and that they would include material relevant to this project (ie, First Nations peoples' peacebuilding and peacemaking, and/or their approaches to managing conflict). The selected commissions span a period of 118 years with the earliest having been published in 1905,²⁷ and the most recent in 2017.²⁸

1.35 Other commission reports available to the project cover a longer time span, with the oldest having been published in 1877,²⁹ and the most recent in 2023.³⁰ However, very few include mention of First Nations peoples' approaches to peacebuilding and peacemaking.

1.36 The review focuses on the relevant recommendations from each Commission to include a comparative review of contents (again, using the explorative analytical approach described above) and identifying any commonalities. As with the review of case studies, the review also seeks to respect

²³ For example, see *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991); *Northern Territory Royal Commission into Child Detention* (Final Report, 2017); *Western Australia Royal Commission into the Condition of the Natives* (Report, 1905).

²⁴ ADR Subcommittee, Northern Territory Law Reform Commission, *Alternative Dispute Resolution in Aboriginal Communities* (Report to the NT Law Reform Commission, 1997); Law Reform Commission [now ALRC], *Recognition of Aboriginal Customary Law* (Report No 31, 1986).

²⁵ Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Enquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997); Human Rights and Equal Opportunity Commission, *Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Third Report* (1995).

²⁶ For example, see Aboriginal and Torres Strait Islander Women's Task Force, *Report on Violence* (Report to the Government of Queensland, 1999); Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009);

²⁷ *Western Australia Royal Commission into the Condition of the Natives* (Final Report, 1905).

²⁸ Northern Territory Royal Commission into the *Protection and Detention of Children in the Northern Territory* (Final Report, November 2017), Vols 1, 2A, 2B, 3A, 3B, 4.

²⁹ Royal Commission on the Aborigines, *Report of the Commissioners Appointed to Inquire into the Present Condition of the Aborigines of this colony, and to Advise as to the Best Means of Caring for, and Dealing with Them, in the Future, in Victoria*, (1877).

³⁰ Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Report of Inquiry into Community Safety, Support Services and Job Opportunities in the Northern Territory* (Parliament of Australia, March 2023).

data sovereignty, and considers the levels and nature of First Nations involvement in the Commissions, as well as the Commissions' capacity to be both culturally responsive and accessible.

Selected case studies and program evaluations

1.37 The researchers have considered case studies and evaluation reports that have examined programs and services being provided by and to First Nations peoples and communities. Many of these case studies and evaluations consider issues similar to those being reported in this project. The assembled on-line collection includes key examples, and these have been subjected to a review in which the following information has been systematically collected:

- Name and location of the original program/service, including whether the program/service is located remotely, regionally, or in an urban setting;³¹
- Whether the evaluation included First Nations evaluators;
- Brief description of the program/service (including type and purpose of service, and whether delivery is by First Nations people), and its dates of operation;
- Objectives/goals of original review/evaluation; and
- Types of processes included in the original review/evaluation;

1.38 The review has also incorporated the same content analysis approach as in the selected thematic analysis and has considered the levels and nature of First Nations engagement in the evaluations, as well as whether the evaluation was designed to be culturally responsive and accessible. The case study approach was adopted in part because one of the more significant projects undertaken in the past to explore First Nations approaches also adopted a case study approach and this work continues to be of importance to First Nations people working in this area.³²

Findings

1.39 The results and findings of the thematic analysis and the targeted reviews are included in Part Four of this Report and are presented as stand-alone findings without the inclusion of additional information from the wider literature. More detailed analysis of the results and findings is included in Part Five where First Nations participants' knowledge and expertise is brought to bear on the outcomes of this part of the Project.

Overview of this report

1.40 This Report is presented in five parts, of which this is the first.

Part Two – Gathering Food for Thought: Terminology, language, and key concepts

Part Two includes an explanation of the importance of language in a First Nations context, an outline of key relevant terminology, and a targeted review of five key concepts (postcolonial theory cultural relativism; collectivism-individualism, social interdependence and the links between cultural

³¹ See Part Three for a discussion of the terms "Urban", "regional", and "remote".

³² Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

connection and wellbeing). Some discussion about these concepts and their influence is intended to inform readers and facilitate their understanding of the reviews reported in Part Three as well as the findings and conclusions reported in Part Five.

Part Three – Gathering Food for Thought: First Nations peoples’ approaches to preventing and managing conflict

Part Three reports on materials that make specific mention of First Nations peoples’ approaches and techniques for preventing and managing conflict. It includes historical references as well as an analysis of two Commissions of Inquiry and other relevant work.

Part Four – Gathering Food for Thought: data and information

Part Four reports on two data collection activities undertaken by the Research Team, and relies on publications included in the collected materials. As described above, a selected thematic analysis, and a targeted review of selected case studies are included.

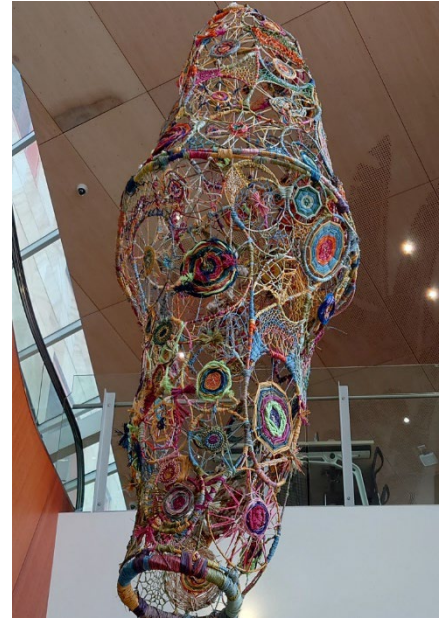
Part Five – Thought: First Nations peoples’ and Indigenous communities’ approaches to peacebuilding and peacemaking

Part Five is the collaborative product of active participation and advice from the First Nations people involved in this project, including Dr Helen Bishop and the members of the Project Advisory Group.

1.41 The researchers consider that this part of the Report is the culmination of this stage of the Project although, as noted, a larger project may follow. The researchers consider that we have a social responsibility to ensure that we seek to actively include First Nations and Indigenous cultural contexts and worldviews and allow their knowledge and experience to inform this project, including its conclusions, and articulation of future work in this neglected area. The researchers are keen to ensure that the research approach makes the work accountable and accessible to the people for whom it is intended to be of most benefit: First Nations peoples and Indigenous communities.

Part Two – Terminology, language, and conceptual framework

Overview



2.0 The purpose of this part of the project report is to provide a conceptual framework for the reviews in Part Three, the reviews and analyses reported in Part Four, and the conclusions and Next Steps reported in Part Five. There are four sections in this part:

- First Nations knowledge perspectives
- Terminology use – a First Nations perspective
- Place
- Targeted review of key concepts

Sections A, B, and C provide a distinctly First Nations perspective, enabling readers to gain insight into some of the cultural dimensions of language that are relevant in this Project.

Section D reviews four key concepts with the intent of informing consideration of the information contained in Parts Three, Four, and Five of the report.

First Nations knowledge perspectives

2.1 Modern Indigenous researcher techniques can contend with and reshape western theoretical perspectives. Makomenaw³³ considers that Indigenous research methodology is *one where the researcher understands the role of Indigenous history, culture, language, and self-determination in the lives of Indigenous peoples*. Doing so can emancipate First Nations axiological and epistemological standpoints as found in the publications of Langford³⁴; Perkins³⁵; Watson³⁶; Tuhiwai-Smith³⁷; Moreton-Robinson³⁸; Weber-Pillax³⁹; Nakata⁴⁰ and Rigney⁴¹ who are among the many other First Nation scholars stressing post colonial methodologies. As Nakata notes, paradigms support researchers to situate cultures, languages, and ideas within a sociological framework that can accommodate for interconnectivities. Indigenous research frameworks emphasize a holistic and contextually sensitive approach that respects and incorporates Indigenous perspectives, knowledge systems, and ways of knowing.

2.2 These paradigms contribute to, and impact on:

1. Cultural sensitivity and respect:
2. Worldview alignment:
3. Language and communication⁴²:
4. Community involvement and collaboration:
5. Holistic approach:
6. Ethical considerations:
7. Long-term impact:
8. Decolonisation and empowerment:
9. Storytelling and narrative.

2.3 In essence, paradigms provide researchers with a set of guiding principles and methodologies to align with the values and priorities of Indigenous people and communities. Each facilitate a deeper understanding of cultures, languages, and ideas by offering a lens through which to view and interpret information within their proper context. This approach ensures that research conducted within an Indigenous research framework is meaningful, respectful, and contributes positively to First Nations communities. While each aspect enumerated here are intimately interconnected there is a particular significance in this research with item 3 (above) language and communication.

³³ Makomenaw, M., 'Welcome to a New World: Experiences of American Indian Tribal College and University Transfer Students at Predominantly White Institutions' (2012) 25(7) *International Journal Of Qualitative Studies In Education* 855, 858.

³⁴ Langford, R.F., 'My Heritage – Your Playground' (1983) 16 *Australian Archaeology Journal* 1.

³⁵ Perkins, R., and M. Langton, *The First Australians* (Mieguyah Press, Australia, 2010).

³⁶ Watson, I.M., *Looking at you, Looking at me: An Aboriginal History of the Southeast* (Self-Published, South Australia, 2000).

³⁷ Tuhiwai-Smith, T., *Decolonising Methodologies: Research and Indigenous Peoples*. (University of Otago Press, New Zealand, 2012).

³⁸ Moreton-Robinson, A., *Talkin' Up to the White Woman: Indigenous Women and Feminism in Australia* (Queensland University Press, Australia, 1999).

³⁹ Weber-Pillax, 'Indigenous Research Methodology: Exploratory Discussion of an Elusive Subject' (1999) 33(1) *Journal of Educational Thought* 31.

⁴⁰ Nakata, M., *Disciplining the Savages, Savaging the Disciplines*. (Aboriginal Studies Press, Australia, 2008).

⁴¹ Rigney, L., *Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and Its Principles* (Minnesota University Press, USA, 1999).

⁴² Note: Discussion on Language and Communication includes Connection through people, Land and Country throughout this Chapter.

Critical aspects of First Nation Language and Communication

2.4 The languages of Australia's First Peoples, play a profound role in shaping knowledge and ways of knowing, (epistemology) and relating to the world. Language is not just a means of communication as it is intricately intertwined with the transmission of knowledge, culture, and worldview. By focusing on language, the researchers do not intend to suggest that non-verbal language as well as paralinguistics do not convey meaning or shape understanding and connection, because they certainly do. However, within the limitations of this research, and given that the research has initially focussed on written materials, non-verbal language and paralinguistics are referred to only where recorded and referred to. The researchers acknowledge that a similarly limited approach has impacted the conclusions of past commentators and researchers who may simply have not observed more subtle approaches that may have been more readily apparent to First Nations people.

2.5 To understand how language conveys meaning and is more than an instrument of communication, it is essential to explore the various profound connections and relationships language holds for First Nations peoples of Australia.⁴³

Implications of First Nations Languages

- *Embedded Cultural Knowledge:* Language and communication contains elaborate systems of terminology to reflect the environment, relationships, kinship structures and systems, and cultural practices of their individual communities. This linguistic treasure trove enables the preservation of unique cultural knowledge that can be difficult to translate into other languages.
- *Specificity of Concepts:* Many First Nation peoples have words and concepts that encapsulate sophisticated ideas, relationships and aspects of the natural world that might not have direct equivalents in other languages. This specificity enables a deeper understanding of their environment and cultural practices to influence the epistemologies of many First Nation groups.
- *Oral traditions, storytelling or narrations:* First Nation languages are often referred to even when not spoken fluently, and can pass down knowledge, heritage, history, and cultural values. The languages nuances and intonations carry the emotion, context, and depth of stories and ensures the integrity and authenticity of the knowledge being shared.
- *Connection to Land and Country⁴⁴:* First Nations languages are deeply connected to the land and country of origin. The words and expressions used in these dialogues often reflect the geographical or ecological features, flora, fauna, and spiritual significance of specific places. This linguistic connection reinforces and substantiates the significance of these intimate relationships between people, culture, and their environments.
- *Cultural Identity and Epistemology:* The language itself embodies the epistemological foundations of First Nation communities. The structures of language mirror how Indigenous

⁴³ See Bishop, J.H., Ngirrwut for Mookununggunuk – The Survival of Koongurrukun Knowledge Transfer in the 21st Century. (PhD Thesis, Batchelor Institute, Northern Territory, Australia, 2022).

⁴⁴ Note: discussion on Connection to Land and Country aligns with Language and Communication yet it needs to be appreciated that each element is intimately connected to all of the universal arrangements that comprise First Nations worldviews and ontological understandings.

people perceive and categorize the world around them. The linguistic structure influences their ways of knowing, reasoning, and how to understand the reality of their world.

- *Oral Knowledge Systems:* First Nation languages are integral to oral knowledge systems, where knowledge is transmitted through spoken words, songs, and ceremonies. This contrasts with Western written knowledge systems, highlighting the importance of oral transmissions and this intimate relationship between language and knowledge.
- *Spiritual and Ceremonial Significance:* First Nations languages often have sacred or ceremonial uses, particularly in rituals, ceremonies, and song-lines. Languages are a vehicle for connecting with Ancestral spirits and entities in passing on sacred knowledge and cultural practices. The significance of spoken languages can connect to the ancestral beings whose influence resonates with the reality of their ancestry connecting them to epoch events.
- *Resilience and Cultural Revival:* The continued use and revival of First Nation languages are critical to preserving cultural knowledge and strengthening cultural identity. Language revitalisation efforts contribute to the transmission of knowledge across generations of people deprived of practising not only their languages, but of their communities and families who cultivated their living requirements about their cultures, laws, heritage, and knowledge of their environments across generations.

2.6 The interconnecting aspects of First Nation languages possess qualities that anchor meaning to “the every when”.⁴⁵ Yet in much the same ways described above, Koormundum⁴⁶ reflects in her research of her own threatened language and how language influenced Koongurrukun people. She says of this:

*Both land and language were locked together in silent communication, through an inexplicable sense of perception deep within the people.*⁴⁷

2.7 This is further exemplified in the research conducted by the primary author of this Report, Bishop⁴⁸ who investigated the ngirrwut process, (knowledge transmission process) of the Koongurrukun people of the Northern Territory. She found the nature of language is the vehicle through which her Ancestors connected to the past, present, and the future. She concluded the language and the laws that governed their philosophies influence behaviours and expectations of accountability that accompany their sociocultural and ecological relationships. Her findings are supported by the very senior Elders who left their evidence in the publications, documents, and land claims, such that recognised and described their understanding of their world:

*So, the language is close to a heart’s beat, sending a vital, life-giving essence through the whole body to keep it alive, binding land and people together in ancient bonds. The people’s history is in their language.*⁴⁹

⁴⁵ The term, “every when”, was coined by W. H. Stanner and describes the significant influences of the Ancient Beings who crafted the Alcheringa ceremony of the Arrernte peoples of Mparntwe (Alice Springs); see Stanner, W.E.H., and R. M. Manne, *The Dreaming and Other Essays* (Black Ink, Australia, 2009).

⁴⁶ Koormundum, I.M., *Ngun Koongurrukun – Speak Koongurrukun* (Self-Published, Perth, Australia, 2000).

⁴⁷ Koormundum, I.M., *Ngun Koongurrukun – Speak Koongurrukun* (Self-Published, Perth, Australia, 2000), xii.

⁴⁸ Bishop, J.H., *Ngirrwut for Mookununggunuk – The Survival of Koongurrukun Knowledge Transfer in the 21st Century*. (PhD Thesis, Batchelor Institute, Northern Territory, Australia, 2022).

⁴⁹ Koormundum, I.M., *Ngun Koongurrukun – Speak Koongurrukun* (Self-Published, Perth, Australia, 2000), xxiii.

2.8 Bishop's research also found that to draw meaning from Koongurrukun terms of reference in the context of their structure enabled deeper understandings to emerge. This meant that it became essential to examine her threatened language and enliven its own cultural context in the fullness of its value. The significance of her endeavour uncovered a richness buried deeply in the language that led to profound inferences grounded in relatedness and familiarity and filled with ancient metaphors. Yet fears were expressed in Bishops' account that are spoken of by the senior informant Ulmeyook Mooradoop. Those fears in the ongoing nature of the colonisation process she recorded in her work:

*It is a threat that continues in the decimation and demise of our relationships and profound connections in the land, corrupting our koorrurk, song cycles of our land or the anthems that pay homage to our ancestors, people, country, and our universe.*⁵⁰

2.9 The aim of Bishop's research was to examine aspects of the colonisation process of Australia and the Northern Territory as she reminded readers that, First Nations people attempted to live harmless and collaborative lives. Indeed, cooperating with each other presented as a necessity to mutually survive the harsh environments of this continent and effectively to manage conflict. She details that her language group lived accountable, duty filled lives, and not to do so put their longevity at risk. While they were living these responsible lives, ranging across their homelands, a western world was edging ever closer to their borders, eyeing the landscapes and people, now known as Australia.

2.10 Bishop proposed that their rules or laws were negotiated within their social group and cooperatively designed for the longevity of the all-encompassing estate with its beings and entities striving to sustain themselves, as Berndt & Berndt chronicle:

*They also believed that they shared the same life-essence with all the natural species and elements within that environment....to include the natural world.*⁵¹

2.11 Adventurers and explorers arrived in Australia with their languages, ways of looking at and interpreting the world and its people. They were to become the purveyors of knowledge, 'experts' in their fields, recording their observations, perceptions, and understandings of Australia's First Peoples. These so called 'experts' such as Dampier⁵² go on to describe the 'natives' as *savage and brutish* while Vogt⁵³ brazenly exposes his biased research to apply polygenist theory categorising Australia's people with his epistemological prejudices.

2.12 A great many of these works were presented and published through bodies such as the Anthropological Society of London, the Royal Historical Society, the Royal Institute of Science, the Ethnological Society of London or the Royal Anthropological Institute of Great Britain and Ireland. These bodies amplified and saturated a European audience, influencing and shaping Western thinking - epistemology. What grew out of these publications was a naïve belief in an 'inherent' superiority, scrupulously recorded to augment unfounded conclusions as to the intellectual capacity and status of Australia's original people.⁵⁴ Some works maintained the prevailing view of people being "inferior,

⁵⁰ Bishop, J.H., Ngirrwut for Mookununggunuk – The Survival of Koongurrukun Knowledge Transfer in the 21st Century. (PhD Thesis, Batchelor Institute, Northern Territory, Australia, 2022), 19.

⁵¹ Berndt, M., and C. H. Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present* (5th Edition, Revised, Aboriginal Studies Press, Australia, 1988), 136.

⁵² Dampier, W., *A Voyage to New Holland, &c. In the Year, 1699* (James Knapton, UK, 1703), Vol III, available at <https://ia800907.us.archive.org/12/items/anevvoyageround00dampgoog/anevvoyageround00dampgoog.pdf>.

⁵³ Vogt, K. C., *Lectures on Man: His Place in Creation, and in the History of the Earth* (Longman, Green, Longman, and Roberts, for the Anthropological Society, UK, 1864), available at <https://wellcomecollection.org/works/brq5hy87>.

⁵⁴ See Langford, R.F., 'My Heritage – Your Playground' (1983) 16 *Australian Archaeology Journal* 1.

brutish, unintelligent and savage” without ever engaging or communicating with their subjects, their cultures, or the social expectations they held. For example, Vogt deploys the following terminology to present his biased findings:

*Australians, Hottentots, and Polynesians, nations in the lowest state of barbarism, commence the series; and no-one can deny that the place they occupy in relation to cranial capacity and cerebral weights corresponds with the degree of their intellectual capacity and civilization*⁵⁵

2.13 At a later period, Dr Crowther, a surgeon, ‘naturalist’ and former Premier of Tasmania ventured into nefarious activities, including the defiling and removal of Aboriginal skeletal remains from their burial sites; he was often accompanied by his son on these expeditions, and the practice was furthered by both his son and grandson after his death.⁵⁶ His more notable exercise was the intention to mutilate the body of an Aboriginal man whose body was held in the hospital’s morgue some time in 1869.⁵⁷ The purpose was to remove and send the skull to the Royal College of Surgeons for further research and examination. His activities and those of other researchers became visible when Aboriginal people of Tasmania raised their conflict with the science of archaeology.⁵⁸ In Langford’s scathing rebuke on this body of work, she detailed examples to express the views of her Palawa community when she asserted:

*As we all know the prevailing white opinion in the 19th century of Aborigines was that we were inherently inferior to whites, and more akin to savages than to other human races,*⁵⁹

And:

*It was your profession which decreed us backward and primitive people...further down the evolutionary line,...your profession allowed itself to be used by white Australia generally, to live with the knowledge of what it did to my people and my people’s society,...the general community could rely upon to excuse gross atrocities committed against Aborigines*⁶⁰.

2.14 There are several non-Indigenous ethnologists who began to fully recognise First Nations systems and the symmetry held in their relationship arrangements as Berndt so eloquently affirms.⁶¹ Their perceptions captured the complex relationship coverage of the diverse peoples, their social arrangements aligned to the ecology, and economy of First Nations estates. Rose described these as complex relationships in their original form to be as formidable as *a social superstructure*⁶².

2.15 Others such as Howitt,⁶³ described a presence of *law and order*, to support a cooperative

⁵⁵ Vogt, K. C., *Lectures on Man: His Place in Creation, and in the History of the Earth* (Longman, Green, Longman, and Roberts, for the Anthropological Society, UK, 1864), 91; available at <https://wellcomecollection.org/works/brq5hy87>.

⁵⁶ Langford, R.F., ‘My Heritage – Your Playground’ (1983) 16 *Australian Archaeology Journal* 1.

⁵⁷ The W L Crowther Collection, Libraries Tasmania, available at <https://libraries.tas.gov.au/about-us/our-collections/tasmanian-heritage-collections/the-w-l-crowther-collection/>.

⁵⁸ Langford, R.F., ‘My Heritage – Your Playground’ (1983) 16 *Australian Archaeology Journal* 1.

⁵⁹ Langford, R.F., ‘My Heritage – Your Playground’ (1983) 16 *Australian Archaeology Journal* 1.

⁶⁰ Langford, R.F., ‘My Heritage – Your Playground’ (1983) 16 *Australian Archaeology Journal* 1.

⁶¹ Berndt, M., and C. H. Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present* (5th Edition, Revised, Aboriginal Studies Press, Australia, 1988), 4.

⁶² Rose, F.G.G., *The Traditional Mode of Production of the Australian Aborigines* (Angus & Robinson, Australia, 1987).

⁶³ Howitt, A.W., *The Native Tribes of South-east Australia* (Macmillan, UK, 1904).

arrangement on social order, while Spencer and Gillen record their observations of the Nathaguru fire ceremony.⁶⁴ This ceremony was implemented to improve and heal relationships between the men of the Wurrungu people of Tennant Creek region. The observations of Spencer and Gillen go on to detail the reciprocal nature of this important fire ceremony, in that the two skin groups making up the Wurrungu nation, look after the others' fire ceremonies and are responsible for convening them. Yet in his profound recognition of the epistemology of First Nations, Tonkinson provides a depth of understanding as to the nature of the origins of First Nations worldview when he wrote:

*Aboriginal cosmologies not only account for the origins and form of their world but also bind them closely to one another, to the land and all living things, and to the realm of spiritual beings who are believed to control the power on which life itself depends*⁶⁵

2.16 A First Nations lens flowing from culture and language experiences can sometimes overwhelm colonial and deleterious viewpoints. When Indigenous people inform the research process and its practice from a standpoint culturally rich with socially cohesive and spiritually aligned cosmologies and axiological positions. Specifically, when we use First Nations languages and communication methods, we embrace a paradigm to include their ethnologies as it connects to the way their world is designed and seen and engaged with. By shaping the research approach through First Nations peoples' cultural standpoints and through a First Nations researcher, the focus of the research lends itself to harness First Nations knowledges and philosophical vantage points.

2.17 Such an approach anchors values and cultural contexts when the Western lens cannot comfortably match Indigenous terms of reference – which are the domains central to the closely related networks of knowledge. For when First Nations are included in research concerning their particular group, they bring with them their participation, worldviews, (epistemologies), cultural values (axiology), expectations, languages, interconnected relationships, needs and fears and approaches to engagement. When Indigenous research methodologies and paradigms concerning First Nations peoples are adopted, decolonising practices can be considered in the research space where Western and Indigenous research intersects.⁶⁶

Terminology use - A First Nations perspective

What's in a Name?

2.18 The identifying terms this project prefers to use for First Nations peoples are held within their own unique languages, lands, or kinship systems. These names in cultural terms originated and were inherited from the Ancestors. Nevertheless, as there are so very many diverse groups across Australia and its many islands, we acknowledge here that those many names which describe them uniquely, cannot all fit within the scope of this report each time the project mentions First Nation peoples. The Research Team are also conscious that other terms have been enflamed by the ethnocentric lens of imperialistic colonialism. Such terms can be dehumanising and hurtful in conveying the authenticity of the peoples or their ceremonies as referred to in this report. Such names as Aboriginal or

⁶⁴ Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4>.

⁶⁵ Tonkinson, R., *The Mardu Aborigine, Living the Dream In Australia's Desert - Case Studies in Cultural Anthropology*. (Holt, Rinehart and Winston Inc., USA, 1991), 19.

⁶⁶ Nakata, M., *Disciplining the Savages, Savaging the Disciplines*. (Aboriginal Studies Press, Australia, 2008).

Indigenous may be used to convey the authenticity of the peoples this report concerns which does not distinguish them from each other. Here we refer to our terms to clarify what they mean and in what context they are used across this report.

Aboriginal, or Aboriginal people?

2.19 When the term Aboriginal is used particularly in referencing other writings and references it only refers directly to mainland Australia's first peoples. Our reasoning is that the commonalities that exist in the social and cultural systems present as similar, although we acknowledge that they are not the same. While Aboriginal groups hold similar cultural nuances they are shaped separately by diverse languages and locations distinct to their unique Ancestors. The common themes that exist between Australia's mainland First Peoples recognise that their social and cultural values are intertwined with relational connections to each other and their ecological estate, social organisation for example skin groups and kinship systems to bear similar traits in the reciprocal nature of their cultural observations and social obligations. While these are not identical there may be similar social rules and cultural routines.

Torres Strait Islander Peoples

2.20 Torres Strait Islander people in themselves represent distinct groupings by their geographical locations and their languages of which there are two traditional languages still spoken. Currently, Kalaw Lagaw Ya of the western Torres Strait region and Meriam Mir are spoken. A third language more recently developed and known to be Pijin is broadly spoken across the islands. Yet these languages and the locations of distinct land groups remain for now tied to the term Indigenous or Indigenous peoples to represent those who come from the Torres Straits and mainland Australia.

Indigenous, or Indigenous people?

2.21 We refer to Indigenous or Indigenous people to include both Aboriginal and Torres Strait Islander people. Each of these two unique peoples who, in themselves represent the great diversity of Australia's First Peoples. Each unique language or land group make up this diversity and it would be for the purposes of this idea, impossible to name every one of the individual groups for this research. Indigenous or Indigenous peoples represent those who come from the original Ancestors of the Torres Straits and those of mainland Australia, and the first peoples that make up the many people who are – the First Australians.

First Nations Peoples, or First Peoples?

2.22 Our preference is to name individual groups as they are identified in any of the publications, archives, or recordings where we are confident the information has been verified through direct contact with language or land groups, our Advisory Panel, Elders and the researchers. The researchers are mindful that the general rule for the project is to refer to the un-named groups as First Nations peoples in respect of the authenticity of their origins being held in Australia.

Place

*Australasia*⁶⁷

2.23 In 1756, Frenchman Charles de Brosses coined the term ‘Australasia’ to differentiate a large though speculative geographic area located to the south of Asia and believed to exist as a literal planetary ‘counterweight’ to the northern landmasses of Europe and Asia.⁶⁸ The term is said to derive from a Latin term for “south of Asia” and purposely excludes Polynesia. Through the nineteenth century, British and US maps continued to describe Australia as “Australasia”.⁶⁹ Despite suggestions in Wikipedia, there is no clear indication that usage of de Brosses’ term was initially imbued with racial overtones; however, postcolonial analysts suggest that it did develop some racial connotations during the nineteenth century.⁷⁰

2.24 By the early 1800s, Australasia denoted the two larger cluster of islands (ie, Australia and what was then New Zealand), whereas Polynesia referred to the many regional clusters of much smaller islands. The early 1800s also mark the beginning of what Douglas calls ‘racial geography’, in which previously purely geographic terms are given racial overlays.⁷¹ For example, the word “Melanesia” derives from a Greek word for “black” and refers to the darker skin colour of many of its island residents. According to Douglas, “Polynesia” refers to the slightly lighter skin (ie, ‘tanned or copper coloured’)⁷² of its residents. The geographic line between these regional areas is said to have been drawn between areas of different skin colours, with Australia and New Zealand being designated as “white”. This interpretation goes some way towards explaining the unclear use of the three geographic terms and the varied interpretations of which countries and islands are included in each.

2.25 According to Douglas, in terms of geographic identifiers, at least among Polynesian islands, island residents tend not to use “Polynesia/n”, instead preferring their own local self-describing words. It could be said that the persistent use of the terms ‘Australasia’, ‘Polynesia’, and ‘Melanesia’ perpetuates their racial overtones and ignores the rich and complex history of their inhabitants.⁷³

2.26 While de Brosses’ naming of Australasia may have arisen from a perceived need for planetary balance with the northern hemisphere, the colonial practice of bestowing more localised place names, and names of geographic features, is often seen as an assertion of ‘power, proprietorship and propinquity’, likely promoting the much broader colonial concepts of power and control.⁷⁴

2.27 On the other hand, the bestowing of European names can also be seen as the means by which a strange landscape was made more familiar for the incoming colonists, and a little easier for them to

⁶⁷ This section does not set out to explore colonial geographic issues in any depth. Its purpose is to explain our reasoning in using the term, “Australasia” in relation to the area that includes Australia and its near neighbours.

⁶⁸ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375, 376.

⁶⁹ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375

⁷⁰ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375; Mein Smith, P., Mapping Australasia’ (2009) 7(4) *History Compass* 1099.

⁷¹ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375, 412.

⁷² Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375, 412.

⁷³ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375.

⁷⁴ Mein Smith, P., ‘Mapping Australasia’ (2009) 7(4) *History Compass* 1099, 1099.

settle.⁷⁵ In his analysis of colonial place names in Australia, Carter incorporates many examples in support of this claim, including the selection of the site for the city of Adelaide (in the mid-1800s). His analysis of contemporary documents shows that the preferred city site was described in very utilitarian terms that would be readily understood by a coloniser, whereas other possible sites were not so described. Creating this sense of familiarity was key to settlement, and an unexplored expanse of land requiring colonisation was deemed to be a form of “blank sheet” on which mapped and named landmarks as well as marks of latitude and longitude created a sense of familiarity about the region that future colonisers found recognisable, and to which they would be drawn. Despite being at some distance from the reality of the land in question, this type of familiarity mapping ‘presumes the unity of the space it covers’, and, by the map’s very existence, confirms that unity.⁷⁶ Of course, that same sense of unity does not take into account the pre-existing inhabitants, perhaps because their existence upsets the sense of familiarity.

2.28 While modern interpretations of Australasia, Polynesia, and Melanesia are not consistent, it is clear that the terms continue to be important in the postcolonial histories and identities of both Australia and Aotearoa-New Zealand (both of which are consistently included in Australasia).⁷⁷ There seems little doubt that, while there are ongoing shifts in how power might be perceived, and what it might imply, those perceptions will influence any interpretation of the term “Australasia”.⁷⁸

2.29 In this report, the researchers have weighed the advantages and disadvantages of using the term, ‘Australasia’, and have decided that its racial and colonial associations make it difficult to use it. Throughout this report, where possible, we use regional and local terms, recognising that each community, each group of people, has a self-described identity worthy of acknowledgement and recognition. Where feasible, we also use the place and locality names originally bestowed by First Nations people, making these as familiar as once were colonial signifiers.

Targeted review of key concepts

Limitations

2.30 The Project Research Team is aware that it brings limited perspectives to this project. Each of our personal histories has influenced our initial choice to join the project, as well as our perceptions and interpretations of the various materials, and the ways in which we have analysed and reviewed them. In this limited review of cultural connection and wellbeing, we are aware that, in addition to our personal frames of reference, there are additional complex, broader contextual nuances inherent to concepts such as ‘conflict’, ‘culture’ and ‘wellbeing’. These constraints necessarily limit the scope of this section; however, the intent is to inform interpretation of the findings reported in Parts Three, Four, and Five of this Report.

2.31 Throughout the collected materials we have reviewed and analysed, there are many references to terms such as *culture*, *cultural connection*, *colonialism*, *wellbeing*, *trauma*, *community*, and *discrimination*. In this subsection, we create a conceptual framework for this report by briefly

⁷⁵ Carter, P., *The Road to Botany Bay: An Essay in Spatial History* (Alfred A. Knopf, USA, 1988).

⁷⁶ Carter, P., *The Road to Botany Bay: An Essay in Spatial History* (Alfred A. Knopf, USA, 1988), 204.

⁷⁷ Douglas, B., ‘Naming “Polynesia”: Cartography, Geography and Toponymy of the “Fifth Part of the World” ’ (2021) 56(4) *The Journal of Pacific History* 375; Mein Smith, P., ‘Mapping Australasia’ (2009) 7(4) *History Compass* 1099.

⁷⁸ Mein Smith, P., ‘Mapping Australasia’ (2009) 7(4) *History Compass* 1099.

reviewing four concepts (i) postcolonialism and cultural relativism; and (ii) collectivism-individualism and social interdependence theory. The subsection concludes with an overview of the literature on the links between cultural connection and wellbeing.

Purpose

2.32 The Research Team considers that a review of these concepts provides a framework within which broader dimensions of the collected materials can be more readily understood with reference to the historical influences on how First Nations perspectives have been perceived and interpreted. The reviews in this section, though necessarily limited, provide an overview of the evolving conceptual background against which many of the materials have been created, including their historical and cultural contexts.

2.33 For example, the historical and cultural contexts for a Commission of Inquiry in Australia in 1905 were quite different from those of a Commission of Inquiry in, say, 1986, or 2017. One notable difference between those periods is the attitudes towards First Nations peoples, which evolved from being quite paternalistic and colonial in 1905 to being more inclusive and participatory by 2017. This change is demonstrated by the reported levels of First Nations peoples' involvement and participation. In 1905, 'the natives' are reported to have had no participatory role at all – the Commissioner relied only on information about them which he obtained from the evidence of white officials.⁷⁹ In 1986, the commissioners report that some 'knowledgeable Aborigines' were designated 'Consultants to the Commission',⁸⁰ and their role is described as the provision of '... advice of the legal, social, administrative and anthropological issues.'⁸¹ Finally, in 2017, one of the two appointed commissioners was a First Nations person, and a co-author of the final report.⁸²

Approach and method

2.34 Subsections (i) and (ii), below, provide a brief overview of four concepts that are key to reading about ideas, issues, and topics raised in literature relevant to First Nations peoples' approaches to peacebuilding, peacemaking, and managing conflict. In various iterations, the four concepts appear throughout the collected materials, and appear to have some influence on how various relevant matters are reported, as well as how they are interpreted. For example, the reporting differences between a Commission of Inquiry in 1905 and one in 2017 are likely to derive from many factors, including changing contextual perceptions of 'colonialism'. Some of the collected materials pre-date the development of all four concepts and so their authors cannot be expected to take them into account; however, despite being specifically undescribed, some of the ideas and concerns that underlie those concepts do appear in the collected materials and are likely to have been influential.

2.35 The researchers have identified the four concepts from the collected materials, noting their apparent importance to many commentators writing about First Nations and Indigenous peoples, in

⁷⁹ Western Australia Royal Commission *On the Condition of the Natives* (Final Report, 1905), 6.

⁸⁰ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Vol 1, 13/737. The Report is downloadable for the website of the Australian Law Reform Commission; however, it does not include page numbers, and, in this Project Report, pages are identified as a page number out of a total of 737 pages.

⁸¹ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Vol 1, 13/737.

⁸² Northern Territory Royal Commission and Board of Inquiry, *Into the Protection and Detention of Children in the Northern Territory* (Final Report, November 2017), Vols 1, 2A, 2B, 3A, 3B, 4.

Australia and overseas. Among the twelve publications selected for thematic analysis,⁸³ and included elsewhere in this report, eight make specific mention of the negative effects of colonialism,⁸⁴ while specific reference to any of the other three concepts is uncommon. In general, all twelve selected publications allude to the need for cultural acknowledgement and recognition (related to cultural relativism). They also refer in various ways to the importance of recognising and acknowledging collective approaches (related to notions of collectivism-individualism); the dependence of Indigenous and First Nations peoples on connection with each other (related to social interdependence); and cultural connection.

2.36 In this section, the key concepts have been discussed in associated pairs. On the one hand, this is a practical approach that can limit more extensive theoretical review and analysis. The intent is to maintain a focus on review and analysis of the collected materials themselves. On the other hand, a basic understanding of the four concepts informs the reviews and analyses.

2.37 There are many threads of commonality running through the four theories in the context of Australia's First Nations peoples. For example, in anthropology, postcolonialism refers to the perceptions of First Nations and Indigenous peoples that derive from a history of domination and subjugation during the colonisation of them and their lands. Cultural relativism, also an anthropological concept, refers to the consequences of viewing other cultures through our own contextual 'lens' rather than seeing cultures within their own contexts and settings.

2.38 Similarly, in this report, the concepts of collectivism-individualism and social interdependence theory have been dealt with together. They are two theories from psychology that relate to contrasting worldviews and how those worldviews influence people's perceptions of themselves and each other.⁸⁵

⁸³ See Part Three of this Report.

⁸⁴ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Gray, S., 'Monsters Around the Stomping-Ground' (1999) 24(5) *Alternative Law Journal* 216; Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Higgins, K., and C. O'Toole, *Climate Change and Conflict Risks in the Pacific* (Conciliation Resources, UK and Australia, 2021); Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Rights Claims' (2007) 8 *The Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report to Manatū Wāhine Ministry of Women, Aotearoa New Zealand, 2021); Salihi, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

⁸⁵ Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Harb, C., and P. B. Smith, 'Self-Construals Across Cultures: Beyond Independence-Interdependence' (2008) 39(2) *Journal of Cross-Cultural Psychology* 178; Hussain, M., C. Kho, A. Main, and M. J. Zawadzki, 'Horizontal Collectivism Moderates the Relationship Between In-the-moment Social Connections and Well-being Among Latino/a College Students' (2021) 23 *Journal of Immigrant and Minority Health* 1001; Johnson, D. W., and R. T. Johnson, 'New Developments in Social Interdependence Theory' (2005) 131(4) *Genetic, Social, and General Psychology* 285; Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, 'Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan' (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163]; Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Nežiri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons

Postcolonialism and cultural relativism

2.39 Postcolonial theory, or postcolonialism, developed in the later twentieth century from the works of E. W. Said, and his concept of 'orientalism'.⁸⁶ He proposed that the romanticised assumptions, expectations, and stereotypes typical of orientalism derive from myths about the Orient that have their basis in a combination of the prejudices and superiorities inherent to former European colonisers.⁸⁷ For Said, '... the key attribute of Orientalism (and of the Orient) is that its countries and peoples are simultaneously dominated and subjugated by Europe,'⁸⁸ and Orientalism's purpose is to maintain that historic 'control' and 'dominion'.⁸⁹ Said suggests that any discussions of colonial history should include mention of the damage caused at the time, and, in his view, the damage that was ongoing at the time of his writing.⁹⁰

2.40 Although Said was referring directly to Western attitudes towards peoples from South Asia and the Middle East, more recently, scholars and commentators have applied the postcolonial expectations of Western mainstream society to other previously colonised regions such as Canada,⁹¹ Latin America,⁹² and parts of Africa, including Cameroon,⁹³ Mozambique,⁹⁴ the Republic of South Africa,⁹⁵ and Sierra Leone.⁹⁶ The concept has also been used in relation to other population groups such as the Sámi peoples of Northern Europe,⁹⁷ and indigenous people in the Philippines.⁹⁸ In applying the concept to a broader mix of former colonies, commentators have also expanded its meaning beyond Said's, so the reported effects of postcolonialism have become synonymous with its meaning.

with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228; Oyserman, D., H. M. Coon, and M. Kemmelmeier, 'Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses' (2002) 128(1) *Psychological Bulletin* 3; Rusbult, C. E., and P. A. M. Van Lange, 'Why We Need Interdependence Theory' (2008) 2(5) *Social and Personality Psychology* 2049; Singelis, T. M., H. C. Triandis, D. P. S. Bhawuk, and M. J. Gelfand, 'Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement' (1995) 29(3) *Cross-Cultural Research* 240; Uskul, A. K., and H. Over, 'Culture, Social Interdependence, and Ostracism' (2017) 26(4) *Current Directions in Psychological Science* 371; Vargas, J. H., and M. Kemmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195.

⁸⁶ Said, E. W., 'Orientalism' (1977) 31(1) *The Georgia Review* 162; Said, E., *Orientalism: Western Concepts of the Orient* (Pantheon Books, USA, 1978); Said, E., *Afterword*, in Said, E., *Orientalism: Western Concepts of the Orient* (revised edition, Vintage Books, UK, 1994).

⁸⁷ Said, E. W., 'Orientalism' (1977) 31(1) *The Georgia Review* 162.

⁸⁸ Said, E. W., 'Orientalism' (1977) 31(1) *The Georgia Review* 162, 206.

⁸⁹ Said, E. W., 'Orientalism Once More' (2004) 35(5) *Development and Change* 869, 872.

⁹⁰ Said, E. W., 'Orientalism Once More' (2004) 35(5) *Development and Change* 869.

⁹¹ Wilmot, S., 'Postcolonial Theory and Canada's Health Care Professions: Bridging the Gap' (2021) 24 *Medicine, Healthcare and Philosophy* 433.

⁹² Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69.

⁹³ Mbembe, A., 'Provisional Notes on the Postcolony' (1992) 62(1) *Africa: Journal of the International African Institute* 3.

⁹⁴ Pereira, R. M., 'Cutting Back, Dividing Up, and Segmenting: Colonial Knowledge and its Postcolonial Extension in Mozambique' (2016) 25(2) *Revista de Antropologia Social* 341.

⁹⁵ Simpson, M. A., *Bitter Waters: Effects on Children of the Stresses of Unrest and Oppression*, in Wilson, J. P., and B. Raphael (eds), *International Handbook of Traumatic Stress Syndrome* (Plenum Press, USA, 1993).

⁹⁶ Millar, G., 'Between Western Theory and Local Practice: Cultural Impediments to Truth-telling in Sierra Leone' (2011) 29(2) *Conflict Resolution Quarterly* 177.

⁹⁷ Spangen, M., A. K. Salmi, and Tiina Äikäs, 'Sámi Archaeology and Postcolonial Theory – An Introduction' (2015) 52(2) *Arctic Anthropology* 1.

⁹⁸ Capulong, E. R. C., 'Mediation and the Neocolonial Legal Order: Access to Justice and Self-Determination in the Philippines' (2014) 27(3) *Ohio State Journal on Dispute Resolution* 641.

2.41 It is now accepted that postcolonialism includes the ongoing damage observed by Said, and it is seen to be a means of perpetuating colonial control and power in former colonies through the mainstream maintenance and imposition of colonial attitudes, perceptions, and stereotypes.⁹⁹ These are seen to be preventing acknowledgement and recognition of cultural evolution and change among Indigenous and First Nations peoples, as well as sustaining the fragmentation of communities and the dispossession of land and culture. Above all, postcolonial theory's core principle is based on '... acknowledge[ing] the harm of colonialism', which is an important step towards building understanding about the embedded disadvantage that influences how conflict develops among First Nations peoples.¹⁰⁰ That same understanding also building appropriate levels of trust between First Nations peoples and mainstream society.¹⁰¹

2.42 In former colonies, postcolonial attitudes have also been credited with the coopting of older traditional rituals and ceremonies into modern mainstream power structures, thereby reducing their original importance, purpose, and meaning.¹⁰² In an Australian context, the effects of postcolonialism have been described as being two-fold: on the one hand are the immediate, contiguous effects of being 'subjugated and dispossessed', and, on the other, are the longer-term effects brought about by stereotyped perceptions and expectations.¹⁰³

2.43 In 2011, a non-First Nations anthropologist noted the differences between mainstream expectations of First Nations culture, and First Nations peoples' cultural reality.¹⁰⁴ For example, mainstream expectations focus on remote traditional communities, whereas the cultural reality for many First Nations people includes urbanised communities whose culture includes a combination of traditional and more modern elements.¹⁰⁵ The same author notes that, for First Nations peoples, postcolonial dispossession by mainstream society has led First Nations peoples to develop specific fringe cultures in 'missions, cattle station camps and fringe camps', which do not accord with mainstream preferences, expectations, and assumptions,¹⁰⁶ and so are ignored.

⁹⁹ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Spangen, M., A.-K. Salmi, and Tiina Äikäs, 'Sámi Archaeology and Postcolonial Theory – An Introduction' (2015) 52(2) *Arctic Anthropology* 1; Wilmot, S., 'Postcolonial Theory and Canada's Health Care Professions: Bridging the Gap' (2021) 24 *Medicine, Health Care and Philosophy* 433;

¹⁰⁰ Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

¹⁰¹ Wilmot, S., 'Postcolonial Theory and Canada's Health Care Professions: Bridging the Gap' (2021) 24 *Medicine, Healthcare and Philosophy* 433, 439.

¹⁰² Cowlishaw, G., 'Mythologising Culture Part 1: Desiring Aboriginality in the Suburbs' (2010) 21 *The Australian Journal of Anthropology* 208; Cowlishaw, G., 'Mythologising Culture Part 2: Disturbing Aboriginality in the Suburbs' (2011) 22 *The Australian Journal of Anthropology* 170; Mbembe, A., 'Provisional Notes on the Postcolony' (1992) 62(1) *Africa: Journal of the International African Institute* 3'.

¹⁰³ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000), 48.

¹⁰⁴ Cowlishaw, G., 'Mythologising Culture Part 2: Disturbing Aboriginality in the Suburbs' (2011) 22 *The Australian Journal of Anthropology* 170.

¹⁰⁵ Cowlishaw, G., 'Mythologising Culture Part 2: Disturbing Aboriginality in the Suburbs' (2011) 22 *The Australian Journal of Anthropology* 170.

¹⁰⁶ Cowlishaw, G., 'Mythologising Culture Part 2: Disturbing Aboriginality in the Suburbs' (2011) 22 *The Australian Journal of Anthropology* 170, 180.

2.44 Recent commentary in Australia has openly aligned postcolonial treatment of First Nations peoples with their full assimilation, at the very least.¹⁰⁷ According to one First Nations scholar in Australia, the scale and purpose of colonial and postcolonial treatment is clear: ‘... in settler-colonial countries, such as Australia, “elimination” of the native is the central goal,’¹⁰⁸ leading to ‘fractured Indigenous and community connections to secure control of territory and population ...’¹⁰⁹

2.45 Postcolonialism has also been described in terms of Indigenous and First Nations people being talked about as subjects of research who are inherently incapable of full participation without non-Indigenous guidance, with the First Nations people often being abandoned once the research is complete.¹¹⁰ Where this approach includes First Nations experts who can be similarly treated by researchers, it has been referred to as ‘parachute or helicopter research’ in reference to the inequity and brevity of the process, as well as the insubstantial and tokenistic use of Indigenous expertise.¹¹¹ This approach has been described as a ‘legacy of colonialism’ that ignores social and cultural context.¹¹²

Cultural relativism

2.46 Although cultural relativism has much in common with postcolonial theory, it does not focus on colonisation’s effects on subjugated Indigenous and First Nations peoples. Cultural relativism’s focus is on the equal importance of all cultures, and it relies on a key principle, that all cultures deserve to be respected as do their interpretations of the world.¹¹³ Cultural relativists acknowledge the importance of considering any specific component of culture in its own cultural context, not in isolation or in comparison to a different social context.¹¹⁴ It has been said that:

‘... cultural significance [is gained] by its place in the whole, and cannot retain its character in a different situation. The whole, therefore, has an integrity which in varying degrees of intensity guides its growth and produces a cultural pattern.’¹¹⁵

¹⁰⁷ Strelein, L., and C. Hassing, *An Office for Advocacy and Accountability in Aboriginal Affairs in Western Australia* (AIATSIS, Submission to the Government of Western Australia, 2018).

¹⁰⁸ Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, ‘Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care’ (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443], 5.

¹⁰⁹ Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, ‘Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care’ (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443], 5.

¹¹⁰ Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, ‘Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care’ (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443]; Spangen, M., A. K. Salmi, and Tiina Äikäs, ‘Sámi Archaeology and Postcolonial Theory – An Introduction’ (2015) 52(2) *Arctic Anthropology* 1.

¹¹¹ Mercier, O., S. Chasi, A. Ghilardi, and M. Pathak, ‘Stop “Parachute” Science: Global South Researchers Want Equal Partnerships that Value Intellectual Exchange’ (2023) 609 *Nature* 885, 885.

¹¹² Mercier, O., S. Chasi, A. Ghilardi, and M. Pathak, ‘Stop “Parachute” Science: Global South Researchers Want Equal Partnerships that Value Intellectual Exchange’ (2023) 609 *Nature* 885, 887.

¹¹³ Milton, K., *Chapter One – Anthropology, Culture and Environmentalism*, in Milton, K., *Environmentalism and Cultural Theory: Exploring the Role of Anthropology in Environmental Discourse* (Routledge, UK, 1996).

¹¹⁴ Heyer, V., ‘In Reply to Elgin Williams’ (1948) 50(1) *American Anthropologist* 163.

¹¹⁵ Heyer, V., ‘In Reply to Elgin Williams’ (1948) 50(1) *American Anthropologist* 163, 164.

2.47 Some publications have also grappled with the apparent disconnect between international human rights and the inability of many traditional/Indigenous cultures to abide by those same rights.¹¹⁶

2.48 Since 2007, some commentators have cited the relevance of ideas and issues encompassed by cultural relativism in the context of international courts and tribunals inquiring into war crimes.¹¹⁷ These could be seen as cultural relativism in practice, if consideration given to the crimes' impacts in their existing cultural context, not only the context of international and/or European law. However, in the cited examples, the dominant culture of the tribunal/court judges and officials (usually Western European) has taken precedence over the culture of the victims and perpetrators. This has resulted in the latter's preferences and perceptions being largely either disregarded or diminished, in a process originally designed to address crimes against them. The process has reverted to the imposition of a dominant culture (usually European) and the ignoring, or diminishing, of a local culture.

2.49 In the Australian context, this can be compared to situations in the National Native Title Tribunal which, although established to focus on First Nations peoples' and communities' title claims, has been recently described as a forum in which those people, their rights and culture are often disempowered. For example, there are inherent complexities to the work of anthropologists in the native title arena where mainstream expectations often confront First Nations peoples' concepts and sense of identity and anthropologists are expected to 'dehistoricise' the latter's perspective so it accords with the former's expectations.¹¹⁸ A further sense of First Nations' disempowerment has been reported when relevant experts (such as anthropologists) are enlisted not to support them, but to undermine their participation by actively enabling 'fishing expeditions' by non-Indigenous parties who are seeking extra information they can use to oppose future Indigenous claims.¹¹⁹

Collectivism-Individualism and social interdependence theory

2.50 The term 'individualism-collectivism' could be seen as perpetuating the perception of 'individualism's' dominance. In this section the sequence of terms is reversed, and 'collectivism-individualism' is used to reflect a focus on First Nations peoples and our respect for their worldview.

Meaning

2.51 Collectivism-individualism refers to two culturally-based worldviews. There is extensive literature on the ways in which the two worldviews influence each other, including that the individualist dominates many aspects of Western interactions, both within the West, and more broadly. This approach can at times result in simplistic explanation that avoids many of the intricacies

¹¹⁶ Colchester, M., 'Cultural Relativism and Indigenous Rights: Rethinking Some Dilemmas in Applied Anthropology (Part 1)' (2021) 37(3) *Anthropology Today* 16; Colchester, M., 'Cultural Relativism and Indigenous Rights: Rethinking Some Dilemmas in Applied Anthropology (Part 2)' (2021) 37(3) *Anthropology Today* 18.

¹¹⁷ Nolan, M., 'The Elusive Pursuit of Truth and Justice: A Review Essay' (2007) 97 *Radical History Review* 143; Eltringham, N., "'Illuminating the Broader Context": Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda' (2013) 19(2) *The Journal of the Royal Anthropological Institute* 338; Wilson, R. A., 'Expert Evidence on Trial: Social Researchers in the International Criminal Courtroom' (2016) 43(4) *American Ethnologist* 730.

¹¹⁸ Bauman, T., and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives* (AIATSIS, workshop proceedings: Turning the Tide: Anthropology for Native Title in South-East Australia, Australia, 2011), 10.

¹¹⁹ Williams, R., and T. Bauman, *Report on Native Title Representative Body Workshops: Directions, Priorities and Challenges Report No 2* (AIATSIS Indigenous Facilitation and Mediation Project, 2004).

of a society's or a culture's worldview. This section provides an overview of the concept as well as a brief exploration of the key issues that are raised in the literature.

2.52 Collectivism-individualism has developed to explain the various ways in which societies and cultures perceive the world and their place within it. Essentially, as the names suggest, one group has a perspective based on being individual-centric, while the other's is collectively-focused – or focused on a community, and the individual's place within that community.

2.53 In 1995, four defining attributes were proposed, in starkly differential terms:¹²⁰

1. *Group role*: Collectivists perceive themselves as part of a group while individualists see themselves as being autonomous.
2. *Personal goals*: Collectivists have 'personal goals [that] overlap' with group goals and group goals have priority; individualists have personal goals that 'may or may not overlap' with group goals, and the personal goals have priority over group goals.
3. *Social behaviour*: For collectivists, 'social behaviour is ... predicted from [group] norms ... duties and obligations'; for individualists, 'social behaviour [is] predicted from [their own] attitudes and ... internal processes'.
4. *Relationships*: For collectivists, relationships are most important ('even if costs ... exceed the benefits'); for individualists, the relationship can be discarded when the costs outweigh the benefits.

2.54 In general terms, collectivists are said to subordinate their personal desires to those of their group. On the other hand, for individualists, a sense of autonomy is linked to personal uniqueness and social inequality: '... the autonomous self ... garners gratification through competition and personal achievement.¹²¹ While collectivism is socially contextual,¹²² and inclusive,¹²³ individualism sees the person as independent and 'assumes social information is not bound to social context'.¹²⁴

2.55 Western Europe and other Westernised societies are reportedly typified by 'personal advancement, individuality and autonomy' and can therefore be described as individualistic.¹²⁵ On the other hand, in non-Western societies, individuals are bound to their group and may have a greater focus on mutual obligations.¹²⁶

2.56 Social interdependence theory is closely linked to collectivism-individualism. Interdependence and dependence have been proposed as defining attributes of collectivism-

¹²⁰ Singelis, T. M., H. C. Triandis, D. P. S. Bhawuk, and M. J. Gelfand, 'Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement' (1995) 29(3) *Cross-Cultural Research* 240, 243-244.

¹²¹ Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195, 196.

¹²² Harb, C., and P. B. Smith, 'Self-Construals Across Cultures: Beyond Independence-Interdependence' (2008) 39(2) *Journal of Cross-Cultural Psychology* 178.

¹²³ Harb, C., and P. B. Smith, 'Self-Construals Across Cultures: Beyond Independence-Interdependence' (2008) 39(2) *Journal of Cross-Cultural Psychology* 178.

¹²⁴ Oyserman, D., H. M. Coon, and M. Kimmelmeier, 'Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses' (2002) 128(1) *Psychological Bulletin* 3, 5.

¹²⁵ Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195, 197.

¹²⁶ Oyserman, D., H. M. Coon, and M. Kimmelmeier, 'Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses' (2002) 128(1) *Psychological Bulletin* 3.

individualism, with the collectivists' sense of self being interdependent on others and others' having a similar sense of self-interdependence,¹²⁷ creating an inherent and overriding sense of equality.

Key issues

2.57 It has been reported that, although the two worldviews are commonly depicted as being quite separate, research suggests that all people have the capacity to display aspects of both collectivism and individualism, and that any demonstration of various attributes of the two is likely to be as influenced by the specific situation and relationships as by any cultural context.¹²⁸

2.58 A recent meta-analysis found that research deriving from a conventional, Western, individualist perspective produces unreliable results because of biased methodologies that are not suitable or appropriate to participants with collectivist orientations,¹²⁹ even that research designs were marred by 'stereotypes and racial and ethnic biases.'¹³⁰

2.59 In particular, research in the field of psychology has been found to ignore the social and cultural contexts of study participants, and to lack 'culturally and ethnically diverse research samples,' leading to quite narrowly defined results.¹³¹ Of particular concern is the reported use of data collection instruments in which key terminology is open to a variety of interpretations and of perceptions of importance and relevance,¹³² and an associated assumption that the individualistic worldview is a 'universal model of human behaviour.'¹³³

2.60 There have been recent studies where results suggest the development of what has been called 'cultural convergence.'¹³⁴ It has been proposed that access to the internet has enabled exposure to a much broader range of cultural traditions, reducing cultural differences and suggesting that the separation between collectivist and individualist worldviews may be becoming less defined.¹³⁵

¹²⁷ Singelis, T. M., H. C. Triandis, D. P. S. Bhawuk, and M. J. Gelfand, 'Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement' (1995) 29(3) *Cross-Cultural Research* 240.

¹²⁸ Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195.

¹²⁹ Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Neziri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228.

¹³⁰ Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Neziri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228, 230.

¹³¹ Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Neziri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228, 230.

¹³² Hussain, M., C. Kho, A. Main, and M. J. Zawadzki, 'Horizontal Collectivism Moderates the Relationship Between In-the-moment Social Connections and Well-being Among Latino/a College Students' (2021) 23 *Journal of Immigrant and Minority Health* 1001, Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Neziri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228; Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195.

¹³³ Oyserman, D., H. M. Coon, and M. Kimmelmeier, 'Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses' (2002) 128(1) *Psychological Bulletin* 3, 4.

¹³⁴ Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195, 195.

¹³⁵ Vargas, J. H., and M. Kimmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195.

2.61 In recent years, there have been an increasing number of studies in this area that have been conducted by a diverse range of researchers, have included appropriately designed materials, and have included a diversity of participants. One of these has shown that, for people from collectivist cultures, when those collectivist values and interdependence attributes are maintained, there are strong associations with self-reported wellbeing and improved health.¹³⁶ Similar findings have been reported elsewhere, ‘well-being and ... life satisfaction’ deriving from a sense of having met social and group obligations,¹³⁷ and self-assessments of ‘purpose and meaning in life, personal growth, and self-acceptance.’¹³⁸

2.62 In summary, although there is widespread acceptance of the separate collectivist and individualist worldviews, there is research suggesting that they are becoming less clearly separated than has been assumed; that most people can demonstrate attributes of both, according to contextual and cultural settings; and that, when collectivist people have their values and obligations maintained, they report wellbeing and a generally positive outlook. Despite the apparent increase in social convergence, the differences inherent to collectivism-individualism continue to make it a useful concept when exploring different cultures and societies.

Social interdependence theory

2.63 As noted above, social interdependence theory has many commonalities with collectivism-individualism. Social interdependence theory has a long association with Alternative Dispute Resolution (ADR), having originated in 1949, and been influential in theories and constructs in respect of dispute resolution, negotiation, and interpretations of power.¹³⁹

2.64 In any given situation, people’s interactions are said to be influenced by each other’s goals, and the nature of those interactions themselves influence any outcomes from that situation.¹⁴⁰

*Social interdependence exists when the outcomes of individuals are affected by each other’s actions. There are two types of social interdependence: positive, when the actions of individuals promote the achievement of joint goals, and negative, when the actions of individuals obstruct the achievement of each other’s goals.*¹⁴¹

2.65 A defining characteristic of social interdependence theory is the influence of the social situation, or ‘social structure’, and its effects on people’s interactions and on outcomes.¹⁴²

¹³⁶ Hussain, M., C. Kho, A. Main, and M. J. Zawadzki, ‘Horizontal Collectivism Moderates the Relationship Between In-the-moment Social Connections and Well-being Among Latino/a College Students’ (2021) 23 *Journal of Immigrant and Minority Health* 1001;

¹³⁷ Oyserman, D., H. M. Coon, and M. Kemmelmeier, ‘Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses’ (2002) 128(1) *Psychological Bulletin* 3, 5.

¹³⁸ Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, ‘Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan’ (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163], 3.

¹³⁹ Johnson, D. W., and R. T. Johnson, ‘New Developments in Social Interdependence Theory’ (2005) 131(4) *Genetic, Social, and General Psychology* 285.

¹⁴⁰ Johnson, D. W., and R. T. Johnson, ‘New Developments in Social Interdependence Theory’ (2005) 131(4) *Genetic, Social, and General Psychology* 285.

¹⁴¹ Johnson, D. W., and R. T. Johnson, ‘New Developments in Social Interdependence Theory’ (2005) 131(4) *Genetic, Social, and General Psychology* 285, 287.

¹⁴² Rusbult, C. E., and P. A. M. Van Lange, ‘Why We Need Interdependence Theory’ (2008) 2(5) *Social and Personality Psychology* 2049, 2049.

Key issues

2.66 As with collectivism-individualism, a key issue is the reported problems with the ways in which researchers have investigated social interdependence theory. It has been noted that, although there have been many empirical studies, many have been marred by methodological flaws, including a lack of terminological clarity; a lack of methodological reliability; a limited range of study participants (mostly primary school students); and researcher bias – many of the researchers were evaluating theories they themselves had developed.¹⁴³ It has also been reported that research design in this field tends to be skewed towards independent/individualist worldviews and so cannot accommodate the worldviews of people from interdependent/collectivist/contextualised cultures.¹⁴⁴

2.67 On the other hand, a well-designed study with a diverse selection of researchers, and of study participants, found strong, but contrasting, links between wellbeing and personal control, and wellbeing and ‘relational harmony.’¹⁴⁵ The study found that people who attached cultural importance to independence experienced strain, stress, and loss of wellbeing when they experienced loss of personal control.¹⁴⁶ For study participants who attached cultural importance to interdependence, a loss of ‘relational harmony’ led to strain, stress, and loss of wellbeing.¹⁴⁷

2.68 A separate study, with findings relevant to this project, found that people with collectivist worldviews and a strong cultural sense of social interdependence were less distressed by the prospect of social exclusion and ostracism than were people with individualist worldviews and a strong cultural sense of social independence.¹⁴⁸ The study’s conclusions were that people with a strong sense of social interdependence have psychological protection against the negative effects of social exclusion, and other more general negative social experiences, because they anticipate the renewal of social connection and social harmony.

2.69 These concepts appear in the collected literature, sometimes with the ‘collectivist’ or ‘interdependence’ labels, though not always. For example, it has been said that First Nations peoples see themselves as ‘being part of a whole that is called community ... who function separately and collectively for the common good of the whole group’¹⁴⁹ and that:

¹⁴³ Johnson, D. W., and R. T. Johnson, ‘New Developments in Social Interdependence Theory’ (2005) 131(4) *Genetic, Social, and General Psychology* 285.

¹⁴⁴ Harb, C., and P. B. Smith, ‘Self-Construals Across Cultures: Beyond Independence-Interdependence’ (2008) 39(2) *Journal of Cross-Cultural Psychology* 178.

¹⁴⁵ Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, ‘Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan’ (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163], 1.

¹⁴⁶ Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, ‘Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan’ (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163].

¹⁴⁷ Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, ‘Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan’ (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163], 1.

¹⁴⁸ Uskul, A. K., and H. Over, ‘Culture, Social Interdependence, and Ostracism’ (2017) 26(4) *Current Directions in Psychological Science* 371

¹⁴⁹ Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002), 39.

*Traditional Indigenous cultures provided a deep sense of both individual recognition and collective worth. Indigenous people were proud, and interdependent for survival and for a sense of spirituality and belonging.*¹⁵⁰

Links between cultural connection and wellbeing

2.70 The literature examined in this report, suggests that First Nations peoples' traditional and contemporary approaches to peacebuilding and peacemaking cannot be considered in isolation from their cultural context. To some extent, that context has been explored in the above sections. For First Nations peoples, that context has been widely described as including colonial and postcolonial trauma in Australia as well as in other former colonies including, for example, Canada,¹⁵¹ the USA,¹⁵² Cameroon,¹⁵³ the Republic of South Africa,¹⁵⁴ Mozambique,¹⁵⁵ and Nigeria.¹⁵⁶ It has also been described in similar terms in relation to displaced people from those same former colonies.¹⁵⁷ Colonial and postcolonial trauma are also key characteristics of the above reviewed literature on postcolonialism.

2.71 Although this Report does not have the scope, to investigate these issues in detail, it is important to keep them in mind when considering the material that is included in Part Three of this report. This section briefly reviews what is meant by cultural connection and by wellbeing, and explores what is known about the links between them. We have purposely included references from publications by First Nations people from Australia.

Culture

2.72 Although there are widely-accepted definitions of what is meant by 'culture', many tend to have what could be regarded as 'a Western focus'. Perhaps the best-known example is Hofstede's seminal theory based on four original 'cultural dimensions',¹⁵⁸ which focus on individualism-

¹⁵⁰ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000), 48.

¹⁵¹ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Egger, G., J. Steven, A. Binns, and B. Morgan, 'Psycho-social Determinants of Chronic Disease: Implications for Lifestyle Medicine' (2019) 13(6) *American Journal of Lifestyle Medicine* 526.

¹⁵² Egger, G., J. Steven, A. Binns, and B. Morgan, 'Psycho-social Determinants of Chronic Disease: Implications for Lifestyle Medicine' (2019) 13(6) *American Journal of Lifestyle Medicine* 526.

¹⁵³ Mbembe, A., 'Provisional Notes on the Postcolony' (1992) 62(1) *Africa: Journal of the International African Institute* 3.

¹⁵⁴ Simpson, M. A., *Bitter Waters: Effects on Children of the Stresses of Unrest and Oppression*, in Wilson, J. P., and B. Raphael (eds), *International Handbook of Traumatic Stress Syndrome* (Plenum Press, USA, 1993).

¹⁵⁵ Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002).

¹⁵⁶ Salihu, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354.

¹⁵⁷ Napier, A. D., C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav, A. Macdonald, U. Neuendorf, A. Parkhurst, R. Reynolds, G. Scambler, S. Shamdasani, S. Z. Smith, J. Stougaard-Nielsen, L. Thomson, N. Tyler, A-M. Volkmann, T. Walker, J. Watson, A. C. de C. Williams, C. Willott, J. Wilson, and K. Woolf, 'Culture and Health' 384 *Lancet* 1607.

¹⁵⁸ Hofstede, G., and M. H. Hoppe, 'Introduction: Geert Hofstede's "Culture's Consequences: International Differences in Work-Related Values"' (2004) 18(1) *The Academy of Management Executive (1993-2005)* 73, 73.

collectivism, perceptions of power differentials, responses to risk, and acceptance of so-called 'masculine values'.¹⁵⁹

2.73 While reportedly very influential in business circles,¹⁶⁰ Hofstede's work has been criticised for being based on an approach that is 'equating nation with culture',¹⁶¹ and lacking methodological reliability.¹⁶² While this flaw has been readily acknowledged in some quarters,¹⁶³ the large number of published studies using the four dimensions has been said to give its application more credibility,¹⁶⁴ and Hofstede himself has strongly defended his approach.¹⁶⁵ Additional concerns about Hofstede's approach (and many other Western theories on culture) centre around its focus on measuring what are qualitative cultural values using an external and Western focus based on 'quantitative data and statistics',¹⁶⁶ and doing so without actually consulting people about their own cultural values. The tension between these different perspectives, though acknowledged,¹⁶⁷ appears to be unresolved.

2.74 In this Report, the researchers have chosen to rely on explanations of culture that have been proposed by First Nations peoples themselves, and by others who have explored the issue of culture in a non-Western or non-mainstream context. Key points raised in one of these explorations is that, across Australia, there is no single First Nations 'culture',¹⁶⁸ and, importantly:

Whether living in urban, regional or remote locations, Indigenous peoples have distinct cultural identities, values and beliefs, emerging from their past and present conditions.

¹⁵⁹ Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679, 681.

¹⁶⁰ Baskerville, R. F., 'Hofstede Never Studied Culture' (2003) 28 *Accounting, Organizations and Society* 1; Hofstede, G., and M. H. Hoppe, 'Introduction: Geert Hofstede's "Culture's Consequences: International Differences in Work-Related Values"' (2004) 18(1) *The Academy of Management Executive (1993-2005)* 73; Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679.

¹⁶¹ Baskerville, R. F., 'Hofstede Never Studied Culture' (2003) 28 *Accounting, Organizations and Society* 1, 1.

¹⁶² Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679.

¹⁶³ Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679.

¹⁶⁴ Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679.

¹⁶⁵ For example, see Hofstede, G., 'What is Culture? A Reply to Baskerville' (2003) 28 *Accounting, Organizations and Society* 811.

¹⁶⁶ Baskerville, R. F., 'Hofstede Never Studied Culture' (2003) 28 *Accounting, Organizations and Society* 1, 9.

¹⁶⁷ Baskerville, R. F., 'Hofstede Never Studied Culture' (2003) 28 *Accounting, Organizations and Society* 1; Hsu, S.-Y., A. G. Woodside, and R. Marshall, 'Critical Tests of Multiple Theories of Culture's Consequences: Comparing the Usefulness of Models by Hofstede, Inglehart and Baker, Schwartz, Steenkamp, as well as GDP and Distance for Explaining Overseas Tourism and Behavior' (2013) 52(6) *Journal of Travel Research* 679.

¹⁶⁸ Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

*This fundamental aspect of Indigenous life must be carefully and respectfully addressed in the design and implementation of effective dispute management processes.*¹⁶⁹

2.75 In the context of Australia's First Nations peoples, the nature of culture has been said to centre around 'beliefs, values and rules for living';¹⁷⁰ and 'the ways in which shared knowledges, beliefs, values, attitudes, traditions, behaviours, customs, norms, expressions, and idioms are learned, transmitted, and practised over time'.¹⁷¹ The concepts of both family and community are central to culture, and can refer to 'a group that is living, sometimes in close proximity, with similar interests, interdependent and interacting with each other for mutual support, in a 'network of relationships''.¹⁷² However, not all people living in close proximity are necessarily part of the same group, and people may feel themselves to be members of a widely dispersed community: 'Community therefore can also be a network of people and groups separated by space but interlinked by common concerns and consciousness.'¹⁷³ For Australia's First Nations peoples, there is also the extra dimension of complex social, kinship and skin group systems, which incorporate strict rules to guide social interaction within and between groups.¹⁷⁴

2.76 In an extensive study of culture and health, investigating non-mainstream communities, culture was described as '[t]he shared, overt and covert understandings that constitute conventions and practices, and the ideas, symbols, and concrete artifacts that sustain conventions and practices, and make them meaningful.'¹⁷⁵ While, in a separate and more recent review of studies into the links between culture and mental health, it was suggested that a more flexible approach be taken to the concept of culture, that it not be limited to groupings, but be seen as 'a complex set of identities, meanings, and practices that change over situation and over time.'¹⁷⁶

¹⁶⁹ Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009), 99.

¹⁷⁰ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000), 271.

¹⁷¹ Krakouer, J., S. Nakata, J. Beaufile, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, 'Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care' (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443], 6.

¹⁷² Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002), viii.

¹⁷³ Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002), viii.

¹⁷⁴ Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Krakouer, J., S. Wise, and M. Connolly, ' "We Live and Breathe Culture": Conceptualising Cultural Connection for Indigenous Children in Out-of-home Care' (2018) 71(3) *Australian Social Work* 265; Krakouer, J., S. Nakata, J. Beaufile, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, 'Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care' (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443].

¹⁷⁵ Napier, A. D., C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav, A. Macdonald, U. Neuendorf, A. Parkhurst, R. Reynolds, G. Scambler, S. Shamdasani, S. Z. Smith, J. Stougaard-Nielsen, L. Thomson, N. Tyler, A-M. Volkmann, T. Walker, J. Watson, A. C. de C. Williams, C. Willott, J. Wilson, and K. Woolf, 'Culture and Health' 384 *Lancet* 1607, 1610.

¹⁷⁶ Ryder, A. G., M. M. Doucerain, B. Zhou, J. Dere, T. Jurcik, and X. Zhou, *On Dynamic Contexts and Unstable Categories: Steps Towards a Cultural-clinical Psychology*, in Gelfand, M. J., C.-y. Chiu, and Y.-y. Hong (eds), *Handbook of Advances in Culture and Psychology* (Oxford University Press, UK, 2021), 235.

a. Cultural connection

*Cultural connection for Indigenous Australians is a feeling, a sense of knowing who you are and where you come from. Cultural connection is also interrelated with wellbeing because it frames the way people think about their needs and relationships*¹⁷⁷

2.77 As is shown above, a sense of cultural connection is incorporated into First Nations peoples' understanding of "culture", and it also involves gaining and maintaining the range of knowledges that teach people what it means to be in that culture, both in themselves, and in the context of the culture's networks of relationships.¹⁷⁸ Importantly, cultural connection is not to be seen as a single and unchanging event: it is 'experienced differently by all First Nations peoples.'¹⁷⁹

b. Loss of cultural connection

2.78 Conversely, the loss of cultural connection has been said to have complex and disastrous consequences and has been called 'the single biggest barrier to advancement of the highest attainable standard of health worldwide.'¹⁸⁰ It has been reported that loss of cultural connection arises from 'dispossession, displacement, conflict ... result[ing] in a loss of purpose or alienation ...',¹⁸¹ or when group members experience 'a horrendous event that leaves indelible marks upon their group consciousness, marking their memories forever and changing their future identity in fundamental and irrevocable ways.'¹⁸² This relates to the widely described traumas arising from colonialism and postcolonialism.

2.79 The consequences of loss of cultural connection have been described as affecting mental health, behaviour, parent-child relationships, and social development.¹⁸³ There is extensive published work on the effects that loss of cultural connection is said to have had on Australia's First Nations peoples. In summary, the loss of cultural connection is said to be characterised by community and

¹⁷⁷ Krakouer, J., S. Wise, and M. Connolly, ' "We Live and Breathe Culture": Conceptualising Cultural Connection for Indigenous Children in Out-of-home Care' (2018) 71(3) *Australian Social Work* 265, 270.

¹⁷⁸ Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, 'Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care' (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443]; Langton, M., Medicine Square. *Being Black: Aboriginal Cultures in "Settled" Australia* (Aboriginal Studies Press, Australia, 1988).

¹⁷⁹ Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, 'Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care' (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443], 10.

¹⁸⁰ Napier, A. D., C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav, A. Macdonald, U. Neuendorf, A. Parkhurst, R. Reynolds, G. Scambler, S. Shamdasani, S. Z. Smith, J. Stougaard-Nielsen, L. Thomson, N. Tyler, A.-M. Volkmann, T. Walker, J. Watson, A. C. de C. Williams, C. Willott, J. Wilson, and K. Woolf, 'Culture and Health' 384 *Lancet* 1607, 1609.

¹⁸¹ Egger, G., J. Stevens, A. Binns, and B. Morgan, 'Psycho-social Determinants of Chronic Disease: Implications for Lifestyle Medicine' (2019) 13(6) *American Journal of Lifestyle Medicine* 526, 528.

¹⁸² Matoba, K., "'Measuring" Collective Trauma: A Quantum Social Science Approach' (2022) *Integrative Psychological and Behavioral Science* [published online]; DOI: 10.1007/s12124-022-09696-2, 4/21.

¹⁸³ Matoba, K., "'Measuring" Collective Trauma: A Quantum Social Science Approach' (2022) *Integrative Psychological and Behavioral Science* [published online]; DOI: 10.1007/s12124-022-09696-2; Patel, R. A., and D. K. Nagata, 'Historical Trauma and Descendants' Well-being' (2021) 23(6) *AMA Journal of Ethics* 487, 490.

interpersonal violence;¹⁸⁴ suicide;¹⁸⁵ a sense of loss, grief, despair, and powerlessness;¹⁸⁶ alcohol and other substance abuse;¹⁸⁷ and poverty.¹⁸⁸ All these are said to have led to the peoples and communities being ‘re-traumatised.’¹⁸⁹

Wellbeing

2.80 As was noted in the previous sections of this report, an understanding of ‘wellbeing’ and its characteristics are known to be contextually and culturally influenced.¹⁹⁰ The United Nations also acknowledges the links between connection to culture and health.¹⁹¹ In the context of Australia’s First Nations peoples, sources of wellbeing have been said to include: community and cultural connection; connection to country, to cultural beliefs and to knowledge; connection to family and kinship, to cultural expression, and to self-determination.¹⁹²

2.81 In empirical studies of the connections between wellbeing and cultural connection in collectivist cultures, it has been reported that there are measurable health benefits when collectivist

¹⁸⁴ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Bauman, T., and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives* (AIATSIS, workshop proceedings: Turning the Tide: Anthropology for Native Title in South-East Australia, Australia, 2011).

¹⁸⁵ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, ‘Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care’ (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443].

¹⁸⁶ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Krakouer, J., S. Wise, and M. Connolly, ‘“We Live and Breathe Culture”: Conceptualising Cultural Connection for Indigenous Children in Out-of-home Care’ (2018) 71(3) *Australian Social Work* 265.

¹⁸⁷ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Bauman, T., and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives* (AIATSIS, workshop proceedings: Turning the Tide: Anthropology for Native Title in South-East Australia, Australia, 2011); Edwige, V., and P. Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report to Bugmy Bar Book, NSW, Australia, 2021); Langton, M., *Too Much Sorry Business – The Report of the Aboriginal Issues Unit of the Northern Territory, Appendix D.(i), Royal Commission Into Aboriginal Deaths in Custody* (Final Report, April 1991).

¹⁸⁸ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Edwige, V., and P. Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report to Bugmy Bar Book, NSW, Australia, 2021); Langton, M., *Too Much Sorry Business – The Report of the Aboriginal Issues Unit of the Northern Territory, Appendix D.(i), Royal Commission Into Aboriginal Deaths in Custody* (Final Report, April 1991).

¹⁸⁹ Atkinson, J., Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002), 58.

¹⁹⁰ See above, (i) and (ii).

¹⁹¹ United Nations, *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, Resolution 61/295, 2007).

¹⁹² Krakouer, J., S. Wise, and M. Connolly, ‘“We Live and Breathe Culture”: Conceptualising Cultural Connection for Indigenous Children in Out-of-home Care’ (2018) 71(3) *Australian Social Work* 265; Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care’ (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443].

and interdependent people have ‘meaningful, valuable’ connections with others,¹⁹³ demonstrating strong links between people’s perceptions of their own wellbeing and their health.¹⁹⁴

2.82 There is also research into the connections between language, art, cultural revitalisation, and cultural wellbeing in First Nations communities in Canada, where those are seen to be part of a sense of wellbeing: ‘their cultural heritage is interwoven to their well-being.’¹⁹⁵

Conclusions

2.83 Part Two of this Report has explored a conceptual framework within which readers can view the range and complexities of First Nations people’s approaches to peacebuilding and peacemaking as discussed in Parts Three and Four of this Report. The framework has drawn on First Nations publications and on studies involving non-mainstream communities. It has emphasised the importance of the approaches First Nations peoples have to language and its purposes; to community, family and culture; and to the strong connections between them, their culture, and their wellbeing.

2.84 The next part of the Report, Part Three, explores what is known about First Nations peoples’ traditional approaches to the prevention and management of conflict, including descriptions of specific peacebuilding and peacemaking techniques. It draws on a range of historical and contemporary materials (including selected commissions of inquiry) published between 1904 and 2022 as well as material from the seminal report, *Solid Work You Mob Are Doing* (*‘Solid Work’*).¹⁹⁶

¹⁹³ Hussain, M., C. Kho, A. Main, and M. J. Zawadzki, Horizontal Collectivism Moderates the Relationship Between In-the-moment Social Connections and Well-being Among Latino/a College Students’ (2021) 23 *Journal of Immigrant and Minority Health* 1001.

¹⁹⁴ Napier, A. D., C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav, A. Macdonald, U. Neuendorf, A. Parkhurst, R. Reynolds, G. Scambler, S. Shamdasani, S. Z. Smith, J. Stougaard-Nielsen, L. Thomson, N. Tyler, A-M. Volkmann, T. Walker, J. Watson, A. C. de C. Williams, C. Willott, J. Wilson, and K. Woolf, ‘Culture and Health’ 384 *Lancet* 1607.

¹⁹⁵ Oddey, A., ‘Nature Connections: Cultural Heritage, Identity and Well-being in Vancouver, Canada’ (2015) 3(1&2) *Scene* 37, 37.

¹⁹⁶ Federal Court of Australia’s Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

Part Three – First Nations peoples' approaches to peacebuilding and peacemaking

Introduction



Warning for First Nations peoples: This part of the Report includes descriptions of historical First Nations ceremonies and procedures.

3.0 This part of the Report draws on key materials that include descriptions of First Nations peoples' specific approaches, processes, and techniques for peacebuilding, peacemaking, and conflict management. It includes summaries of the various descriptions.

3.1 Given the objectives of this Project, this part is unexpectedly short and reflects the small number of specific references to First Nations peoples' approaches in the materials that we have reviewed and analysed. The Research Team considers that this is a starting point for future consultation with First Nations peoples, which could comprise Stage 2 of a larger system design project.

3.2 The descriptions provided below are categorised as 'historical', 'contemporary', and 'current'. Historical includes descriptions originally published at the beginning of the twentieth century; contemporary includes descriptions from Commissions of Inquiry in the 1980s and 1990s; and current includes brief descriptions of approaches used in communities, such as the traditional style of listening known as 'dadirri'.¹⁹⁷ In quite general terms, it is clear that the earlier descriptions are of quite intricate and ritualised ceremonies, usually including a whole community, whereas those from the 1980s and 1990s include formalised processes and protocols (which may include ritualised components), as well as community behaviour norms. The contemporary descriptions also include some references to the complex interactions between the customary (ie, First Nations peoples') and

¹⁹⁷ Ungunmerr, M.-R., R. A. Groom, E. L. Schuberg, Atkinson, J., C. Atkinson, R. Wallace, and G. Morris, 'Dadirri: An Indigenous Place-based Research Methodology' (2022) 18(1) *AlterNative An International Journal of Indigenous Peoples* 94.

conventional (ie, the Western legal system) norms and approaches. This part concludes with a brief review of other materials which mention ritualised aggression and fighting.

Solid Work You Mob Are Doing¹⁹⁸

3.3 *Solid Work* is a Report of Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia. The research was commissioned by the then National Alternative Dispute Resolution Advisory Council (NADRAC) with the Federal Court of Australia in partnership with AIATSIS, and their report was finalised in 2009. It needs to be noted this research was a significant undertaking and achievement for it stands alone as a foundational declaration to benchmark best practice, access to flexible, culturally sound services for First Nations of Australia.

3.4 It is essential to note that the research project did not explore the web of relationships between First Nations traditional methodologies, governance, or the epistemology of First Nations peoples and their languages. Such an undertaking would require substantial resources, time, and expertise. In the absence of these specific characteristics, *Solid Work* examines the people, skills, resources, access, practices and processes and training and developmental support essential for effective service. Each elemental feature relied upon to support First Nations people in managing, working with and facilitating peace making events or in using services that support culturally competent amenities and staff who specialise in non-violent, problem solving.

3.5 *Solid Work* describes case studies and outcomes of the investigation into First Nations contemporary practices in conflict management, peacemaking processes, dispute resolution, negotiation, facilitation, and agreement making. The Report details the form the investigation takes to draw upon three full case studies and several mini case studies referred to as snapshots. The distances the investigation covers takes in such far-flung locations as the Northern Territory's Tiwi Islands and Ali Curung, over to Western Australia at Halls Creek, North Queensland to Gintji and then into New South Wales. Each case study involves First Nations people as peace-building practitioners or as participants accessing dispute resolution services.

3.6 Each case study focuses on the parties, advocates, Elders, stakeholders, and primary agents involved. The features that comprise the conflicts management are isolated in detail and include considering the history of the dispute, the intervention strategy, the identification the correct parties, determining through Elders the sociocultural features to resolve kinship structures and where the parties and advocates fit, as well as clarifying details about the background of the facilitator/s or resolution body and the stakeholders involved to support or witness the process. In the case of the Halls Creek matter the report considers how cultural connections and relationships can impact on aspects of the dispute and how participants may mutually choose to exit the dispute. Yet each of the case studies speak of commonalities including the importance of relationship building and the relative nature of connections within First Nations communities.

3.7 Each case study draws attention to the urgent need to greatly improve support for timely, meaningful dispute management processes. There is a focus in the Report on the importance of

¹⁹⁸ Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

reliable and viable resources to ensure stable institutions and service capacity, promote professional development and skills with particular reference to improving dispute management system design and training and development. The Report recognises essential requirements for effective practice to support facilitators in a meticulous planning process as critical in sustaining meaningful peace building activities.

3.8 The Report includes a Chapter on Indigenous dispute resolution and conflict management and sets out an expectation that Federal, State and Territory governments will take responsibility for ensuring access to timely and meaningful dispute management services and practices. The Report notes that this can be achieved by investing in the resources, supporting practitioners, tailoring community education and awareness to describe such services, and ensuring government officers and agents are resourced with the skills and capabilities to support effective fair-minded and impartial attitudes. The Report includes information on the often-concealed effects of unresolved conflict and the escalation of disputes as well as information about the necessary skills, techniques, processes and in some, the cultural contexts when working with First Nations people to support Indigenous dispute resolution and conflict management in Australia. Despite being published in 2009, the report's key recommendations are yet to be implemented in 2023.

Contemporary descriptions of First Nations peoples' systems to managing conflict

3.9 Two Commissions of Inquiry have included relevant material in their final reports, and these are examined in this section.¹⁹⁹ This section uses short-form titles for them: "1986 Customary Law",²⁰⁰ and "1991 RCIADIC".²⁰¹ Both Commissions relied on expert reports made available to them.²⁰² Where the Commissions refer to specific communities, we have used the Commission's name for the community, preferring to retain that historical context. A summary of the range of relevant Commissions of Inquiry is located in Table One below and as previously noted, many Commissions of Inquiry had limited First Nations input and two had more specific material that was explored as part of this research report.

¹⁹⁹ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Royal Commission *Into Aboriginal Deaths in Custody* (Final Report, April 1991), Vols 1, 2, 3, 4, 5.

²⁰⁰ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2.

²⁰¹ Royal Commission *Into Aboriginal Deaths in Custody* (Final Report, April 1991), Vols 1, 2, 3, 4, 5.

²⁰² The amount of detail included about each process appears to relate to the contents of the relevant expert report.

Final report	Title	Traditional approaches: peacebuilding & peacemaking	Key First Nations concepts	Evidence from First Nations people
1905	<i>Western Australia Royal Commission on the Condition of the Natives</i>	No	No	Very limited; 86 pages of evidence transcripts from 43 witnesses; 2 First Nations witnesses = total transcript of around ½ page. ²⁰³
1986	Law Reform Commission, Report No. 31, <i>The Recognition of Aboriginal Customary Laws</i> , Vols. 1 & 2,	Yes; based on reports from third parties.	Yes	Several First Nations people were appointed as ‘Consultants’ to the Commission.
1991	Royal Commission into Aboriginal Deaths in Custody, Vols 1, 2, 3, 4, 5	Yes	Yes	Yes, directly via hearings, interviews, consultations and submissions; also via Aboriginal Information Units established by the Royal Commission itself. Also, when Commissioner The Honorable John Muirhead AO retired in 1989, Patrick Dodson was appointed as a Commissioner (ensuring continuity of five Commissioners)
1997	<i>Human Rights Commission, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families</i> (Final Report, 1997)	No	Yes	Yes, a small secretariat established by the Commission was to publicise the Inquiry, encourage contributions, evidence and submissions and organise hearings. Many First Nations people provided evidence, as witnesses, families and as removed survivors. The Human Rights and Equal Opportunity Commissioner Sir Ronald Wilson and the Aboriginal Social Justice Commissioner Mick Dodson were responsible for the hearings and Inquiry.
2017	NT Royal Commission into <i>Into the Protection and Detention of Children in the Northern Territory</i> , Vols 1, 2A, 2B, 3A, 3B, 4	No	Yes – the importance of kinship relationships; not approaches to peacebuilding/making	Yes; a First Nations Commissioner, and extensive interviews, meetings, and focus group with First Nations individuals and groups.

Table 1 showing summary information about Commissions of Inquiry and their inclusion of First Nations Participants

²⁰³ According to pages 35 – 121 (86 pages) of the report, 43 witnesses were interviewed (not always clear if the Commissioner conducted all interviews; however, he does appear to have interviewed the two First Nations prisoners); 2 witnesses were ‘native’ prisoners at Wyndam and, in both cases, their testimony was given in ‘pidgin’ (page 104) and apparently translated by a ‘secretary to the Commission’ (104); Boodungarry was a 14 year old ‘child’ (page 104) serving a sentence of two years hard labour for ‘alleged cattle killing’ (104), and who was asked to describe his own arrest and court hearing; Garngulling was a 30 year old man serving an unspecified sentence for ‘breaking into a house’ (104), who was asked to describe the circumstances of his own arrest, and to provide some additional information about other First Nations people.

1986 Customary Law²⁰⁴

3.10 The 1986 Law Reform Commission, Report No. 31, *The Recognition of Aboriginal Customary Laws*, describes conflict management systems that include specific approaches, processes and techniques being used in three separate First Nations communities as at 1986. All the systems are very structured, including protocols for participation, and they are all community-focused, recalling a collectivist and interdependent worldview.

- ‘Murri Law’: applied in the then Edward River community,²⁰⁵ Far North Queensland;²⁰⁶
- Inter- and intra-community meetings, or so-called ‘moots’: applied in the then Yirrkala community, NT;²⁰⁷
- Ten Men Committee: applied in the then Strelley community,²⁰⁸ WA.²⁰⁹

Reported Protocols

3.11 The three described systems each incorporate structured protocols:

i. Murri Law

- Declaration – a public announcement by the aggrieved person setting out the details of the transgression.
- Rejoinder – denial or counter charge by the accused.
- Argument – public disputation between the parties. It is stated that these would usually be armed with weapons. (arm waving, gesticulating, arguing loudly, waving weapons in a threatening manner). It was also noted that other people standing in special relationship to the disputants would arrange themselves in such a way that they could assist either party in the dispute if required.
- Insult and physical combat – it is suggested that this generally involved fighting with weapons between the parties, escalating as other people aligned with the disputing parties, became involved. It is also suggested that during this phase certain persons were expected to play the role of ‘blockers’ to ensure the dispute and fighting did not get completely out of hand and attempted to contain the dispute to the parties involved. To some extent it is suggested that such people acted as an ‘umpire’, so that if physical conflict followed, they ensured no foul play.

²⁰⁴ All references are to Volume 2 of the Commission’s Final Report.

²⁰⁵ Edward River community is now known as Pormpuraaw.

²⁰⁶ 1986 Customary Law, Vol 2, 18-23; the Commission relied on an expert submission for much of its commentary: Taylor, J. Submission 388, 11 October 1983.

²⁰⁷ 1986 Customary Law, Volume 2, 23-25; the Commission relied on an expert submission for much of its commentary: Williams, N., *Two Laws: Managing Disputes in a Contemporary Aboriginal Community*, (based on PhD Thesis, Canberra, 1973).

²⁰⁸ The Strelley community subsequently dispersed with most people locating in the Warralong community.

²⁰⁹ 1986 Customary Law, Volume 2, 26-28; for much of its commentary, the Commission relied on evidence provided by: Bucknall, J., *Transcript*, 23-24 March 1981.

- Separation – this was said to have occurred as a result of a number of factors including physical exhaustion, injuries needing to be treated, if satisfaction that the resolution had been obtained by each of the disputants. 'The Edward River community notion of fair play reportedly stressed that those who initiated trials-at-arms, should come away bearing equal injuries, irrespective of the nature of the wrong actions that triggered the combat in the first place.'²¹⁰
- Reconciliation – the Report noted that return of normal relationships indicated that everyone was reconciled.

Community moots

Are described as having the following characteristics:

- A public announcement of grievance/conflict, usually as a statement of offence and relevant law by those with jurisdiction.
- People address themselves to the specific allegations in the case under consideration. They may mention any other allegations they consider pertinent, and judge the consequences of alleged acts.
- Response to the allegations. The convener urges the defendant to admit the extent of his or her culpable acts. The defendant, who was the agent of the culpable act, responds.
- Statements about the outcome, and the composition for the dispute may be made by a number of people, but should include the convener, the offender and the aggrieved person.²¹¹

Ten Men Committee

The Commission described these as follows:

- Meetings were convened to hear evidence against wrongdoers and to consider punishments.
- Attending people sat in a large circle, according to their skin group and family relationships.
- The accused person sat inside the circle in a position that took account of the position of the accusers and of their own families, who may have had to speak on their behalf.
- Certain people were assigned the role of negotiator.
- The meeting was highly organized, and everyone understood their own role.

²¹⁰ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Vol 2, paragraph 698.

²¹¹ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Vol 2, paragraph 698.

Types of conflict

3.12 It was suggested by the Commission that the types of conflict varied:

- i. Murri Law
 - Kinship duties,
 - Breaches of gift expectations and arrangements,
 - Insult or threat of injury, and
 - Trespass, homicide and, occasionally, infidelity.
- ii. Community moots
 - A distinction was drawn between ‘little trouble’ including issues that arose out of breach of kin-defined rights or duties, and ‘big trouble’ which referred to situations involving ‘physical assault, which resulted in serious injury or death and thereby made the act of assault highly visible.’²¹²
- iii. Ten Men Committee
 - Offences against local order.

3.13 The Commission reported that the Yirrkala community is reported to have had a second procedure which did not involve a community moot, and which had the following characteristics:

- Intervention and subsequent management by a clansman with political authority, who is senior to both disputants.
- Gathering and checking evidence by the intervening clansmen.
- Obtaining an admission of all culpable acts (the ‘true story’).
- Confirmation of findings and of action taken by those with authority over and responsibility for the principals of the dispute.
- The application of sanctions.²¹³

Reported influence of conventional legal system

Edward River Community

3.14 The Commission reported that, in 1968, the Edward River community commenced a locally-based Aboriginal/Community Court which operated according to the conventional legal system. The court included two or more First Nations Justices of the Peace, often members of the local elected Aboriginal Council, who heard charges against First Nations residents of the community, with the charges involving breaches of regulations and by-laws. The community referred to this court as ‘white man’s way’.²¹⁴ Although this court controlled how much Murri Law was used, the First Nations people

²¹² Both quotes are from: 1986 Customary Law, Volume 2, 25.

²¹³ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2; Vol 2, paragraph 698.

²¹⁴ 1986 Customary Law, Volume 2, 19.

saw their customary approaches as a way of resolving personal differences and did not consider that they should be of any concern to non-First Nations people, or other outsiders.

3.15 The community's First Nations members were reportedly aware that non-First Nations people were concerned about customary processes that involved ritualised fighting and verbal taunts. The Commission reported that non-First Nations people, including the Department of Aboriginal and Islander Affairs, saw the local Community Court as a tool of assimilation, through which the community learnt about the conventional legal system and its enforcement processes. The same people saw the customary approaches as 'lawless' and 'primitive', leading to the predominant perception (among non-First Nations people) that the Edward River community would never be able to manage its own affairs. It could be concluded that ultimately, following these interventions coupled with the likelihood of court penalties, customary processes were changed.

Yirrkala Community

3.16 The nature of imposed sanctions under customary processes has changed over time. In 1986, the Commission reported greater emphasis on non-physical sanctions, although physical sanctions had not completely disappeared. The likelihood that persons handing out physical punishments could be dealt with under the then NT's conventional laws appears to have been at least one – if not the main – reason for this change. In addition, the Commission reported ongoing conflict between the two systems.

Strelley Community

3.17 The Strelley Community did not have any on-site police or court and the Commission reported that, although the community accepted the reality of the broader conventional legal system, it did not see it as applicable to management of their own conflicts. However, the Ten Men Committee could operate outside the community and, if a community member committed any wrong in, say, Port Hedland, they risked being dealt with under both systems, leading to a double punishment.

Royal Commission into Aboriginal Deaths in Custody (RCIADIC)²¹⁵

3.18 The Commission's Final Report has quite a complex structure, and the discussion below has relied on Volume 2, Chapter 11,²¹⁶ and Chapter 13.²¹⁷ As noted earlier, the Commissioners relied on expert reports for the descriptions of First Nations peoples' norms and behaviours.

3.19 The Commission tended to report more about First Nations peoples' social norms in relation to managing conflict, rather than describe First Nations systems. In the sections on which we have relied, references are made to various First Nations peoples, including Wiradjuri people, Aurukun people, and Yalata people. Below is a summary of the Commission's descriptions and observations,

²¹⁵ All references are to Volume 2 of the Commission's Final Report.

²¹⁶ Chapter 11 Some Aspects of Aboriginal Society Today; 11.10 Indigenous Mechanisms of Social Control; 11.10.7 – 11.10.10 ['Fighting, Swearing and Other Aggressive Behaviours']; 11.10.11 ['Witnessing']; 11.10.13 ['The Responsibility of Close Kin']; 11.10.14 – 11.10.16 ['Ritualised Expressions of Anger and Distress']; 11.10.19 ['The Imputation of Responsibility']; 11.10.27 ['Policing']; 11.12 Aboriginal Identity; 11.12.3.

²¹⁷ Chapter 13 The Criminal Justice System Relations with the Police; 13.2 Community Relations and Control; 13.2.7 [*Police Culture*]; 13.2.31 [*Public Violence*]; 13.3 The Historical Basis; 13.3.7 [*Police Culture*].

which should be read on the understanding that they were current in 1986. They may not be as relevant in 2023.

3.20 The Commission reported that, in some First Nations communities, what they call ‘rule-governed fighting’ and swearing had been an important structured and ritualised means of navigating social order by accepted ways of signaling and responding. In some communities, First Nations people had reported choosing to relocate to missions purposely to reduce the levels of fighting and violence. However, according to the Commission, this had a side-effect of altering the effectiveness of traditional cultural mechanisms for maintaining social order.

3.21 In association with the ritualised fighting, the audience identified as a key player, acting collectively as a control and restraint on combatants. In addition, the audience was said to give legitimacy to the fighting, and overall approval to the activity. On the other hand, and particularly in some contemporary settings, where fighting and violence occurred without an audience, they might have had the effect of threatening or undermining the existing social order.

3.22 Kinship relationships were also seen as key components of maintaining social order in First Nations communities. Close kin would be expected to keep track of what people were doing and where they were, and, in foreseeing any danger, be vigilant in intervening and preventing such consequences. This could be expected to include ensuring that the ritualised fighting did not get out of hand.²¹⁸

3.23 The Commission also reported other effective forms of social control. For example, in one, an unidentified member of a community would walk around the community at night, after everyone had retired. The process was called ‘tjunparni’ (or ‘growl’) and included an unidentified person who had authority to express dissatisfaction about wrong-doing and outline the potential ramifications if the behaviour recurred. In another, various forms of shaming confirmed the community’s dominance and the importance of conformity to its norms of behaviour.

3.24 In some communities, the use of traditional and customary practices was said to be not as strongly supported, and, in some, the non-First Nations community managers took active steps to reduce, or even destroy, the authority of community Elders. This latter was apparently achieved by instituting punishments for not promoting conventional approaches, and some Elders were expelled to live in completely different communities. The Commission noted that this led to a marked decrease in the effectiveness of customary mechanisms leading to a decrease in acceptance of those traditional social norms and controls. In addition, according to the Commission, there was (in 1986) growing recognition among some First Nations peoples that the traditional and customary approaches were no longer adequate, and that new approaches were being initiated that accommodated contemporary settings while continuing to incorporate key aspects of tradition. Finally, the Commission noted that traditional, ritualised public fighting and violence continued to cause conflict with the expectations and behavioural norms of mainstream society.

²¹⁸ This key role is described in other materials in this Part. See above, c. Nathagura, or Fire, ceremony, and, below, (ii) Ritualised aggression and social anarchy.

Other Material – Dadirri and Yarning circles

*Dadirri*²¹⁹

*Dadirri is the art of being present, being still, connecting with yourself and the environment in such a profound way that it creates space for deep relationships. Dadirri encourages cyclical, deep listening, and reflection. Through Dadirri, relationships are built on trust and respect, which provides opportunities to create the co-directional sharing of knowledge and privileges Indigenous voices. Dadirri listens and knows, witnesses, feels, empathises in the pain of the Indigenous experience of trauma ... enables reflection of one's beliefs, influences, assumptions, and choices, with the potential to release a field of emergence that facilitates the potential to change.*²²⁰

*The principles and functions of dadirri are: a knowledge and consideration of community and the diversity and unique nature that each individual brings to community; ways of relating and acting within community; a non-intrusive observation, or quietly aware watching; a deep listening and hearing with more than the ears; a reflective nonjudgemental consideration of what is being seen and heard; and, having learnt from the listening, a purposeful plan to act, with actions informed by learning, wisdom, and the informed responsibility that comes with knowledge.*²²¹

*The concept and spiritual practice comes from the Ngan'gikurunggurr and Ngen'giwumirri languages of the Aboriginal peoples of the Daly River region in the Northern Territory and means 'inner deep listening and quiet still awareness.'*²²²

*My mother taught me this [deep listening] in my own cultural role when I had to mediate a family dispute. I had to stop and sit quiet, not speaking, just listening and observing. When I was ready to talk it was only in response to what I had heard. This deep listening stops us from imposing our own ideas and directing the outcome that we want. It stops us from making top down decisions. Instead, mediation based in deep listening brings clarity to the thoughts and feelings experienced by others, so the outcomes that emerge are ones that people truly want – those that come from the ground up.*²²³

²¹⁹ Miriam-Rose Ungunmerr's explanation of Dadirri is available on You Tube, 'Dadirri by Miriam Rose Ungunmerr', https://www.youtube.com/watch?v=Pahz_WBSSdA.

²²⁰ Atkinson, J., *Dadirri: Listening to One Another*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Ungunmerr, M.-R., R. A. Groom, E. L. Schuberg, Atkinson, J., C. Atkinson, R. Wallace, and G. Morris, 'Dadirri: An Indigenous Place-based Research Methodology' (2022) 18(1) *AlterNative An International Journal of Indigenous Peoples* 94, 96.

²²¹ Atkinson, J., *Dadirri: Listening to One Another*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002), 16.

²²² Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022), 19.

²²³ Oscar, J., OA, *Key Note Address* (National Mediation Conference, Australia, April 2019), 7.

3.25 The technique of deep and attentive listening is being reported in recent literature as a means for managing conflict,²²⁴ for improving communication generally,²²⁵ and as a key component of qualitative research involving First Nations peoples.²²⁶

Yarning circles

3.26 One of the selected materials that is included in the targeted review of selected case studies is focused on the traditional technique of yarning circles being used in association with some courts in Australia to assist the resolution of conflicts involving young offenders.²²⁷ The yarning circle is described as ‘a place where stories and knowledge can be shared in a caring environment that’s relaxed and comfortable,’²²⁸ and as a traditional, inclusive learning method that relies on communal participation. Yarning circles are said to be a safe forum within which participants become aware of both listening and being listened to.²²⁹ Other materials mention yarning circles in the context of resolving conflicts within communities,²³⁰ and of healing from trauma.²³¹

3.27 The next section includes a review of four historical descriptions of traditional ceremonies, and is followed by a brief review of descriptions of current ceremonial adaptations.

Historical descriptions of First Nations ceremonies for managing conflict

3.28 This section relies on Western observers’ descriptions of four First Nations communities’ ceremonies from the late nineteenth and early twentieth centuries, as well as much later commentary

²²⁴ Oscar, J., OA, *Key Note Address* (National Mediation Conference, Australia, April 2019); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); Oscar does not use the term ‘dadirri’ herself; however, her presentations describes the technique and discusses its value.

²²⁵ Atkinson, J., *Dadirri: Listening to One Another*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Oscar, J., OA, *Key Note Address* (National Mediation Conference, Australia, April 2019); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); Ungunmerr, M.-R., R. A. Groom, E. L. Schuberg, Atkinson, J., C. Atkinson, R. Wallace, and G. Morris, ‘Dadirri: An Indigenous Place-based Research Methodology’ (2022) 18(1) *AlterNative An International Journal of Indigenous Peoples* 94; Walters, J. A., *Trauma and Resilience Among a Stolen Generation of Indigenous People*, in M. O’Loughlin and M. Charles (eds), *Fragments of Trauma and the Social Production of Suffering – Trauma, History, and Memory* (Rowman & Littlefield, USA, 2015).

²²⁶ Ungunmerr, M.-R., R. A. Groom, E. L. Schuberg, Atkinson, J., C. Atkinson, R. Wallace, and G. Morris, ‘Dadirri: An Indigenous Place-based Research Methodology’ (2022) 18(1) *AlterNative An International Journal of Indigenous Peoples* 94, 96.

²²⁷ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

²²⁸ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022), 2.

²²⁹ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

²³⁰ The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

²³¹ Edwige, V., J. Alexi, B. Selkirk, and P. Dudgeon, *Australia Needs to Decolonise its Mental Health System and Empower More Indigenous Psychologists* (Guardian Newspaper, Australia, June 2022); available online at <https://www.theguardian.com/commentisfree/2022/jun/02/australia-needs-to-decolonise-its-mental-health-system-and-empower-more-indigenous-psychologists>.

on those historical descriptions. Four of the original observations were recorded and published contemporaneously (one of the publications includes descriptions of two of the ceremonies),²³² and one has also been described in a separate recent publication.²³³ It is unclear whether the authors sought (and gained) the consent of the First Nations participants before recording and publishing their observations. Although these descriptions provide insight into long past approaches and processes, in at least one case, the equivalent modern community has made clear that the descriptions are dated and the described ceremonies are no longer practised.²³⁴ The Research Team suggests that the next steps in this project include consultations with relevant community groups about the ongoing inclusion of these descriptions.

3.29 Two of the collected materials include generalised mentions of ritualised aggression and/or fighting. One is focused specifically on First Nations peoples and communities in Queensland, and describes the ‘assertive aggression’ as a key part of customary approaches to managing conflict.²³⁵ Echoing the descriptions included below, the original document emphasises the responsibility of the whole group for preventing excessive violence, and protecting individuals from it, as well as for ensuring that ‘assertive aggression’ was a safe customary conduit for emotional expression of conflict both between individuals and within the whole group.²³⁶ A key characteristic in the descriptions is the community cooperation that is fundamental to the activities, as well as the reciprocal nature of their focus, making clear that all community members have mutual obligations to each other and, ultimately, are responsible for each other’s safety throughout the ritual event. This emphasis also appears in other cathartic descriptions that include ritualised aggression and violence.²³⁷

3.30 A more contemporary description is specific to the Wiradjuri people of NSW, and, although it describes people’s preference for fighting and verbal insults, it does not mention that such fighting is a recognised ritualised form of dispute resolution.²³⁸ However, it does note that some First Nations peoples were very amused at the Western suggestion that they learn to prevent disputes by ‘talking over their problems and conflicts.’²³⁹

3.31 Below are descriptions of four ceremonies for managing conflict in Central Australia, north-east Northern Territory, and north Queensland. The descriptions are based on historical reports and each ceremony occurred within important cultural contexts of reciprocity, respect and reverence. The

²³² Roth, W. E., *Ethnological Studies Among the North-West-Central Queensland Aborigines* (Government Printer, Queensland, Australia, 1897; Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4> ; Warner, W. L., *A Black Civilization: A Social Study of an Australian Tribe* (Revised Edition, Harper & Row, USA, 1964) [original publication: Harper & Brothers, USA, 1937].

²³³ Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002).

²³⁴ Toner, P., *W. Lloyd Warner, A Black Civilization* (STUAnthroBlog, St Thomas University, Canada, 2017), available at <https://wp.stu.ca/anthropology/2017/09/29/w-lloyd-warner-a-black-civilization/> .

²³⁵ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000), 271.

²³⁶ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000), 270.

²³⁷ See for example, Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012).

²³⁸ Macdonald, G. M., ‘Where Words Harm and Blows Heal’ (1990) 1(3) *ADRJ* 125.

²³⁹ Macdonald, G. M., ‘Where Words Harm and Blows Heal’ (1990) 1(3) *ADRJ* 125, 128.

descriptions are relatively brief, out of respect for cultural restrictions that might apply for some readers.

Atninga ceremony (Arrernte peoples of Central Australia)²⁴⁰

3.32 Atninga ceremony belongs to the Arrernte peoples of Central Australia and has been described as being for circumstances where a gravely serious wrong had occurred, and was to be avenged by a highly choreographed and ritualised ceremony, during which the wrongdoer was killed, putting the matter to rest. The ceremony incorporated a series of carefully choreographed smaller rituals that took place away from the main camp, the first being to bind the avenging parties to each other, rendering treachery among them impossible, and binding them tightly to the secrecy of their task. Another ceremony recognised the grief and sorrow bound to follow for the family and community whose member they intended to kill, demonstrating both compassion for those who would bear the grief and loss, and recognition that the Atninga should not be seen as casual violence or brutality. Remaining away from the camp, and after the retribution was completed, the men ritually cleansed themselves to remove any lingering spirits of the dead before beginning their trek back to their camp. A final ceremony was undertaken by two women, an elder and a younger, whose task was to ensure that no remnant of the dead person's spirit could enter the camp. Both women were daubed in white pipeclay to maintain their anonymity, and while the elder woman presented to the avenging party a challenging dance, the younger struck their shields to test their mental wellbeing, and ensure that they were not influenced by the spirit of the dead. Each ceremony incorporated into the Atninga was to safeguard the identity, the mental and emotional health of the avenging party; to mask the path the avenging party travelled; and to safeguard their community. The ceremony was stoical and significant, for the avenging party began the process as a solemn task, one requiring each member to render themselves invisible or unrecognisable so that their deed could not be visited upon their members or their community.

Makarrata ceremony (North East NT)^{241 242}

3.33 The ceremony has been depicted as a ritual which, in some cases, was used to punish a wrong through elaborate ritualised activities. Its name comes from the Yolngu Matha language of the Yolngu peoples of Arnhemland. The term generally refers to the upper part of the leg, (makarr or the thigh) which is the purpose of the ritualised spear throwing. The aim of the ceremony was to resolve a dispute and restore friendly relationships among visitors or kinsmen and women. Formalising the significance of the ceremony came when combatants presented themselves daubed in white pipeclay,

²⁴⁰ This description is based on two works, one of which the first description of the ceremony, and the other is a much later commentary on it; Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012); Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4>.

²⁴¹ Current views of this ceremony and other ritualised warfare and feuding make clear that these are no longer practised among the Yolngu people, the influences on their disappearance are not yet established; see Toner, P., *W. Lloyd Warner, A Black Civilization* (STUAnthroBlog, St Thomas University, Canada, 2017), available at <https://wp.stu.ca/anthropology/2017/09/29/w-lloyd-warner-a-black-civilization/>.

²⁴² This description is based on three works, one of which is its first description, and two are later; Berndt, M., and C. H. Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present* (5th Edition, Revised, Aboriginal Studies Press, Australia, 1988); Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012); Warner, W. L., *A Black Civilization: A Social Study of an Australian Tribe* (Revised Edition, Harper & Row, USA, 1964) [original publication: Harper & Brothers, USA, 1937].

marking the gravity of the occasion and rendering participants a certain anonymity to the event. There would be two groups: the aggrieved group would be spear-throwers, while the wrong-doer's group would be avoiding those spears. Proceedings commenced when participants danced to honour the opposing participants ancestors. Prior to the events commencing the social observations for the Makarrata were negotiated between the Elders of each opposing side. The Elders selected members from each side to be included within both sides' grouped representatives, thus ensuring some caution to the proceedings. While the wrong doer may have needed to dodge spears, also running were selected members of the spear throwing group. Likewise, within the spear thrower group were appointed members of the wrong-doer's group. The onerous need for caution and restraint weighed heavily on the spear throwers for amongst the wrong doers were members of their own group who had to dodge the spears they were to throw. If the Elders deemed it necessary, towards the end of the ceremony, the wrong-doer would submit themselves for a formal ceremonial thigh wounding to demonstrate to the broader community that the 'wrong has been rectified.'²⁴³ As with the Atninga ceremony, the Makarrata atmosphere was quite serious.

Nathagura fire ceremony (Central Australia)²⁴⁴

3.34 The Nathagura ceremony was of fire, belonging to the Wurumungu people in the region of Tennant Creek in the Northern Territory. The ceremony was a socially sophisticated and cooperative event with a duration of 14 days. Its purpose, to resolve long-standing disputes and arguments and create agreeable relationships among the men. Women and men had their own roles in the ceremony, with women ensuring that the men do not take the proceedings too far or cause serious injury or break certain relationship laws. Although the ceremony relied on the cooperative nature of kinship groups, it also required that most of their social observations and obligations be paused while the Nathagura took place. These rules were largely set aside except for a caveat over sexual conduct, which remained firmly in place throughout the ceremony. All social license was freely exhibited over this 14-day trial, that had displays of physical threats, assaults, verbal taunts, theft, obscene gestures, and practical jokes to conjure a scene of social anarchy. Day and night social chaos played out and appeared to test the social restraint, tolerance, and patience of every member of the language group. While the original description creates a sense of somewhat chaotic entertainment, the ceremony culminated in a spectacular ritualised fire event. The ceremony finished around dawn on the final day and with it, the social laws, obligations, and observances once again fell back into place. Social order was restored into the daily lives of the Wurumungu people, satisfied in attending to resolving conflicts and restoring relationships among themselves.

²⁴³ Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012), 26.

²⁴⁴ This description is based on two works, one of which is its first description; Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012); Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4>.

Prun ceremony (North Queensland)²⁴⁵

3.35 The Prun ceremony comes from an area in far north Queensland. The ceremony has been described as a ritualised, reciprocal physical combat with use of verbal taunts: said to be a ‘combative expression of the conflict’.²⁴⁶ The ceremony was seen to have broader application than within-group conflict and was said to also help maintain good inter-group relationships. The ceremony was held regularly, reportedly once every two weeks during the drier seasons, commencing during the day, carrying over into the night and concluding the following morning. It was necessary for participants to formalise their attendance by painting their face and body in white pipeclay. This assured some anonymity for participants. During the day, they involved themselves in ritualised combat and verbal taunting. After sunset, celebratory events were held with ceremonial dancing and song, marking a pause to the combat and taunting. The ceremony again continued with ritualised hostilities for a brief period before the ceremony ended and the groups dispersed.

More Recent descriptions of First Nations ceremonies for managing conflict

3.36 *Solid Work* reports on First Nations peoples’ approaches to conflict and its management and includes descriptions of situations in which traditional ceremonial processes have been used in modern contexts.²⁴⁷ One example describes the use of ‘ceremony and ritual performance’ to build positive negotiating relationships between the local First Nations groups and mining personnel.²⁴⁸ Another example is that, in community settings, the use of recognised rituals around the sharing of food and drink is reported to have reduced the atmosphere of conflict and enabled development of more constructive interactions. The Report also notes that, in some communities, aspects of traditional ceremonies and practices have been incorporated into more modern dispute management programs, and, in communities where Christian beliefs are strongly held, associated ceremonies, including prayer, have been coopted into more traditional processes for managing conflict.

Participatory research

3.37 The researchers are aware that this Report has included little about the important role that Elders have in peacebuilding, peacemaking, managing conflict, and community healing. This is largely due to the limited research that has been done in this area. There would be benefit from cooperative

²⁴⁵ This description is based on three publications, the two more recent being based on the original of 1897 which is its earliest depiction; Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002); Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012); Roth, W. E., *Ethnological Studies Among the North-West-Central Queensland Aborigines* (Government Printer, Queensland, Australia, 1897).

²⁴⁶ Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012), 24.

²⁴⁷ Federal Court of Australia’s Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

²⁴⁸ Federal Court of Australia’s Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009), 97.

and inclusive research, in which First Nations researchers participate fully as co-designers and co-researchers.

3.38 In this Report, the findings reported in Part Three and Part Four, suggest that there are likely to be as many First Nations peoples' approaches to managing conflict as there are communities and groups and that there is unlikely to be one way to approach conflict. However, it is clear that, in future, there would be benefit in changing research and evaluation approaches, placing First Nations engagement and participation at the centre of all studies in this area.

Conclusion

3.39 This part of the report illustrates the significant range and cultural complexity of First Nations peoples' approaches to peacebuilding and peacemaking, including their emphasis on social systems of relationships and cultural obligations, and the effects of conflict on their social ordering and on how their relationship systems work. This part has relied on more than a century's worth of key resources in the Research Team's collected materials, including material from *Solid Work*.

3.40 The researchers acknowledge that some of the earlier descriptions of violence and aggression may be confronting and they depict historical ceremonies that are no longer practised. However, they provide insight into the history of First Nations peoples' approaches to conflict and its management, and demonstrate the importance of conflict resolution as a reciprocal and cooperative task which involved the whole community. Each description depicts a controlled ritual apparently designed to release tensions, as well as to heal and strengthen relationships. In the descriptions, tolerance, patience, and prudence are key qualities underlying the ritualised aggression. Although the observations are from a non-First Nations perspective, these important historical records provide valuable insights into First Nations peoples' historical systematic approaches to conflict and its management, in particular, the intricate complexities of kinship and relationship systems.

3.41 The next section of the Report, Part Four, investigates contemporary perceptions of conflict management among First Nations peoples and communities through a thematic analysis of selected case studies, and includes the results of two data collection activities undertaken by the researchers.

Part Four – Selected thematic analysis and targeted review of case studies.

Data and information gathering



4.0 This Part of the Report describes three desktop reviews of selected publications from the project’s online collection. The first is a limited thematic analysis of selected publications; and the second, a review of selected case studies of dispute resolution programs and services operating in First Nations communities. The approach has enabled an exploration of the ideas, topics, and issues raised in selected materials with the objective of examining the practicalities of conflict management services being used by First Nations peoples and exploring the relevant recommendations from key Commissions of Inquiry. The methodology for each activity is described in some detail in Part One of this Report.²⁴⁹ Lacking the capacity to conduct an in-depth review or analysis of the whole collection, we anticipated that a selective ‘snapshot’ of two representative clusters of materials would provide a useful overview of the collection, as well as providing something of a launch-pad for the future examination and extension of the collection.

4.1 As noted earlier in this Report,²⁵⁰ the results and findings for each review/analysis are presented without any substantial research or literature context, enabling them to stand in their own right. Part Five of this Report includes a broader analysis of the consolidated findings.

4.2 The researchers have sought to take contextual influences into account both in our choice of materials to review, and in the reviews themselves and how we have interpreted them. In addition, in Part Five of this Report, we have relied on the active participation of First Nations colleagues in considering the findings and how they are interpreted.

Limited thematic analysis

4.3 The thematic analysis has three components. Firstly, in November 2022, the Project Research Team undertook a preliminary thematic analysis of a small number of randomly selected publications

²⁴⁹ See above, Part One – Introductory matters, C. Methodology.

²⁵⁰ See above, Part One – Introductory matters, B. Methodology, and C. Overview of this report..

from the range of materials that had already been collected.²⁵¹ While it was impracticable within the limited scope of this project to conduct a larger analysis, it was anticipated that, although limited, the analysis would be valuable in providing some insight into the issues and topics appearing in the selection. The included publications were randomly selected, intended to be largely representative of the broader collected materials. The themes identified during this analysis were then used to develop key words for annotation of the broader online collection. Secondly, eight months later, in mid-2023, the Project Research Team completed a targeted review of key conceptual frameworks in the broader literature from other fields relating to studies of and about Indigenous and First Nations peoples in Australia and elsewhere.²⁵² Thirdly, following that targeted review, we re-visited the findings of the preliminary thematic analysis to review the possible relevance and influence of the four key conceptual frameworks.²⁵³

4.4 The findings of the thematic analysis are presented below, with section (i) reporting on the original preliminary analysis, section (ii) providing a summary of the targeted review of key conceptual frameworks, and (iii) reporting on the review of the thematic analysis. The full targeted review of key conceptual frameworks is available elsewhere in this report. A key finding is that thematic analysis is a useful technique for exploring the content of these materials and their focus on Indigenous and First Nations peoples. The thematic analysis suggests there are temporal parallels between the twelve analysed publications and the development of the key conceptual frameworks, suggesting likely influences between the latter and the former.

Key findings

4.5 Although the analysis includes only twelve randomly selected items, all twelve include reference to the importance of traditional culture. The analysis shows that various aspects of traditional culture, including the negative effects of conventional Western laws and legal systems, comprise an overwhelmingly important focus of the selected materials. These results are consistent with reports in the wider literature about the positive effects of cultural connection, and the importance of mainstream respect and recognition for traditional cultures.²⁵⁴

²⁵¹ Since November 2022, the materials in the collection have been re-organised several times, and the original storage folder selection – on which basis materials were selected for inclusion in the thematic analysis – is no longer accessible. Were the same selection protocols applied now, they would produce a different set of materials for inclusion on the thematic analysis.

²⁵² See Part Two – Gathering Food(1): Terminology, language, and key concepts.

²⁵³ See Part Four of this report.

²⁵⁴ Both these are discussed in more detail elsewhere in this report; see Part two – Gathering Food (1), above.

Analysis

4.6 Twelve representative publications were selected for inclusion in the original preliminary thematic analysis,²⁵⁵ and the same twelve items were included in the later review of that analysis.²⁵⁶ The collection from which the items were selected was compiled with a focus on various aspects of First Nations and Indigenous approaches to conflict management, and the selected items, too, have that focus. As noted earlier in this Report, care was taken not to predetermine any potential themes, and to ensure that the themes detected in the materials derived directly from the materials themselves. This was in keeping with the principles of thematic analysis and protected the research information from having to align with the Research Team’s own preferences, interpretations, and ideas.²⁵⁷ Above all, the researchers wanted to maintain respect for the original authors and their views, while analysing a complex range of diverse materials.

4.7 Following completion of the preliminary thematic analysis, the resulting key themes were applied as key words to facilitate annotation of the collected materials, providing a broad indication of key themes and key words that could be applied in any future analysis of them.

4.8 Due to the limited capacity of this project, only twelve items were selected for thematic analysis. To ensure selection of a broad range of materials for analysis, the selection included documents from more than one geographic location, some originating from outside Australia. Using the cloud-based SharePoint as a guide, twelve documents were selected simply by being the first document in each of the original twelve online storage folders.²⁵⁸

4.9 The twelve documents include three reports; three presentations/speeches; one training manual; one policy document; and four journal articles. The selection derives from seven geographic regions/countries of origin, including six in Australia: Aotearoa New Zealand; Bougainville; Canada; Nigeria; Nicaragua; PNG; and Australia (ACT; NSW; NT; Qld; SA; Tas).

²⁵⁵ Arraiza, J.-M., ‘Squaring Indigenous Circles: The Making of Nicaragua’s Indigenous Communal Property Regime’ (2012) 19(1) *International Journal on Minority and Group Rights* 69; Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Department of Foreign Affairs and Trade, *Indigenous Diplomacy Agenda* (DFAT, 2021); Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in *Accord Journal*, Association of Christians in Counselling, UK); Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Kelly, R., and L. Behrendt, ‘Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims’ (2007) 8 *Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihi, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁵⁶ A more detailed description of our methodology is included in Part One – Introductory matters, C. Methodology (see above).

²⁵⁷ Braun, V., and V. Clarke, *Thematic Analysis: A Practical Guide* (Sage Publishing, UK, 2022).

²⁵⁸ For example, the article by Maiava-Zajkowski was the first document in the folder “Aotearoa New Zealand”, and was selected accordingly; however, in the folder “Canada”, the first document was a journal article and no training materials had yet been included in the selection – the document by Crooks et al (2010) was the first training document listed in the folder and was selected to ensure a cross-section of materials was included in the selection.

4.10 Thematic analysis of the twelve publications has revealed seven separate clusters of ideas, topics, and issues, and it became clear that those seven could be grouped as themes under three key subject areas.²⁵⁹ The next section considers both levels of analysis.

Three key subject areas, seven associated themes

4.11 Within the thematic analysis, three overarching subject areas were devised:

- (i) *Cultural influences* on approaches, processes, and methods for managing conflict;
- (ii) *Specific conflict management strategies* (including the conventional legal system); and
- (iii) *Specific types of conflicts and disputes* (including native title, land rights, violence, and the effects of intergenerational trauma).

4.12 In addition, seven associated themes were identified. These include the effects of traditional and conventional laws and legal systems; customary conflict management approaches and techniques; the role of women in traditional contexts and settings; the need for services for specific population groups; ADR processes; prevention strategies; and training and standards.

4.13 The three subject areas are listed below in descending order of the frequency of their appearance across the twelve documents. *Cultural influences*, and *specific conflict management strategies* occur far more often than does the third subject area (*specific types of conflict and disputes*). Among the selected materials, it is markedly more common to find references to cultural influences and to specific conflict management strategies than to find mention of specific types of conflict and disputes. Listed under each subject area are the specific themes found in the selected publications.

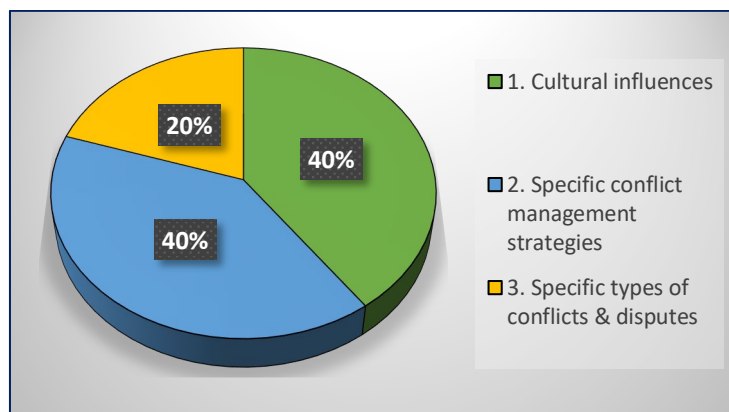


Figure 1 showing the proportional incidence of the three key subject areas arising from the thematic analysis: subject area 1. *Cultural influences on conflict management approaches, processes, and methods*; subject area 2. *Specific conflict management strategies (including laws and legal systems)*; and subject area 3. *Specific types of conflicts and disputes*.

²⁵⁹ Four themes appear only in one publication – not in any others – and have not been grouped: economics; business; sustainable development; First Nations diplomats; all are in the DFAT document [Department of Foreign Affairs and Trade, *Indigenous Diplomacy Agenda* (DFAT, 2021)]. The same publication does not include any of the other subject areas.

Cultural influences on conflict management approaches, processes, and methods

4.14 This subject area appears at least twenty-two times across the twelve publications. Within the ten publications that include mention of it, two themes emerge, describing two sides to the issue, one predominantly positive and the other negative.²⁶⁰

- (a) Positive: the importance of using culturally appropriate approaches, processes, and methods (eight publications);²⁶¹
- (b) Negative: the negative influence of colonialism, non-Indigenous law/legal systems, and Western expectations, assumptions, and romanticisations (five publications);²⁶² this theme is similar to postcolonialism;

*Specific conflict management strategies, including the six themes set out below.*²⁶³

4.15 This subject area appears at least twenty-two times across all twelve documents.

- (a) Law/lore and legal systems (customary and conventional/Western) (seven publications);²⁶⁴

²⁶⁰ Three of the publications include consideration of both aspects: Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihu, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354;.

²⁶¹ Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihu, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁶² Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihu, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354.

²⁶³ The publications listed under each item include only those that make specific mention of the item; the description of each item derives from the language used in the publications.

²⁶⁴ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Gray, S., 'Monsters Round the Stomping-ground' (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources,

- (b) Customary approaches and techniques (including yarning circles, healing, and traditional listening techniques [eg, “dadirri”]) (seven publications);²⁶⁵
- (c) Women as peacemakers and peacebuilders/specific role of women in traditional contexts and settings (five publications);²⁶⁶
- (d) Services specific to population groups (five publications): women (two publications),²⁶⁷ youth (one publication),²⁶⁸ and men (two publications).²⁶⁹
- (e) A/DR processes (including mediation and restorative approaches) (four publications);²⁷⁰

Report, Australia, 2022); Kelly, R., and L. Behrendt, ‘Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims’ (2007) 8 *Journal of Indigenous Policy* 73; Salihi, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁶⁵ Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216; Kelly, R., and L. Behrendt, ‘Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims’ (2007) 8 *Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihi, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022) (latter makes specific mention of yarning circles, healing, and listening [dadirri]).

²⁶⁶ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Department of Foreign Affairs and Trade, *Indigenous Diplomacy Agenda* (DFAT, 2021); Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK); Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihi, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015) – does not make specific mention of women as peacemakers and peacebuilders, nor of a specific role for women; however, the photos in the publication include far more women than men).

²⁶⁷ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021).

²⁶⁸ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010).

²⁶⁹ Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022).

²⁷⁰ Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Salihi, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

- (f) Prevention strategies (including community approaches) (three publications),²⁷¹ and
- (g) Training and standards (three publications).²⁷²

4.16 Within the ten publications that mention one or more of these topics,²⁷³ most include mixed positive and negative references to conventional and customary law/lore and legal systems,²⁷⁴ and/or positive references to the need for access to customary approaches and techniques.²⁷⁵

²⁷¹ Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010);

²⁷² Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010).

²⁷³ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK); Gray, S., 'Monsters Round the Stomping-ground' (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihi, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁷⁴ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Gray, S., 'Monsters Round the Stomping-ground' (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73; Salihi, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁷⁵ Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management, Agreement-making, and Decision-making Services* (Presentation, Alternative Dispute Resolution in Indigenous Communities, Melbourne University, Australia, 2015); Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, 2014; event and location not stated); Gray, S., 'Monsters Round the Stomping-ground' (1999) 24(5) *Alternative Law Journal* 216; Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73; Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report, Manatū Wāhine Ministry for Women, Aotearoa New Zealand, February 2021); Salihi, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the

Specific types of conflicts and disputes raised in the documents.

4.17 This subject area appears ten times across the twelve documents. The themes for this subject area are the specific types of conflicts/disputes, including:

- a. Land/property ownership, custodianship, land rights and native title;²⁷⁶
- b. Youth;²⁷⁷
- c. Violence;²⁷⁸
- d. Civil war;²⁷⁹
- e. Community disputes/conflict;²⁸⁰ and
- f. Social breakdown (including reduced respect for tradition and custom) (five publications)²⁸¹

4.18 Intergenerational trauma and loss is included in this subject area because, where it is specifically mentioned, it is in direct association with specific types of conflict (such as violence). Intergenerational trauma and loss is not mentioned specifically in the selected Australian materials, although it does appear in other Australian materials in the collection. Although the specific term is not used, similar situations are described in the context of Nicaragua and Papua New Guinea.²⁸²

Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁷⁶ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73.

²⁷⁷ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010).

²⁷⁸ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022).

²⁷⁹ Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK).

²⁸⁰ Gray, S., 'Monsters Round the Stomping-ground' (1999) 24(5) *Alternative Law Journal* 216; Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73.

²⁸¹ Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Garasu, Sister L., *The Role of Women in Promoting Peace and Reconciliation* [Report on the Bougainville Inter-Church Forum for Peace Workshop, Bougainville, 1996] (published in Accord Journal, Association of Christians in Counselling, UK); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Kelly, R., and L. Behrendt, 'Creating Conflict: Case Studies in the Tension Between Native Title Claims and Land Right Claims' (2007) 8 *Journal of Indigenous Policy* 73.

²⁸² Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022).

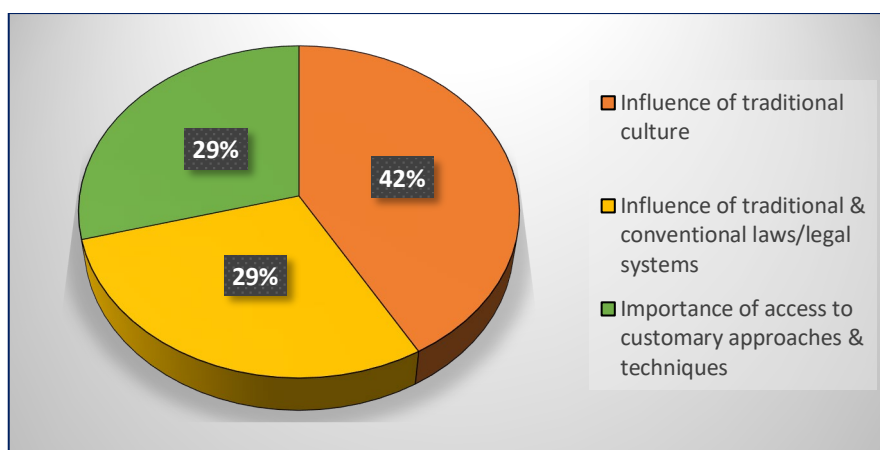


Figure 2 showing comparative numbers of selected items referring to key aspects of traditional culture: the influence of traditional culture; the positive/negative influence of traditional & conventional laws and legal systems; and the importance of access to customary approaches and techniques for managing conflict.

4.19 Although the analysis includes only twelve items, the results show that the three key concerns are the positive influence of traditional culture; the positive and negative effects, respectively, of customary and conventional laws and legal systems; and the importance of having access to customary approaches and techniques for managing conflict. All twelve publications include reference to the importance of traditional culture, and as is shown in Figure 2., above, the results relating to various aspects of traditional culture, including the negative effects of conventional Western laws and legal systems, comprise an overwhelmingly important focus of the selected materials. These results are consistent with reports in the wider literature about the positive effects of cultural connection, and the importance of mainstream respect and recognition for traditional cultures.²⁸³

4.20 Only four of the publications refer specifically to Alternative Dispute Resolution (ADR) processes and techniques.²⁸⁴ All four include specific references to mediation,²⁸⁵ or restorative approaches;²⁸⁶ however, one includes the following caution, ‘concern in some quarters that government may use the existence of ADR schemes in indigenous communities as an excuse to abdicate responsibility for community problems.’²⁸⁷

²⁸³ Both these are discussed in more detail elsewhere in this report; see Part two – Gathering Food (1), above.

²⁸⁴ Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Salihu, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354; Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁸⁵ Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216; Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022); Taylor, H., L. Bartels, M. Crowe, and Y. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (ANU Centre for Social Research & Methods, Report, 2022).

²⁸⁶ Salihu, H. A., ‘Possibilities for the Incorporation of African Indigenous Procedures and the Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria’ (2020) 23(4) *Contemporary Justice Review* 354.

²⁸⁷ Gray, S., ‘Monsters Round the Stomping-ground’ (1999) 24(5) *Alternative Law Journal* 216, 216.

4.21 The topic of intergenerational trauma and loss is mentioned in only two of the selected publications, where it is directly associated with community and interpersonal violence.²⁸⁸ Elsewhere in the collected materials, this issue is mentioned more often and is given more prominence than this analysis would suggest. This is discussed in more detail elsewhere in this report.²⁸⁹

4.22 Within the twelve selected items, one mentions the importance of specific protocols for research with First Nations peoples.²⁹⁰ This important topic is considered elsewhere in this report, in the context of cultural responsiveness, and ethical approaches to such research.²⁹¹

²⁸⁸ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010); Higgins, K., *Conflict Challenges and Opportunities for Building Peace in Hela Province, Papua New Guinea* (Conciliation Resources, Report, Australia, 2022).

²⁸⁹ See Part two – Gathering Food (1).

²⁹⁰ Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010).

²⁹¹ See above, Part One – Introductory matters, A. Overview of the project (iii) First Nations researchers; Part one – Introductory matters, A. Overview of project (vi) Research approach; Part two (i) First Nations context.

Targeted review of selected evaluations and case studies

Introduction

4.23 This section reports on the second of the project's data collection activities, a desktop review of sixteen selected program evaluations and program case studies.²⁹² Items were selected to represent programs operating in a broad range of geographic locations, as well as in urban, regional, remote, and non-specific settings.²⁹³ For the purposes of this review, urban includes cities and major urban centres; regional includes regional cities and centres; and remote includes communities and settlements described as "remote" in their own program.

4.24 The sixteen selected items span a twenty-three-year publication period, with one having been published twenty-three years ago,²⁹⁴ five between ten and twenty years ago,²⁹⁵ and the majority (ten)

²⁹² Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Arney, F., K. McGuiness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Child Protection Research Program, Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012); Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654; Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

²⁹³ The researchers did not include the following report in this selection, preferring to select stand-alone evaluations and case studies: Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009).

²⁹⁴ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000).

²⁹⁵ Arney, F., K. McGuiness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Child Protection Research Program, Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654; Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); Venables, P., *Mornington Island*

being published during the past ten years.²⁹⁶ The review suggests that there are very few notable temporal differences.

4.25 Of the sixteen selected items, seven relate to programs located in Queensland,²⁹⁷ six to programs located in the Northern Territory (NT),²⁹⁸ two to programs located in the Australian Capital Territory (ACT),²⁹⁹ and one to a Victorian program.³⁰⁰ Eight of the selected items have been

Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

²⁹⁶ Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

²⁹⁷ Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington Island Shire Council, 2010); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

²⁹⁸ Arney, F., K. McGuiness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Child Protection Research Program, Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012); Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020).

²⁹⁹ Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

³⁰⁰ McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654.

categorised as relating to programs in a remote setting;³⁰¹ three to programs in a regional setting;³⁰² and two in an urban setting.³⁰³ The remaining three items were classified as ‘non-specific’ as the studies either did not specify a location or included multiple locations.³⁰⁴ Captured in the sixteen selected items were nine individual programs, with one program being subject of four reports,³⁰⁵ and another being subject to two reports.³⁰⁶ The ‘non-specific’ reports were not included in an evaluation of the design, implementation, or delivery of the program as they were too generalised to gain accurate data.

4.26 The sixteen selected items were subjected to two review processes, one examined the reported evaluation process itself using a set of measures developed by the Project Research Team,³⁰⁷ and the other identified and analysed themes within the items. Both reviews are incorporated within this section.

³⁰¹ Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General’s Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³⁰² Arney, F., K. McGuiness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Child Protection Research Program, Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012); One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020).

³⁰³ Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); McAsey, B., *A Critical Evaluation of the Koori Court Division of the Victorian Magistrates’* (2005) 10(2) *Deakin Law Review* 654.

³⁰⁴ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

³⁰⁵ Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General’s Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³⁰⁶ One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020) [NT, regional]; One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020) [NT, regional].

³⁰⁷ These measures, or data points, are available on the review spreadsheet at Appendix C.

Key findings

4.27 There are four key findings from the desktop review. One is the reported inadequate community engagement in the evaluations of programs, and, in some cases, in the programs themselves. A second and associated finding is the lack of First Nations peoples' participation as evaluators, particularly people from the communities in which the subject programs operate. Thirdly, the measures of program success reported in the evaluations tend to be Western-focused, making it difficult to ascertain the community's own views, and the extent to which traditional approaches may be available. The majority of evaluations report that the programs have been effective according to the devised evaluation measures.

4.28 The overall problems with the design and implementation of the evaluations suggest that their findings about the programs may not be a reliable guide to the effectiveness of those same programs. For that reason, this review focuses on the evaluation processes, rather than on their findings. More detailed information of each of our program/service evaluations is included at Appendix B.

Overview of reported outcomes

4.29 The selected items report on several different dispute resolution processes, including mediation programs, restorative justice programs, sentencing courts, conference coaching, and a family group conferencing program. The most commonly reported dispute resolution process is mediation which was found to be the main focus of ten of the sixteen items,³⁰⁸ with the next most frequently described being restorative processes;³⁰⁹ however, all of the programs using restorative processes, are reported to use them in combination with mediation. Two of the selected items report

³⁰⁸ Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011) [NT, remote]; One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020) [NT, remote]; One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020) [NT, regional]; One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020) [NT, regional]; Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³⁰⁹ Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

on court programs which have been designed specifically to be more culturally appropriate to First Nations peoples.³¹⁰ Both of the latter programs are located in capital cities.

4.30 On the whole, the evaluations report very positively about the various programs. As is noted below, most of the evaluations aim to confirm the financial benefits of the programs and can be expected to provide the basis for their ongoing financial support, or government funding. Although this approach can provide valuable quantitative cost benefit data, it may not include much insight into broader community benefits of such programs.

4.31 According to the selected items, many of the programs describe similar aims which include reducing contact with the formal criminal justice system, reducing conflict and/or violence, and to strengthen community/family relationships. As is noted below, most of the evaluations do not align their own stated or apparent aims and objectives with those of the subject programs.

Evaluation processes

a. Evaluation personnel

4.32 Of the sixteen selected items, only one states that it was authored by a First Nations writer.³¹¹ Most do not state whether any First Nations people are included in the evaluation team. As a matter of respect and transparency, it would be useful information to include in future program evaluations.

b. Evaluation resources

The evaluation reports do not include clear statements of the resources made available to them to conduct their evaluations.

4.33 An associated issue that is raised in some evaluations, is the resourcing of the subject programs, in particular the question of whether a program's initial resource input is adequate to ensure appropriate approaches to participatory design, implementation and longer-term operation, as well as to ensure the program's effectiveness. Although this is rarely mentioned in the evaluations, one does report that stakeholders felt the programs were inadequately resourced from the outset, and required more funding to increase resources such as staffing, vehicles, and infrastructure, and for increased capacity of the programs.³¹² A separate evaluation of a regional program reported a key concern that ongoing funding be secured for the subject program, although this was not stated as an aim of the evaluation.³¹³

c. Evaluation aims and objectives

³¹⁰ Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); McAsey, B., *A Critical Evaluation of the Koori Court Division of the Victorian Magistrates'* (2005) 10(2) *Deakin Law Review* 654.

³¹¹ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

³¹² The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

³¹³ Arney, F., K. McGuinness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012).

4.34 Of the sixteen selected items, six do not include clear aims and objectives;³¹⁴ however, of those, one does give prominence to financial aspects of the subject program.³¹⁵ Two evaluations treat financial considerations as paramount, seeking to establish the economic value of the subject programs.³¹⁶ One is specifically non-financial in its scope (and is not linked to prospects of future funding for the subject program), seeking to evaluate the inclusivity, responsiveness, and extent of power transfer to communities by the Koori Court in Melbourne.³¹⁷

4.35 Other stated aims and objectives include assessing the subject program and its potential for expansion,³¹⁸ ascertaining adaptations and improvements for the subject program,³¹⁹ assessing the programs' effects on communities,³²⁰ informing similar programs elsewhere,³²¹ assessing the community's capacity to operate such programs,³²² and, to informing future evaluations.³²³ One evaluation specifically sought to assess the role of the evaluators' funding body in the subject program.³²⁴

4.36 Overall, within the selected items, success of the subject programs is largely based on Western notions of what is successful, with a consistent focus on financial considerations – only one evaluation

³¹⁴ Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program (Report, 2016); Okazaki, I., The "Ponki" Victim Offender Mediation Program on the Tiwi Islands (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); One Pacific Dispute Resolution, Ali Curung Project: Final Project Report (2020); One Pacific Dispute Resolution, Tennant Creek Mediation Case Studies (2020); One Pacific Dispute Resolution, Tennant Creek Peace Project: 100 Day Project Report (2020); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³¹⁵ Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program (Report, 2016).

³¹⁶ Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020).

³¹⁷ McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654.

³¹⁸ Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

³¹⁹ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016).

³²⁰ The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

³²¹ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016).

³²² Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General).

³²³ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022).

³²⁴ Arney, F., K. McGuiness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Child Protection Research Program, Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012).

does not have finances as a key consideration.³²⁵ Three openly declare their focus on finances and whether the economic value of program benefits exceeds their cost.³²⁶

4.37 Many of the programs have a focus on reducing contact with the criminal justice system and reducing community violence; however, measuring achievement of these objectives has not been consistent. One report found that outcomes relating to reduced violence are difficult to assess due to the subjective nature of whether a conflict would have progressed to a situation where violence or property damage was more likely to occur if the dispute resolution intervention had not taken place.³²⁷ Another measured the reduction in contact with the criminal justice system by the number of arrests and remanded prisoners within the community since the implementation of the program.³²⁸ Other evaluations measured the achievement of these aims through the total number of people coming before the court; however, one stated this method of performance measurement could not take account of the program's other activities, and was 'too narrowly focused on court'.³²⁹

4.38 Two of the evaluations include consideration of the subject programs' effects on communities,³³⁰ which can be difficult to quantify. It is possible that the evaluators measure program resourcing and effects in ways that are different from the preferred measures of the affected communities, suggesting that such inconsistencies risk skewing the evaluation outcomes towards the evaluators' preferences. Similar inconsistencies have been reported in unrelated research on evaluations of First Nations peoples' services.³³¹

4.39 All of the selected items have subject programs/services that receive at least some level of government funding, and it is likely that the focus on financial considerations is driven by an interest in retaining future funding for the program.

Measuring effectiveness

4.40 The most notable of all evaluations was that of the Correctional Centre Conferencing program,³³² in which the measure of success was centred around reduced rates of recidivism. The

³²⁵ McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654.

³²⁶ Barrett, G., and A. Daly, *Independent Cost benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of Galambany Court* (Report to ACT Justice and Community Safety Directorate, 2020); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016).

³²⁷ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016), 81.

³²⁸ Barrett, G., and A. Daly, *Independent Cost benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014).

³²⁹ The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021), 70.

³³⁰ McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654; The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021).

³³¹ The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

³³² Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011).

evaluation reported that, when offenders participated in the program, recidivism dropped by around 40%. The Aurukun evaluation measured success of the subject program by whether a dispute was settled and/or the parties reconciled (it reported that 68% did),³³³ noting the lack of appropriate benchmarks for measuring success.

*... stakeholders widely believe that mediation (and other forms of peacemaking such as shuttle diplomacy) are helping parties to settle disputes and preventing minor disputes from escalating into violence or property damage.*³³⁴

Financial measures of success

4.41 As noted above, it is likely that the evaluators' reliance on financial measures of success arise from the needs of program funders (ie, governments) and the lack of appropriate benchmark measures; and of the sixteen selected items that include the aims and objectives of the evaluation, only one does not include a strong focus on financial matters. Ten of the sixteen outline financial considerations as a key measure in their evaluations.³³⁵

4.42 Financial considerations were used to measure the ultimate success of programs, and the viability of continuing the programs. In many, the economic impact of a program was evaluated in support of ongoing program funding, with three stating this fairly bluntly.³³⁶ For example, 'has the

³³³ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016).

³³⁴ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016), 80.

³³⁵ Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Arney, F., K. McGuinness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012); Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington Island; Moyenda (Council of Elders) Mornington Island; and Mornington island Shire Council, 2010); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012); Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016); The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021); Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000).

³³⁶ Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016).

ARJP resulted in reduced financial costs to society?’³³⁷ and that the evaluation report provided ‘strong support to investing.’³³⁸

4.43 There appears to be scope for governments to review their own funding and evaluation practices to accommodate approaches that are more participatory, inclusive and culturally appropriate, as has been recommended in the education sector.³³⁹

Incorporation of community cultural interests

4.44 The inclusion of cultural practices within programs are reported to be of high importance within each of the case studies; however, this appears to contradict the lack of inclusivity in the planning and implementation processes of subject programs, and of evaluations. As is noted in one of the sixteen:

*The limitations of the development process of the Division such as the absence of formal involvement by the Elders and the fact that the Koori community was not given the chance to independently develop a framework for the Division shows that self-determination in the Division was somewhat limited to being an administrative policy.*³⁴⁰

Community and stakeholder engagement – empowerment and participation

4.45 According to Articles 3 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), participation is linked to self-determination and should lead to empowerment.³⁴¹ Although Australia supports UNDRIP, it has been suggested that the support is notional, at best, and that self-determination for Australia’s First Nations peoples is not recognised.³⁴² In the context of self-determination and participation, empowerment has been said to be:

*... an intentional ongoing process centred in the local community, invoking mutual respect, critical reflection, and group participation, through which people lacking an equal share of valued resources gain greater access to and control over those resources.*³⁴³

4.46 However, despite the existence of recognised definitions and understandings of these commonly used terms, it seems reasonable to accept that First Nations peoples themselves, and

³³⁷ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016), 14.

³³⁸ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016), 40.

³³⁹ The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

³⁴⁰ McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates’ (2005) 10(2) *Deakin Law Review* 654, 670-71.

³⁴¹ United Nations, *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, Resolution 61/295, 2007).

³⁴² Hunt, J., and T. Bauman, *No More Business as Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (ANU Centre for Aboriginal Economic Policy Research, Policy Insights Paper 06/2022).

³⁴³ Hunt, J., and T. Bauman, *No More Business as Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (ANU Centre for Aboriginal Economic Policy Research, Policy Insights Paper 06/2022), 8, citing Perkins, D., and M. Zimmerman, ‘Empowerment Theory, Research, and Application’ (1995) 23(5) *American Journal of Community Psychology* 569, 570.

Indigenous communities, have the capacity to define meanings that are appropriate to their own cultural settings, both locally and regionally,³⁴⁴ and that this capacity can influence the design and implementation of their own programs, as well as of any evaluations of those programs.³⁴⁵

4.47 The selected evaluations and case studies suggest that First Nations peoples are rarely participants in the design and implementation of dispute management programs, or of evaluations of those programs. Although it is clear that some programs have sought community participation, the evaluations suggest that it has been inadequate. Only two of the selected items pre-date UNDRIP, and both express clear understanding of appropriate processes for inclusion, participation, and engagement of First Nations peoples.³⁴⁶

4.48 A notable exception is the Ponki Victim Offender Mediation Program that operates from the Tiwi Islands, in the Northern Territory.³⁴⁷

The Ponki Victim Offender Mediation Program

4.49 The Ponki Mediator program is an example of a service that enjoys strong community and stakeholder reengagement, and could be said to have a high level of protective ownership among its community. Tiwi Elders were engaged in the design, implementation, and delivery of the program, which combines traditional and contemporary approaches and techniques, as well as incorporating a sense of ‘strong Tiwi tradition’.³⁴⁸

*... through incorporating cultural values, priorities and governance structures – including kinship protocols, respect for Elders and traditional owners, use of ceremony, and approaches to gender makes the Ponki system relevant and effective and respected in the modern Tiwi society.*³⁴⁹

4.50 As noted above, the Ponki program has a laudable success rate, suggesting that, where there is a high level of community engagement in a program’s design and implementation, that participation is likely to influence the program’s effectiveness.

Community participation

4.51 According to the selected evaluations, the level of community involvement within the design and implementation phases of most programs is limited. Many of the case studies of individual programs found limitations in the community engagement,³⁵⁰ despite seven of the nine individual

³⁴⁴ Hunt, J., and T. Bauman, *No More Business as Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (ANU Centre for Aboriginal Economic Policy Research, Policy Insights Paper 06/2022).

³⁴⁵ The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

³⁴⁶ Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000); McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates’ (2005) 10(2) *Deakin Law Review* 654.

³⁴⁷ Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011).

³⁴⁸ Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011), 5.

³⁴⁹ Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011), 15.

³⁵⁰ The non-specific case studies are not included in these numbers because they did not relate to the implementation of one specific program; including them would distort the data.

programs reporting community involvement that occurred in the initial stages.³⁵¹ In one evaluation, the inadequate community engagement in the program design phase was found to have affected the lack of subsequent community engagement in implementing the program (as mediators), and acceptance of the program's model of operation.³⁵² In a separate evaluation, it was reported that 'community engagement and perceptions of community ownership are fragile and easily eroded.'³⁵³ Both evaluations report that further engagement with the community was a necessary factor in improving the services.

4.52 This material suggests that early community engagement in the design of a program might be a key indicator of how well the program will be received and the levels of community commitment to its operation, or, to put it another way, if the community is not engaged early in the design of a program, the implementation phase will face obstacles. This link is well-recognised,³⁵⁴ and cannot be identified through economic analysis, nor can program effectiveness be evaluated without considering the community's role.

Evaluation data collection

4.53 The inadequate community inclusion in the evaluation processes becomes clear during the collection of evaluation data. The collection and use of evaluation data in these case studies appears to be a point of contention for evaluators and was said to be lacking in some cases.³⁵⁵ For example, in relation to the use of yarning circles in association with court programs, it was said:

There was generally a paucity of research explicitly demonstrating the impact of yarning programs and the reasons for this were examined. This suggests that further research is required to evaluate programs of this nature. It is vital that such research

³⁵¹ Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Barrett, G., and A. Daly, *Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014); McAsey, B., A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' (2005) 10(2) *Deakin Law Review* 654; Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011); One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020); Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³⁵² Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016).

³⁵³ Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014), 20.

³⁵⁴ Hunt, J., and T. Bauman, *No More Business As Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (ANU Centre for Aboriginal Economic Policy Research, Policy Insights Paper 06/2022); The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

³⁵⁵ Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014) 146; The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021); Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022); Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016); Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of the Galamby Court* (Report to the ACT Justice and Community Safety Directorate, 2020); Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost Benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016).

*be undertaken by and designed in collaboration with the local Aboriginal and Torres Strait Islander community, to ensure its methodology is appropriate and consistent with an Aboriginal and Torres Strait Islander worldview ... In addition, the findings must be relevant to the local context.*³⁵⁶

4.54 These findings suggest that there is a need for evaluative research, at least, to include affected communities in the development of evaluation processes, including in the decisions about data collection to inform those evaluations. It is likely that, by not being engaged in the choice of data collection for the evaluation, the communities have a reduced commitment to and ownership of the evaluation process.

Trust

4.55 Community engagement in the delivery of programs was in many cases found to be linked to ‘trust’ and a key factor in promoting participation, increasing support for the use of the programs, referral rates and the satisfaction of the users. In one evaluation, mistrust within the community was ‘acknowledged as a feature of the relations’ between the program and its users.³⁵⁷ The 2020 One Pacific Dispute Resolution Ali Curung Project report emphasises:

*‘trust is a barrier to plan, organise, coordinate and implement any measures to mitigate/prevent, prepare for, respond to and recover from conflict events. This concept of trust applies to both people within the community and even to ‘experts’ from outside the community especially if the community has no reasons to trust an outsider’.*³⁵⁸

Findings

4.56 Overall, the selected evaluations and case studies may not enable useful assessment of the effectiveness of the various dispute management programs, with the exception of the Ponki Mediator Project.

4.57 This review suggests that two key factors have affected the reliability of the evaluation data:

- (i) Inadequate, and sometimes lack of, meaningful community and stakeholder engagement, including in:
 - a. The program/service design (including developing aims and objectives);
 - b. Program/service implementation;
 - c. Evaluation design (including developing aims and objectives relevant to the community and stakeholders);

³⁵⁶ Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022), 33.

³⁵⁷ Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal communities* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012).

³⁵⁸ One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020); One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020).

- d. Evaluation process (including designing flexible approaches to participation, and transparent availability of evaluation outcomes); and
- (ii) Selected evaluations have a Western focus and lack design features that:
 - a. Accommodate community and stakeholder cultural interests;
 - b. Incorporate discernible community relevance.

4.58 Various governments have been the source of most of the funding for all the evaluated programs, and it seems likely that government requirements have influenced the approaches evaluators have taken. There is some onus on governments to take a more enlightened and inclusive approach to designing, implementing, and assessing the conflict management programs that operate in First Nations communities. Finally, it must be noted that this review is limited because it is based on only a selection of evaluations.

Case Study	Location		ATSI Author	Program		Community involvement			Finance focus	Evaluation	
	State			Y/NS	Operation	DR	Design	Implementaion		Delivery	Aims/Objectives
2020 Galambany Court	VIC	Urban	NS	2004	Yarning circles	N/S	Y	Y	Y	Stated	Stated
2005 Koori Court Vic	ACT	Urban	NS	2002	Sentencing Court	Y	Y	Y	N	Stated	Stated
2011 Ponki Mediaiton	NT	Remote	NS	2009	Mediation	Y	Y	Y	N	Not Stated	Not Stated
2014 Yuendumu	NT	Remote	NS	2011	Mediate/Bush Courts/referral	Y	NS	Y	Y	Stated	Stated
2016 Aurukun	QLD	Remote	NS	2013	Mediate/Conflict Coach/Negotiate	Y	Y	Y	Y	Stated	Stated
2020 Ali Curung	NT	Remote	NS	2018	Mediate/Shuttle/Conflict Coach	Y	Y	Y	N	Not Stated	Not Stated
2012 A/Sp Family GC	NT	Regional	NS	2009	Family Group Conferencing	NS	NS	Y	Y	Stated	Not Stated
2020 Tennant Ck CS	NT	Regional	NS	2019	Mediation	NS	NS	Y	N	Not Stated	Not Stated
2020 Tennant Ck 100 days	NT	Regional	NS	N/S	Mediation	Y	NS	Y	N	Not Stated	Not Stated
2010 Browning Morn. Isl	QLD	Remote	NS	2008	Mediate / Restorative Justice	Y	NS	Y	Y	Stated	Stated
2012 Venables Morn. Isl	QLD	Remote	NS	2008	Mediate / Restorative Justice	Y	NS	Y	Y	Not Stated	Not Stated
2014 Brunton Morn. Isl	QLD	Remote	NS	2008	Mediate / Restorative Justice	Y	NS	Y	Y	Stated	Stated
2016 Jurunki Laka Morn. Isl	QLD	Remote	NS	2008	Mediate / Restorative Justice	NS	NS	Y	Y	Stated	Stated
2022 Yarning circles	ACT	Various	Y	N/A	Yarning Circles	N/A	N/A	N/A	N	Stated	Stated
2021 CJGrps Qld	QLD	Various	NS	N/A	Community Justice Groups	N/A	N/A	N/A	Y	Stated	Stated
2000 ATSI Task Force	QLD	Various	NS	N/A	N/A	N/A	N/A	N/A	Y	Stated	Stated

Table 1 Data analysis: Targeted review of selected evaluations and case studies.

Conclusions

4.59 The key findings from above two data collection activities suggest that, despite the reportedly positive influence of culturally appropriate approaches, processes and methods for managing conflict in First Nations settings, evaluations of *in situ* programs continue to have a Western-focus including a strong focus on financial measures of success and inadequate engagement of affected First Nations people.

Thematic analysis

4.60 The selected materials had a clear focus on cultural influences on the approaches, processes and methods for managing conflict, in particular, the positive influences of access to those that are culturally appropriate; and the negative influences of colonialism, non-Indigenous law/legal systems, Western expectations, assumptions, and romanticisation. There was a similarly clear focus on specific conflict management strategies, including law/lore and legal systems (both customary and Western); customary approaches and techniques; the role of women as peacemakers and peacebuilders in traditional contexts and settings; services appropriate to specific population groups; A/DR processes; prevention strategies; and training and standards for practitioners. There was less focus on specific types of conflict and disputes.

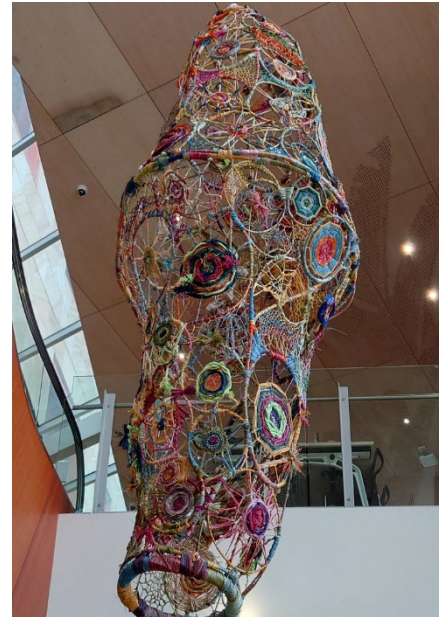
Review of selected evaluations and case studies

4.61 The review has revealed reported inadequate levels of community engagement in the evaluations and, in some cases, in the programs themselves; a lack of First Nations people as evaluators; and the use of success measures that are largely Western-focused, making it difficult to ascertain the relevant communities' own views.

4.62 Both Parts Three and Four of this report show that recent commentary has included descriptions of traditional community- and group-focused approaches and processes that are more cooperative and less dramatic, and that these have been familiar to First Nations peoples for thousands of years. The next, and final, part of this report, Part Five, outlines the conclusions to be drawn from the research project and includes an outline of preferred next steps for future research in this area. In particular, Part Five draws on the expertise of the Project Advisory Group.

Part Five – Next Steps

Overview



5.0 In this Report, previous sections have outlined the ways in which the Research Team undertook its task to investigate what is known about First Nations peoples' approaches to conflict and its management in Australia, and of their roles as peacebuilders and peacemakers. Parts One and Two also report on the Research Team developing a research framework that includes:

- A Statement of Cultural Responsiveness.
- Discussion about the critical nature of First Nations languages and terminology that contextualise their worldview, (epistemology).
- A conceptual framework specific to this project.

5.1 Parts Three and Four report on information gathered from four separate data collections (a selected thematic analysis; a targeted review of selected program evaluations and case studies; a targeted review of commissions of inquiry; and a brief review of selected historical records).

5.2 This section of the Report takes into account the impediments that affected access to First Nations researchers, constricted funding and resources, all of which restricted the scope of this Project to a snapshot of the many materials that have been collected.³⁵⁹ In addition, each of the researchers has their own standpoints, governed largely by their own personal history, education and sociocultural perceptions. Their viewpoints or standpoints influence their understanding of the material, and how information is deciphered to invariably shape the ways in which they have reviewed and interpreted the research materials.

5.3 The research findings are also limited by decisions made about the selection of materials to include in the reviews and analysis, and the choices about how the analysis and reviews would be conducted. Further, this research could not cover access to First Nations peacemaking services, including engagement of peacemakers by Government agencies, non-government organisations, or

³⁵⁹ The project and research limitations are considered elsewhere in the report, including in Parts A and C.

the private sector. Such an exploration could yield information to harness specific social and economic benefits where First Nation peacemakers are relied upon to support maintenance of community cohesion; community problem solving; relationship and trust building; conflict management; dispute resolution; and agreement making.

5.4 The Research Team's research findings (described elsewhere in this Report) suggest there is an important consequence of the limited (or lack of) engagement of First Nations peoples in the design, implementation and evaluation of programs and services for the management of conflict. In brief, some programs and services do not align with or incorporate First Nations peoples' values, their cultural needs, or their approaches, methods, techniques, knowledge and skills. For example, the selected review of programs and services shows that the most widely introduced process is a non-First Nations model of mediation.³⁶⁰ The model may not take into account First Nations peoples' traditional conflict management values or strategies, not be designed around the relative nature of the key cultural dynamics that are critical in connecting with kinship structures in First Nations communities, and may not recognise the essential role of Elders and leaders who amplify the worldviews and social settings of their language groups, and support the natural languages of the people in their communities.

5.5 In addition, it is not yet clear how the introduction of that model of mediation may have influenced the proliferation of non-First Nations people as dominant problem solvers within First Nations communities, bringing with them the approaches and preferences of Western government-based structures such as those of law enforcement, housing, and social services.

5.6 In respect of future work, the Research Team recognises that while its desktop review has been valuable in identifying areas for further research, additional observational analysis and in depth interviewing with First Nations peoples is necessary for more accurate conclusions to be drawn. This would involve the engagement of First Nations researchers to design and lead consultations with various First Nations communities and individuals. The consultations and interviews would be best conducted on country, as well as with First Nations peacebuilders and peacemakers, to explore the range of matters discussed below, as well as in the rest of the report.

5.7 This section outlines seven Next Steps for future research, listed in order of priority. Each of the steps is intended to improve the standard of research in this area, and to increase knowledge in this area. The greater aim is in supporting growth in specific skilling and recovery of the broader aspects required by First Nations peoples and communities to harness peacebuilding and peacemaking methods uniquely known by them or crafted to meet a balance of socio-cultural needs essential to sustaining their social governance systems.

The Project Advisory Group co-developed the Next Steps with the following aims:

1. To improve future research by engaging First Nations researchers to work on the co-design and conduct of the next phases of this project;
2. To address knowledge gaps by investigating:
 - a. The contemporary influence of leadership in First Nations peoples' approaches to community governance, social cohesion and decision-making;

³⁶⁰ See Part #.

- b. The changing role of Elders and their influence on cultural connection, community cohesion, and the prevention and management of conflict in First Nations communities;
 - c. The influence of culturally nuanced diversity of First Nations communities on the varying contemporary approaches to preventing and managing conflict;
 - d. The ways in which three core concepts influence First Nations communities' approaches to community governance, social cohesion, and decision-making:
 - i. Relationships
 - ii. Trust
 - iii. Cultural understanding and responsiveness
 - e. The ways in which three core characteristics influence the effectiveness of First Nations peacebuilders and peacemakers and the extent to which:
 - i. Trust, acceptance and connections are fostered within the affected community.
 - ii. Processes and outcomes are endorsed by reliable community and system supports.
 - iii. Sensitivity to every situation and context is supported (including culture).
3. To investigate the influence of government policy and legislation on First Nations peoples' approaches in supporting community cohesion, and to the prevention and management of conflict.

5.8 The remainder of this part describes key Next Steps in the ongoing development of this project and its aim to improve recognition of First Nations peacebuilders and peacemakers. It is noted that researchers may already be working in related areas, and, if so, it would be appropriate to seek opportunities for cooperative and joint projects.

First Nations researchers

5.9 During this project, it became clear to the Research Team and to the Project Advisory Group that greater involvement of First Nations researchers was essential. Although the lead researcher on the Project is a First Nations researcher, there were difficulties in attracting and retaining additional First Nations researchers, and, in part, this is likely to have been a resource issue. For example, although the Research Team actively sought the involvement of First Nations students who expressed interest in joining the project, there was greater attraction in other longer term, more prestigious and well-paying legal work.

5.10 A key first step in any future research in this area is that additional First Nations researchers must be enlisted to drive future projects and activities – without such participation, it may not be appropriate for research in this area to be undertaken. It is essential to engage a wide and diverse range of First Nations voices and expertise in the co-design and co-conduct of any future research – including in the co-design of what happens next with this research project. However, neither of these

is achievable without commitment, realistic funding, and resources to sustain such a comprehensive research project.

Next steps

- a. Future work on this project must be realistically funded and resourced and be assured of active institutional commitment.
- b. Future work on this project can showcase First Nations expertise and diversity by:
 - i. Enlisting researchers from diverse areas of expertise, and with varying approaches, views and perspectives.
 - ii. Ensuring engagement of a range of urban, regional and remote communities and groups.

Knowledge gaps

5.11 A key factor when considering “knowledge” in a First Nations research context is recognition that First Nations peoples’ choices about providing information might be limited by their perceptions about the research (a limitation common to many non-First Nations research participants). For example, if they believe there are insufficient levels of trust, they may choose to withhold information. In some situations, it may not be appropriate to say there is no knowledge, rather that the information has not yet been made available.

5.12 The limited scope of this research project has prevented any in-depth consideration of two topics that have been identified by the Project Advisory Group and by the Research Team: the influence of leadership approaches and of Elders in the prevention and management of conflict. It is clear that future research in this area would benefit from investigations of both topics.

Cultural consent

5.13 This report includes references to, and descriptions of historical ceremonies as published by white observers more than a century ago.³⁶¹ Although the descriptions have been in the public domain for over a century, it is not clear to the Research Team that relevant community groups consented to either the recording of observations of their ceremonies, or to publication of those recordings. The Research Team suggests that the Next Steps in this project include consultations with relevant community groups about the ongoing inclusion of these materials as part of this research project.

Next Steps

- a. That future researchers consult with the relevant communities regarding the ongoing inclusion of historical descriptions of their traditional ceremonies.

³⁶¹ See above, Part Three – First Nations peoples’ approaches to peacebuilding and peacemaking.

Leadership

5.14 This project's investigations of historical, evaluation, and Commission records, suggests that First Nations peoples' approaches to leadership are changing. Clearly delineated authoritative leadership roles are described in relation to traditional ceremonies in the writings of Spencer and Gillen,³⁶² and of Roth.³⁶³ Traditional leadership roles and influence are also considered by Stanner in 1959, where he describes his own encounters during a period when colonialism was actively restricting, even preventing, First Nations peoples' access to their own cultural practices.³⁶⁴

5.15 Much later descriptions of the three remote First Nations communities in the 1986 Commission of Inquiry suggest that changes had already been occurring in perceptions of First Nations leaders, and the authority vested in their roles – both within the communities themselves as well as among external non-First Nations people.³⁶⁵ For example, in the Edward River community, First Nations leaders who were elected to the local Aboriginal Council could also be appointed as Justices of the Peace to work in the Aboriginal/Local Court – which was not universally respected by the community itself. In RCIADIC (1991), the Commissioners report that, in some First Nations communities, non-First Nations community managers actively sought at least to undermine the authority of community leaders and Elders, reportedly leading to the communities' reduced acceptance of traditional social controls.³⁶⁶

5.16 In the review of selected program evaluations and case studies, it was found that, in most examples, the roles of leaders in First Nations communities were similarly limited under the influence of non-First Nations intermediaries. On the other hand, the Ponki Mediators are reported to have incorporated traditional leadership roles into their program, and this has been acknowledged as a key factor in the program's success.³⁶⁷

5.17 Like all societies, First Nations communities cannot be expected to remain static, despite being expected to continually engage in unsuitable static systems designed by governments and other non-First Nations organisations. While it is reasonable for approaches to community leadership to change and develop in response to such internal and external social influences (and under the influence of conflict as well as peacebuilding), it is evident that Elders continue to assert some aspects of their well-informed social systems that were designed by their Ancestors as triggers to improve relationships, participate in avoidance laws and at the same time build social cohesion.

5.18 In a more recent study of leadership in a remote NT community it is reported that there are clear generational differences in contemporary views of leadership,³⁶⁸ and that these are affected by

³⁶² Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4>.

³⁶³ Roth, W. E., *Ethnological Studies Among the North-West-Central Queensland Aborigines* (Government Printer, Queensland, Australia, 1897).

³⁶⁴ Stanner, W. E. H., *Durmugam: A Nangiomeri (1959)*, in Stanner, W. E. H., *White Man Got No Dreaming: Essays 1938 – 1973* (ANU Press, Australia, 1979; online replica ANU Press, Australia, 1991).

³⁶⁵ Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2.

³⁶⁶ Royal Commission *Into Aboriginal Deaths in Custody* (Final Report, April 1991), Vols 1, 2, 3, 4, 5, Vol 2.

³⁶⁷ Okazaki, I., *The "Ponki" Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011).

³⁶⁸ Senior, K., R. Chenhall, and D. Daniels, *'They Don't Dance Corroboree Any More': Youth Relations to Authority, Leadership and Civic Responsibility in a Remote Aboriginal Community*, in Senior, K., R. Chenhall, and V. Burbank (eds), *Indigenous Australian Youth Futures: Living the Social Determinants of Health* (ANU Press, Australia, 2021).

three circles of influence: developments within the community itself; the non-First Nations organisations with which they must interact on a daily basis; and a much broader globalised social setting created by internet access. The same study concluded that, regardless of approaches to leadership, there is a ‘continuity of structural determinants that place Aboriginal people in positions in which they have very limited authority and opportunity to make decisions about their own lives and communities.’³⁶⁹

Next steps

- a. Future research could investigate the influence of traditional, contemporary and combined approaches to cultural and community leadership across a diverse range of communities, including community perceptions of leadership roles in fostering community cohesion and conflict management.
- b. Future research could investigate the influence of First Nations leadership approaches on the following two areas:
 - i. Community governance and social cohesion, as well as decision making.
 - ii. The methods, skills and techniques used to prevent and manage conflict in any particular community or group.

The role of Elders

5.19 During this project, and during discussions between the Project Advisory Group and the Project Research Team, it has become clear that, in the First Nations context, the role of Elders in particular is seen to influence social cohesion and conflict management. However, it is also apparent that, as with leadership, the recognition of Elders and their roles can be changing in some communities.

5.20 In the recent leadership study mentioned above, there is no clear differentiation between “leadership” and “Elder” roles.³⁷⁰ The leader from the older generation may be described as an “Elder”, as Edward himself describes in the ritualised cultural process in which he was bestowed that role; while his daughter Edna appears to hold Elder status without any attendant ritual, and the youngest man actively avoids such traditional roles and titles – but retains some sociocultural values said to be inherent to the community’s identity³⁷¹.

³⁶⁹ Senior, K., R. Chenhall, and D. Daniels, ‘*They Don’t Dance Corroboree Any More’: Youth Relations to Authority, Leadership and Civic Responsibility in a Remote Aboriginal Community*, in Senior, K., R. Chenhall, and V. Burbank (eds), *Indigenous Australian Youth Futures: Living the Social Determinants of Health* (ANU Press, Australia, 2021), 78.

³⁷⁰ Senior, K., R. Chenhall, and D. Daniels, ‘*They Don’t Dance Corroboree Any More’: Youth Relations to Authority, Leadership and Civic Responsibility in a Remote Aboriginal Community*, in Senior, K., R. Chenhall, and V. Burbank (eds), *Indigenous Australian Youth Futures: Living the Social Determinants of Health* (ANU Press, Australia, 2021).

³⁷¹ Senior, K., R. Chenhall, and D. Daniels, ‘*They Don’t Dance Corroboree Any More’: Youth Relations to Authority, Leadership and Civic Responsibility in a Remote Aboriginal Community*, in Senior, K., R. Chenhall, and V. Burbank (eds), *Indigenous Australian Youth Futures: Living the Social Determinants of Health* (ANU Press, Australia, 2021).

5.21 Mainstream literature rarely acknowledges and recognises the important, influential, and changing role of Elders in First Nations communities. Nor does it report on the complex intersection between leadership and Elder status.

Next steps

- a. Future research could investigate the changing perception of Elders in First Nations Communities.
- b. In association with the above recommendation, future research could investigate the influence of community Elders and leaders in the following two areas:
 - i. Community governance and social cohesion, as well as decision making.
 - ii. The methods, skills and techniques used to prevent and manage conflict in any particular community or group.

First Nations peacebuilders and peacemakers

5.22 There is enormous diversity among Australia’s First Nations peoples and communities. For example, and considering language alone, AIATSIS has noted that there are at least 250 languages (or language groups) including 800 dialects, and each language group is associated with a specific geographic location and culture. Given this diversity, there is likely to be a wide range of approaches to preventing and managing conflict and it is unrealistic to expect there to be any single, or standardised, approach or technique common to all groups.

5.23 The limitations already noted about this project affect the capacity to provide detailed commentary on this issue, as does the lack of relevant research. The materials available to this project, and discussions with the Project Advisory Group, suggest that there are some points of commonality in how First Nations peacebuilders and peacemakers approach conflict, its prevention and management, as well as how they approach the safeguarding of the social cohesion and governance of First Nations and Indigenous communities. These commonalities fall into two broad categories: factors external to the peacebuilders and peacemakers that influence their effectiveness (including their cultural knowledge and authority) and their personal characteristics. Neither of these has been investigated in any depth.

Next steps

1. External factors

- a. Future research to investigate the following influences on First Nations peoples’ approaches to peacebuilding and peacemaking:
 - i. Relationships (including within the affected community, and between the affected community and the peacebuilders/peacemakers); this includes knowledge and practical understanding about relevant kinship systems within the affected community.

- ii. Trust (within the affected community, across its kinship systems, and, in a two-way exchange, between the community and the practitioners).
- iii. Cultural knowledge and authority, as well as cultural responsiveness.

2. Personal characteristics

- a. Future research to investigate the extent to which the following characteristics influence the effectiveness of First Nations peacebuilders and peacemakers:
 - i. Their level of acceptance within the affected community, and their trusted connections:
 - 1. Within the affected community.
 - 2. With community Elders.
 - ii. Their level of system, professional and peer support:
 - 1. Systemic financial support.
 - 2. Access to appropriate professional, peer and personal support and resources.
 - iii. Their capacity for sensitivity to every situation, and flexibility in their use of culturally attuned and responsive processes and approaches.

5.24 Another key component of future research is the methodology for measuring the effectiveness of First Nations peacebuilders and peacemakers. Using culturally responsive evaluations and assessments could reveal valuable community perceptions of the effectiveness and longevity of peacemaking activities.³⁷² When combined with conventional cost benefit analysis, such evaluations are likely to provide reliable information for anticipating community need as well as resources, training, professional development, and peer support into the future.

Government policies, legislation, and institutions

5.25 This project has found that governments generally could take a more enlightened and inclusive approach to designing, implementing, and assessing the conflict management programs that operate in First Nations communities. In particular, First Nations peoples could have an active role in co-designing such programs and the effectiveness measures by which they are to be evaluated.

5.26 It was well beyond the scope of this project to investigate the strong and historical influence of government policy on First Nations peoples' approaches to community cohesion, and to conflict prevention and management. Similarly, this project did not have the capacity to investigate the equally strong and historical influence of relevant legislation at the Commonwealth, State, and Territory levels.

³⁷² A valuable guide to evaluation methodology has been noted elsewhere in this report: The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022).

5.26 These are two important areas whose influence was both intended and purposeful, and it would be beneficial for future policy makers to be informed about their effects. This would be a large and complex research undertaking requiring significant support including funding, resources and commitment.

Next steps

- a. To ensure governments at all levels that provide and fund dispute resolution programs/services in Indigenous communities, actively seek the participation and engagement of those same communities in the co-design, co-implementation, and co-evaluation of those same programs, incorporating effectiveness measures that reflect the interests and needs of the affected communities.
- b. To ascertain influences on First Nations peoples' approaches to community cohesion, conflict prevention and management, future research investigate:
 - i. Relevant Commonwealth, State, and Territory government policies, and their evolution in relation to First Nations issues.
 - ii. Relevant Commonwealth, State, and Territory legislation, and its evolution in relation to First Nations issues.



Appendices

Appendix A

Consolidated Bibliography

All materials marked with an * have content specific to Australia

Journal articles

- * 5(14) *Indigenous Law Bulletin* (2002) [issue in full]
- Arraiza, J.-M., 'Squaring Indigenous Circles: The Making of Nicaragua's Indigenous Communal Property Regime' (2012) 19(1) *International Journal on Minority and Group Rights* 69
- * Bauman, T., "'You Mob All Agree?'" The Chronic Emergency of Culturally Competent Engaged Indigenous Problem Solving' (2007) 6(29) *Indigenous Law Bulletin* 13
- * Bauman, T., R. Carter, M. Harding, T. Kelly, S. Smith, A. Sweeney, B. McKeague, M. Meegan, and J. Weepers, 'Towards a Community of Practice' (2013) *December Native Title Newsletter* 12
- * Bishop, H., 'Communication, Representation, Voice and Choice: Facilitating Conversations on Indigenous Needs and Aspirations Part 1' (2009) 11(2) *ADR Bulletin* 1
- * Bishop, H., 'Communication, Representation, Voice and Choice: Facilitating Conversations on Indigenous Needs and Aspirations Part 2' (2009) 11(3) *ADR Bulletin* 1
- * Brigg, M., 'Mediation, Power, and Cultural Difference' (2003) 20(3) *Conflict Resolution Quarterly* 287
- * Brigg, M., and A. Tonnaer, 'Mawul Rom Project: Openness, Obligation and Reconciliation' (2008) 2 *Australian Aboriginal Studies* 3
- Broadhurst, K., "'Absolutely Nothing is So Important for a Nation's Culture as its Language'" (Wilhelm von Humbolt): The Cornish Language in Formal Education' (2021) *Academia Letters* Article 2284; DOI: 10.20935/AL2284
- Capulong, E. R. C., 'Mediation and the Neocolonial Legal Order: Access to Justice and Self-determination in the Philippines' (2012) 27(3) *Ohio State Journal on Dispute Resolution* 641
- Carl, A., and Str L. Garasu (eds), 'Weaving Consensus: The Papua New Guinea – Bougainville Peace Process' (2002) 12 *Accord*
- Colchester, M., 'Cultural Relativism and Indigenous Rights: Rethinking Some Dilemmas in Applied Anthropology (Part 1)' (2021) 37(3) *Anthropology Today* 16
- Colchester, M., 'Cultural Relativism and Indigenous Rights: Rethinking Some Dilemmas in Applied Anthropology (Part 2)' (2021) 37(5) *Anthropology Today* 18
- * Cowlshaw, G., 'Mythologising Culture Part 2: Disturbing Aboriginality in the Suburbs' (2011) 22 *The Australian Journal of Anthropology* 170
- * Crawford, N., and R. Thwaites, 'Two Way Learning & Culturally Appropriate Mediation Training in Remote Communities' (2013) 8(4) *Indigenous Law Bulletin* 24
- Daicoff, S. S., 'Families in Circle Process: Restorative Justice in Family Law' (2015) 53(3) *Family Court Review* 427 [USA]
- Diala, A. C., 'The Concept of Living Customary Law: A Critique' (2017) 49(2) *The Journal of Legal Pluralism and Unofficial Law* 143
- * Douglas, B., 'Naming "Polynesia": Cartography, Geography, and Toponymy of the "Fifth Part of the World"' (2021) 56(4) *The Journal of Pacific History* 375

- Drake, K., 'Indigenous Constitutionalism and Dispute Resolution Outside the Courts: An Invitation' (2020) 48(4) *Federal Law Review* 570
- Egger, G., J. Stevens, A. Binns, and B. Morgan, 'Psycho-social Determinants of Chronic Disease: Implications for Lifestyle Medicine' (2019) 13(6) *American Journal of Lifestyle Medicine* 526
- Eltringham, N., "'Illuminating the Broader Context": Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda' (2013) 19(2) *The Journal of the Royal Anthropological Institute* 338
- Garasu, Str L., 'The Role of Women Promoting Peace and Reconciliation' (1996) 12 *Accord* 28
- Gewin, V., 'Invest the Time to Build Trust Among Marginalized Research Participants' (2022) 612 *Nature* 177
- * Gray, S., 'Monsters Around the Stomping-Ground' (1999) 24(5) *Alternative Law Journal* 216
- * Grose, P. R., 'An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms' (1995) 12(4) *Mediation Quarterly* 327
- Harb, C., and P. B. Smith, 'Self-Construals Across Cultures: Beyond Independence-Interdependence' (2008) 39(2) *Journal of Cross-Cultural Psychology* 178
- Heyer, V., 'In Reply to Elgin Williams' (1948) 50(1) *American Anthropologist* 163
- Holmes, D., 'Profile: David Napier: Cultivating the Role of Culture in Health' (2014) 384 *The Lancet* 1568
- Hussain, M., C. Kho, A. Main, and M. J. Zawadzki, 'Horizontal Collectivism Moderates the Relationship Between In-the-moment Social Connections and Well-being Among Latino/a College Students' (2021) 23 *Journal of Immigrant and Minority Health* 1001
- Johnson, D. W., and R. T. Johnson, 'New Developments in Social Interdependence Theory' (2005) 131(4) *Genetic, Social, and General Psychology* 285
- * King, K., 'Indigenous Dispute Resolution' (2001) *Legal Date* 1
- Kitayama, S., M. Karasawa, K. B. Curhan, C. D. Ryff, and H. S. Markus, 'Independence and Interdependence Predict Health and Wellbeing: Divergent Patterns in the United States and Japan' (2010) 1 *Frontiers in Psychology* 1 [DOI: 10.3389/fpsyg.2010.00163]
- * Krakouer, J., S. Nakata, J. Beaufils, S.-A. Hunter, T. Corrales, H. Morris, and H. Skouteris, 'Resistance to Assimilation: Expanding Understanding of First Nations Cultural Connection in Child Protection and Out-of-home Care' (2022) *Australian Social Work* [DOI: 10.1080/0312407x.2022.2106443]
- * Krakouer, J., S. Wise, and M. Connolly, "'We Live and Breathe Culture": Conceptualising Cultural Connection for Indigenous Children in Out-of-home Care' (2018) 71(3) *Australian Social Work* 265
- Lacko, D., J. Čeněk, J. Točík, A. Avsec, Y. Đorđević, A. Genc, F. Haka, J. Šakotić-Kurbalija, T. Mohorić, I. Neziri, and S. Subotić, 'The Necessity of Testing Measurement Invariance in Cross-Cultural Research: Potential Bias in Cross-Cultural Comparisons with Individualism-Collectivism Self-Report Scales' (2022) 56(2-3) *Cross-Cultural Research* 228
- * Langford, R.F., 'My Heritage – Your Playground' (1983) 16 *Australian Archaeology Journal* 1

- Leckey, R., 'Child Welfare, Indigenous Parents, and Judicial Mediation' (2022) 49 *Journal of Law and Society* 151
- * Macdonald, G. M., 'Where Words Harm and Blows Heal' (1990) 1(3) *ADRJ* 125
- Macfie, A. L., 'My Orientalism' (2009) 45(1) *Journal of Postcolonial Writing* 1
- Makomenaw, M., 'Welcome to a New World: Experiences of American Indian Tribal College and University Transfer Students at Predominantly White Institutions' (2012) 25(7) *International Journal Of Qualitative Studies In Education* 855
- Matoba, K., "'Measuring" Collective Trauma: A Quantum Social Science Approach' (2022) *Integrative Psychological and Behavioral Science* [published online]; DOI: 10.1007/s12124-022-09696-2
- Mbembe, A., 'Provisional Notes on the Postcolony' (1992) 62(1) *Africa: Journal of the International African Institute* 3
- * McAsey, B., 'A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' Court' (2005) 10(2) *Deakin Law Review* 654
- Mercier, O., S. Chasi, and A. Ghilardi, 'Stop "Parachute" Science: Global South Researchers Want Equal Partnerships that Value Intellectual Exchange' (2023) 619 *Nature* 885
- * Mildrean, D., the Hon Justice, 'Redressing the Imbalance Against Aboriginals in the Criminal Justice System' (1997) 21 *Criminal Law Journal* 7
- Millar, G., 'Between Western Theory and Local Practice: Cultural Impediments to Truth-telling in Sierra Leone' (2011) 29(2) *Conflict Resolution Quarterly* 177
- * Myers, F. R., Book review: Tonkinson, R., *The Mardudjara Aborigines: Living the Dream in Australia's Deserts* (Case Studies in Cultural Anthropology, Holt, Rinehart and Winston, USA, 1978), (1979) 81(2) *American Anthropologist* 423
- Napier, A. D., C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav, A. Macdonald, U. Neuendorf, A. Parkhurst, R. Reynolds, G. Scambler, S. Shamdasani, S. Z. Smith, J. Stougaard-Nielsen, L. Thomson, N. Tyler, A-M. Volkmann, T. Walker, J. Watson, A. C. de C. Williams, C. Willott, J. Wilson, and K. Woolf, 'Culture and Health' 384 *Lancet* 1607
- Nolan, M., 'The Elusive Pursuit of Truth and Justice: A Review Essay' (2007) 97 *Radical History Review* 143
- Oddey, A., 'Nature Connections: Cultural Heritage, Identity and Well-being in Vancouver, Canada' (2015) 3 (1&2) *Scene* 37
- Oyserman, D., H. M. Coon, and M. Kimmelmeier, 'Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analyses' (2002) 128(1) *Psychological Bulletin* 3
- Pereira, R. M., 'Cutting Back, Dividing Up, and Segmenting: Colonial Knowledge and its Post-colonial Extension in Mozambique' (2016) 25(2) *Revista de Antropologia Social* 341
- Peters, M. A., and C. T. Mika, 'Aborigine, Indian, Indigenous or First Nations?' (2017) 49(13) *Educational Philosophy and Theory* 1229
- Phelan, S., 'Bougainville's Inspiring Tribute to Survival by Women of Peace: Book Review' (2004) 10(1) *Pacific Journalism Review*

- Pimentel, D., 'Rule of Law Reform Without Cultural Imperialism? Reinforcing Customary Justice Through Collateral Review in Southern Sudan' (2010) 2 *Hague Journal on the Rule of Law* 1
- Roy, A., 'Postcolonial Theory and Law: A Critical Introduction' (2008) 29 *Adelaide Law Review* 315
- Rusbult, C. E., and P. A. M. Van Lange, 'Why We Need Interdependence Theory' (2008) 2(5) *Social and Personality Psychology* 2049
- Said, E. W., 'Orientalism' (1977) 31(1) *The Georgia Review* 162
- Salihu, H. A., 'Possibilities for the Incorporation of African Indigenous Procedures and Mechanisms of Dispute Resolution in the Administration of Criminal Justice in Nigeria' (2020) 23(4) *Contemporary Justice Review* 354
- * Sharp, J., 'Addressing the Vulnerability of Aboriginal Young People in the Justice System' (2014) 124 *Precedent* 10
- Singelis, T. M., H. C. Triandis, D. P. S. Bhawuk, and M. J. Gelfand, 'Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement' (1995) 29(3) *Cross-Cultural Research* 240
- * Smith, P. M., 'Mapping Australasia' (2009) 7(4) *History Compass* 1099
- Spangen, M., A.-K. Salmi, and Tiina Äikäs, 'Sámi Archaeology and Postcolonial Theory – An Introduction' (2015) 52(2) *Arctic Anthropology* 1
- * Strelein, L., '25 Years of the Native Title Research Unit' (2018) 1 *Native Title Newsletter* 4
- Thorp, H., 'Editorial: It Matters Who Does Science' (2023) 380(6648) *Science* 873
- * Tonkinson, R., 'Aboriginal "Difference" and "Autonomy Then and Now: Four Decades of Change in a Western Desert Society' (2007) 17(1) *Anthropological Forum* 41
- * Turner, D. H., Book review: Tonkinson, R., *The Mardudjara Aborigines: Living the Dream in Australia's Deserts* (Case Studies in Cultural Anthropology, Holt, Rinehart and Winston, USA, 1978), (1992) 27(2) *Man, New Series* 440
- * Ungunmerr, M.-R., R. A. Groom, E. L. Schuberg, Atkinson, J., C. Atkinson, R. Wallace, and G. Morris, 'Dadirri: An Indigenous Place-based Research Methodology' (2022) 18(1) *AlterNative An International Journal of Indigenous Peoples* 94
- Uskul, A. K., and H. Over, 'Culture, Social Interdependence, and Ostracism' (2017) 26(4) *Current Directions in Psychological Science* 371
- Vargas, J. H., and M. Kemmelmeier, 'Ethnicity and Contemporary American Culture: A Meta-analytic Investigation of Horizontal-Vertical Individualism-Collectivism' (2013) 44(2) *Journal of Cross-Cultural Psychology* 195
- * Vivian, A., 'Conflict Management in the Native Title System: A Proposal for an Indigenous Dispute Resolution Tribunal' (2009) 93 *Reform Native Title* 33
- Weber-Pillax, 'Indigenous Research Methodology: Exploratory Discussion of an Elusive Subject' (1999) 33(1) *Journal of Educational Thought* 31
- * Welch, C., 'South Australian Courts Administration Authority: Aboriginal Court Day and Aboriginal Justice Officers' (2002) 5(14) *Indigenous Law Bulletin* 5
- * Whitehall, J., 'Dr W. E. Roth: Flawed Force of the Frontier' (2002) 26(75) *Journal of Australian Studies* 59; DOI: 10.1080/14443050209387804

Wilmot, S., 'Postcolonial Theory and Canada's Health Care Professions: Bridging the Gap' (2021) 24 *Medicine, Healthcare and Philosophy* 433

Wilson, R. A., 'Expert Evidence on Trial: Social Researchers in the International Criminal Courtroom' (2016) 43(4) *American Ethnologist* 730

Wright, S., 'The Akitsiraq Law School: A Unique Approach to Indigenous Legal Education' (2002) 5(19) *Indigenous Law Bulletin* 14

Books, Chapters of books

Adeosun, H. O., *Indigenous Knowledge Systems and Dispute Resolutions: The Yorùbá Example*, in Mawere, M., and S. Awuah-Nyamekye (eds), *Between Rhetoric and Reality: The State and Use of Indigenous Knowledge in Post-Colonial Africa* (Langas Research and Publishing Common Initiative Group, Cameroon, 2015)

* Atkinson, J., *Dadirri: Listening to One Another*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002)

* Atkinson, J., *Song Lines and Trauma Trails*, in Atkinson, J., *Trauma Trails: Recreating Songlines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press P/L, Australia, 2002)

* Berndt, M., and C. H. Berndt, *The World of the First Australians: Aboriginal Traditional Life Past and Present* (5th Edition, Revised, Aboriginal Studies Press, Australia, 1988)

* Bishop, H., and C. Coburn, *Chapter 2 An Overview of Traditional Forms of Indigenous Conflict Resolution and Peace in Australia*, in Bretherton, D., and N. Balvin (eds), *Peace Psychology in Australia* (Springer Science+Business Media, USA, 2012)

Braun, V., and V. Clarke, *Thematic Analysis: A Practical Guide* (Sage Publishing, UK, 2022)

Burger, C., and R. A. Wilson, *The Practice of Human Rights*, in MacClancy, J. (ed), *Exotic No More* (2nd Edition, University of Chicago Press, USA, 2019)

* Carter, P., *The Road to Botany Bay: An Essay in Spatial History* (Faber and Faber, UK, 1987)

Dampier, W., *A Voyage to New Holland, &c. In the Year, 1699* (James Knapton, UK, 1703), Vol III, available at

<https://ia800907.us.archive.org/12/items/aneuvoyageround00dampgoog/aneuvoyageround00dampgoog.pdf>

* Dudgeon, P., H. Milroy, and R. Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2nd Edition, Commonwealth of Australia, 2014)

Gandhi, L., *The Limits of Postcolonial Theory*, in Gandhi, L., *Postcolonial Theory: An introduction* (University of Edinburgh Press, UK, 1998)

Gelfand, M. J., C.-y. Chiu, and Y.-y. Hong (eds), *Handbook of Advances in Culture and Psychology* (Oxford University Press, UK, 2021)

* Howitt, A.W., *The Native Tribes of South-east Australia* (Macmillan, UK, 1904)

- * Keen, I., *Being Black: Aboriginal Culture in 'Settled' Australia* (Aboriginal Studies Press, Australia, 1994)
- Koormundum, I.M., *Ngun Koongurrukun – Speak Koongurrukun* (Self-Published, Perth, Australia, 2000)
- Milton, K., *Chapter One – Anthropology, Culture and Environmentalism*, in Milton, K., *Environmentalism and Cultural Theory: Exploring the Role of Anthropology in Environmental Discourse* (Routledge, UK, 1996)
- * Moreton-Robinson, A., *Talkin' Up to the White Woman: Indigenous Women and Feminism in Australia* (Queensland University Press, Australia, 1999)
- * Nakata, M., *Disciplining the Savages, Savaging the Disciplines*. (Aboriginal Studies Press, Australia, 2008)
- O'Loughlin, M., and M. Charles, *Fragments of Trauma and the Social Production of Suffering* (Rowman and Littlefield Publishers, Canada, 2014)
- * Perkins, R., and M. Langton, *The First Australians* (Mieguyah Press, Australia, 2010)
- Rigney, L.I., *Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and Its Principles* (Minnesota University Press, USA, 1999)
- * Rose, F.G.G., *The Traditional Mode of Production of the Australian Aborigines* (Angus & Robinson, Australia, 1987)
- * Roth, W. E., *Ethnological Studies Among the North-West-Central Queensland Aborigines* (Government Printer, Queensland, Australia, 1897)
- Ryder, A. G., M. M. Doucerain, B. Zhou, J. Dere, T. Jurcik, and X. Zhou, *On Dynamic Contexts and Unstable Categories: Steps Towards a Cultural-clinical Psychology*, in Gelfand, M. J., C.-y. Chiu, and Y.-y. Hong (eds), *Handbook of Advances in Culture and Psychology* (Oxford University Press, UK, 2021)
- Said, E., *Orientalism: Western Concepts of the Orient* (Vintage Books, UK, 1978, Afterword, 1994)
- Seeberg, J., A. Roepstorff, and L. Meinert (eds), *Biosocial Worlds: Anthropology of Health Environments Beyond Determinism* (University College London Press, UK, 2020)
- Simpson, M. A., *Bitter Waters: Effects on Children of the Stresses of Unrest and Oppression*, in Wilson, J. P., and B. Raphael (eds), *International Handbook of Traumatic Stress Syndrome* (Plenum Press, USA, 1993)
- Sirivi, J. T., and M. T. Havini (eds), *... as Mothers of the Land: The Birth of the Bougainville Women for Peace and Freedom* (Pandanus Books, ANU, Australia, 2004)
- * Spencer, B., and F. J. Gillen, *Chapter III Certain Ceremonies Concerned with Marriage Together with a Discussion Regarding the Same*, in Spencer, B., and F. J. Gillen, *Native Tribes of Central Australia* (Cambridge University Press, UK, 1899; replica published online, Cambridge University Press, UK, 2011); DOI: 10.1017/CB09780511751196.005
- * Spencer, B., and F. J. Gillen, *The Northern Tribes of Central Australia* (Macmillan Company, UK, 1904); available online at <https://wellcomecollection.org/works/pybpr3r4>
- * Stanner, W. E. H., *White Man Got No Dreaming: Essays 1938 – 1973* (ANU Press, Australia, 1979; online replica ANU Press, Australia, 1991)

- * Stanner, W.E.H., and R. M. Manne, *The Dreaming and Other Essays* (Black Ink, Australia, 2009)
- * Tonkinson, R., *The Mardu Aborigine, Living the Dream In Australia's Desert - Case Studies in Cultural Anthropology*. (Holt, Rinehart and Winston Inc., USA, 1991)
- Tuhiwai-Smith, T., *Decolonising Methodologies: Research and Indigenous Peoples*. (University of Otago Press, New Zealand, 2012)
- Vogt, K. C., *Lectures on Man: His Place in Creation, and in the History of the Earth* (Longman, Green, Longman, and Roberts, for the Anthropological Society, UK, 1864), available at <https://wellcomecollection.org/works/brq5hy87>
- * Walters, J. A., *Trauma and Resilience Among a Stolen Generation of Indigenous People*, in M. O'Loughlin and M. Charles (eds), *Fragments of Trauma and the Social Production of Suffering – Trauma, History, and Memory* (Rowman & Littlefield, USA, 2015)
- Warner, W. L., *A Black Civilization: A Social Study of an Australian Tribe* (Revised Edition, Harper & Row, USA, 1964) [original publication: Harper & Brothers, USA, 1937]
- Webster, D. (ed), *Flowers in the Wall: Truth and Reconciliation in Timor-Leste, Indonesia, and Melanesia* (University of Calgary Press, Canada, 2017)
- Wilson, J. P., and B. Raphael (eds), *International Handbook of Traumatic Stress Syndrome* (Plenum Press, USA, 1993)

Reports, Discussion Papers, briefings (including Commissions of inquiry)

- * Akin Ojelabi, L., and A. Boyle, *“Playing devil’s advocate”: Reality testing in the context of mediation in Australia* (Report to the Mediator Standards Board, December 2022)
- * Aboriginal and Torres Strait Islander Social Justice Commissioner, *Third Report 1995* (Australian Human Rights Commission, 1995)
- * Aboriginal and Torres Strait Islander Women’s Task Force on Violence, *Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report* (Report to Queensland Government, Australia, 2000)
- * Ali Curung Community, *Let’s Work Together to Bring Peace in Ali Curung: An Overview of the Current Situation in Ali Curung* (Community Report; undated; reference includes 2021)
- * Arney, F., K. McGuinness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Menzies School of Health Research, Report to the Northern Territory Department for Children and Families, 2012)
- Asmia, S., *Indigenous Youth Restorative Justice: Addressing Overrepresentation in the Canadian Criminal Justice System* (Report to Social Connectedness Fellowship Program, Canada, 2019)
- * Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *An Office for Advocacy and Accountability in Aboriginal Affairs in Western Australia (Submission to Independent Office for Advocacy and Accountability in Aboriginal Affairs in Western Australia, 2018)*
- Australia, Pacific & Asia Conflict Prevention and Peacebuilding Network, *Australian International Development Policy Review* (2022); available online at <https://peacebuildingaustraliapacificasia.wordpress.com/policylearning/>

- * Barrett, G., and A. Daly, *Independent Cost benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014)
- * Bauman, T., *Final Report of the Indigenous Facilitation and Mediation Project July 2003 – June 2006: Research Findings, Recommendations and Implementation, Report No 6* (AIATSIS, 2006)
- * Bishop, R., and R. Campbell, *Dollar Dreaming: A Literature Review of Economic Assessments of Indigenous Social Investment* (Report for The Australia Institute, Australia, 2017)
- * Blagg, H., *Problem-Oriented Courts: A Research Paper Prepared for the Law Reform Commission of Western Australia, Project 96* (Law Reform Commission of Western Australia, March 2008)
- * Blundell, B., J. Clare, E. Moir, M. Clare, and E. Webb, *Review Into the Prevalence and Characteristics of Elder Abuse in Queensland* (Report for Queensland Government, 2017)
- * Brown, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General's Department; Queensland Department of Justice and Attorney-General; Junkuri Laka Association Inc, Mornington island; Moyenda (Council of Elders) Mornington Island; and Mornington Island Shire Council, 2010)
- * Browning, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General, 2010)
- * Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014)
- Chartrand, L., and K. Horn, *A Report on the Relationship Between Restorative Justice and Indigenous Legal Traditions in Canada* (Report to the Department of Justice Canada, Canada, 2016)
- * Commonwealth Attorney-General's Department, *New Family Dispute Resolution Services for Aboriginal and Torres Strait Islander Families (Discussion Paper, 2022)*
- * Community Justice Centre (CJC) [Northern Territory], *Service Overview* (CJC, 2021)
- Cornell, S., *Indigenous Peoples, Poverty and Self-determination in Australia, New Zealand, Canada and the United States* (JOPNA No. 2006-02, Joint Occasional Papers on Native Affairs, Native Nations Institute, Harvard Project on American Indian Economic Development, USA, 2006)
- Cornell, S., and J. P. Kalt, *Sovereignty and Nation-building: The Development Challenge in Indian Country Today* (Harvard Project on American Indian Economic Development, USA, 1998)
- * Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of Galambany Court* (Report to ACT Justice and Community Safety Directorate, 2020)
- * Department of Aboriginal and Torres Strait Islander Partnerships (Queensland), *Annual Bulletin for Queensland's Discrete Indigenous Communities 2016-17* (2017)
- * Department of Child Safety, Youth and Women, *Restorative Justice Project: 12-Month Program Evaluation* (Report for Director General Endorsement, 2018)
- * Department of Children, Youth Justice and Multicultural Affairs (Queensland), *Annual Report 2021-22* (2022)
- * Department of Foreign Affairs and Trade, *Indigenous Diplomacy Agenda* (Commonwealth of Australia, May 2021)

- * Department of Justice and Attorney-General (Queensland), *Youth Justice Benchbook* (Report for Childrens Court of Queensland, 2021)
- * Edwige, V., and P. Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report to Bugmy Bar Book, NSW, Australia, 2021)
- * Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (Report to the National Alternative Dispute Resolution Advisory Council [NADRAC], 2009)
- Henson, E. C., M. M. Hill, M. R. Jorgenson, and J. P. Kalt, *Recommendations for the Allocation and Administration of American Rescue Plan Act Funding for American Indian Tribal Governments* (Policy Brief No 6; University of Arizona Native Nations Institute, USA, 2021)
- Higgins, K., and C. O'Toole, *Climate Change and Conflict Risks in the Pacific* (Conciliation Resources, UK and Australia, 2021)
- * Hunt, J., *Engaging with Indigenous Australia – Exploring the Conditions for Effective Relationships with Aboriginal and Torres Strait Islander Communities, Issues Paper No. 5* (Australian Institute of Family Studies, 2013)
- * Hunt, J., and T. Bauman, *No More Business As Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (ANU Centre for Aboriginal Economic Policy Research, Policy Insights Paper 06/2022)
- * Jones, C., *Aboriginal Boundaries: The Mediation and Settlement of Aboriginal Secondary Disputes in a Native Title Context* (National Native Title Tribunal, Occasional Papers, No. 2.2002, Australia, 2002)
- * Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016)
- * Junkuri Laka, *Independent Cost Benefit Analysis of the Mornington island Restorative Justice Program* (2016?)
- * Kingham, F., and T. Bauman, *Native Title Mediation: Issues Identified, Lessons Learnt: Proceedings and findings of IFaMP workshops with Native Title mediators, Report No 5* (AIATSIS, 2005)
- * Law Council of Australia, *New Family Dispute Resolution Services for Aboriginal and Torres Strait Islander Families* (Submission to Commonwealth Attorney-General's Department Discussion paper, 2022)
- Liloqula, R., and A. A. Pollard, *State Society and Governance in Melanesia* (Discussion Paper, Australian National University Research School of Pacific and Asian Studies, 2000)
- * Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016)
- Maiava-Zajkowski, M., *Realising Pacific Potential in Aotearoa New Zealand: Occupational Segregation and Pathways to Leadership* (Report to Manatū Wāhine Ministry of Women, Aotearoa New Zealand, 2021)
- Middle East and North Africa (MENA) Report, *Philippines: Forging Peace Through Indigenous Dispute Resolution* (Al Bawaba, UK, 2018)

- * Miller, B., *Crime Prevention and Socio-Legal Reform on Aboriginal Communities in Queensland* (Report to Queensland Government, Australia, 2000)
- * Morley, S., *What Works in Effective Indigenous Community-Managed Programs and Organisations* (Institute of Family Studies, CFCA Paper No 32, Australia, 2015)
- Nagle, P., and R. Summerrell, *Aboriginal Deaths in Custody: The Royal Commission and its Records, 1987 – 1991* (National Archives of Australia, Research Guide No 2, 2002)
- * National Alternative Dispute Resolution Advisory Council (NADRAC), *Recommendations to the Attorney-General of Australia: Indigenous Dispute Resolution and Conflict Management* (Report to the Commonwealth Attorney-General, 2009)
- * Office of the Registrar of Indigenous Corporations (ORIC), *ORIC Yearbook 2020-21* (Commonwealth of Australia, 2021)
- * Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Criminal Lawyers Association Northern Territory, Conference, 2011)
- * One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report* (2020)
- * One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report* (2020)
- * One Pacific Dispute Resolution, *Ali Curung Project* (Interim Report, June 2019)
- * Queensland Treasury, *Wise Practice for Designing and Implementing Criminal Justice Programs for Aboriginal and Torres Strait Islander Peoples* (Research Report, 2021)
- * Restorative Justice Evaluation Team, *Restorative Justice Project: 12 Month Program Evaluation* (Report to Queensland Director-General, Endorsement, 2018)
- * Society of Consumer Affairs Professionals (SOCAP, Australia) and the University of Newcastle, *Return on Investment of Effective Complaints Management* (Report to SOCAP, 2018)
- * Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022)
- * The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021)
- * The Wollotuka Institute (University of Newcastle), and The Centre of Excellence for Equity in Higher Education, *Re-imagining Evaluation: A Culturally Responsive Evaluation Framework for the NSW Department of Education* (Report to the NSW Department of Education, Australia, 2022)
- Transcend Oceania and Conciliation Resources, *Peacebuilding Approaches to Climate Change in Fijian Communities* (Transcend Oceania and Conciliation Resources, UK and Australia, ND)
- * Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal Communities in Queensland* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012)
- * Victorian Aboriginal Legal Service Co-operative Ltd, *Exploring Culturally Appropriate Dispute Resolution for Aboriginal and Torres Strait Islander Peoples (Follow-up Report to Victorian Law Reform Committee, 2015)*

- * Williams, R., and T. Bauman, *Report on Native Title Representative Body Workshops: Directions, Priorities and Challenges, Report No 2* (AIATSIS, 2004)

Commissions of inquiry

- * ADR Subcommittee, Northern Territory Law Reform Committee, *Alternative Dispute Resolution in Aboriginal Communities (Report for Mediation and the Criminal Justice System, 1997)*
- * Australian Human Rights Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Final Report, 1997)
- * Australian Law Reform Commission, *The Recognition of Aboriginal and Customary Laws, Report No 31* (Final Report, 1986), Vols 1, 2
- * Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Report No 133* (Final Report, 2017)
- * Langton, M., L. Ah Matt, B. Moss, E. Schaber, C. Mackinolty, M. Thomas, E. Tilton, and L. Spencer, *Too Much Sorry Business – The Report of the Aboriginal Issues Unit of the Northern Territory, Volume 5, Appendix D.(i), Royal Commission Into Aboriginal Deaths in Custody* (Final Report, April 1991)
- * Northern Territory Law Reform Committee, *Mediation and the Criminal Justice System* (Final Report, 1996)
- * Northern Territory Royal Commission, *Into the Protection and Detention of Children in the Northern Territory* (Final Report, November 2017), Vols 1, 2A, 2B, 3A, 3B, 4
- * Royal Commission *Into Aboriginal Deaths in Custody* (Final Report, April, 1991), Vols 1, 2, 3, 4, 5
- * Western Australia Royal Commission, *On the Condition of the Natives* (Final Report, 1905)
- * Western Australia Law Reform Commission, *Aboriginal Customary Laws: The Interaction of Western Australia Law with Aboriginal Law and Culture, Project 94* (Final Report, September 2006)
- * Western Australia Law Reform Commission, *Aboriginal Customary Law: The Interaction of Western Australia Law with Aboriginal Law and Culture, Project 94* (Background Papers, January 2006)

Speeches, presentations, conference proceedings, papers/presentations

- Armando, L., and T. Villabona, *Land and Agrarian Problems and the Rights of Nature Based on the Colombian Experience* (Presentation, Conference on Peace and Conflict Resolution in Rural Areas: Challenges for the UN Declaration on Rights of Peasants and Other People Working in Rural Areas [UNDROP], Göttingen, Germany, November 2022)
- * Bauman, T., *The Missing Piece of Infrastructure: Towards National Indigenous Dispute Management Agreement-Making and Decision-Making Services* (Presentation, Conference: Alternative Dispute Resolution in Indigenous Communities, Australia, July 2015)

- * Bauman, T., and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives* (AIATSIS, workshop proceedings: Turning the Tide: Anthropology for Native Title in South-East Australia, Australia, 2011)
- * Bishop, H., *Aboriginal Decision Making, Problem Solving and Alternative Dispute Resolution – Challenging the Status Quo* (Key Note Address, Conference: Alternative Dispute Resolution in Indigenous Communities, Australia, July 2015)
- * Central Australia Indigenous Elders, and H. Bishop, *Statement to National Mediation Conference* (National Mediation Conference, Australia, April 2019)
- * Crawford, W., *Justice Reinvestment: Empowering Communities to Rehabilitate Offenders, Mediate Disputes and Innovate Crime Prevention Strategies* (PowerPoint presentation, event/location not stated, 2014)
- * Fuary, M., *Documenting and Producing the “Aboriginal”: W. E. Roth’s Work in North-Western Cape York* (Presentation, Conference: The Roth Family Anthropology and Colonial Administration, Australia, February 2004)
- * Gillen, F. J., *Address and Report to the Section of Ethnology and Anthropology* (Australasian Association for the Advancement of Science, Victoria, 1900), 109 – 123
- * National Native Title Tribunal (NNTT), *NNTT: Building Strong Working Relationships and Agreements* (PowerPoint presentation, conference: AIATSIS National Native Title Conference 2015)
- Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Conference: Criminal Lawyers Association Northern Territory, 2011)
- * One Pacific Dispute Resolution, *Ali Curung Peace Project* (PowerPoint presentation; event and date not included)
- * Oscar, J., *OA, Key Note Address* (National Mediation Conference, Australia, April 2019)
- * Thorne, R., *Incorporating ADR into Contemporary Aboriginal Society* (Presentation, International Mediation Conference, Australia, 1996)
- * Thorne, R., *Developing Reconciliation Processes for Aboriginal Families and Communities in Conflict* (Presentation, Conference on the Contribution of Psychology to Peace, Australia, 1997)
- Toroama, The Honourable Ishmael, Bougainville President, *Inaugural or Maiden Speech* (Autonomous Bougainville Government, 2020)
- XiaoJun, C., *Status and Responsibilities of Grassroots Peasant Leaders in Rural Governance in China* (Presentation, Conference on Peace and Conflict Resolution in Rural Areas: Challenges for the UN Declaration on Rights of Peasants and Other People Working in Rural Areas [UNDROP], Göttingen, Germany, November 2022)

Legislation, and standards

- * ACT Law Courts, *Practice Direction 2 Children’s Court, October 2019, Warrumbul Court*
- * Australian Psychological Accreditation Council (APAC), *Accreditation Standards for Psychology Programs (Version 1.2, APAC, Australia, 2019)*

- * Australian Psychological Accreditation Council (APAC), *Annexure to the APAC Evidence Guide: Standard 5 Program of Study, Criterion 3.8 [‘Cultural Responsiveness, including with Aboriginal and Torres Strait Islander cultures, is appropriately integrated within the program and clearly articulated as a required learning outcome’]*, (APAC, Australia, 2023)

Autonomous Region of Bougainville, *The Constitution of the Autonomous Region of Bougainville* (2004)

- * County Court Victoria, *County Koori Court Practice Note, PNCR 1-2021, March 2021*

Independent State of Papua New Guinea, *The Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum* (2002)

Republic of South Africa, *Promotion of National Unity and Reconciliation Act* (1995)

Recordings (audio and visual)

Maureen Abbott and Helen Bishop, *Interview*; (National Mediation Conference, Mparntwe, September 2021)

Ungunmerr, M – R., ‘Dadirri by Rose Miriam Ungunmerr’,
https://www.youtube.com/watch?v=Pahz_WBSSdA.

Training, teaching, and educational materials

- * Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Finding Training Solutions in Indigenous Decision-Making and Dispute Management: A Resource for Native Title Representative Bodies, Part Two: Training Providers* (AIATSIS, 2006)

- * Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *The Satisfaction Triangle: A Simple Measure for Negotiation and Decision Making* (AIATSIS, 2004, unpublished)

Crooks, C. V., D. Chiodo, D. Thomas, S. Burns, and C. Camillo, *Engaging and Empowering Youth: A Toolkit for Service Providers* (2nd Edition, Public Health Agency, Canada, 2010)

- * Gondarra, Rev Dr D., and B. Gondarra, *Yolŋu Peacemaking: Inter-cultural Mediation Workshop* (PowerPoint presentation, Workshop, 2021)

- * Gondarra, Rev Dr D., B. Gondarra, and B. Muthamuluwuy, *The Yolŋu Maḏayin Legal System* (PowerPoint presentation, event and date not stated)

- * Mawul Rom Project, *Inter-cultural Mediation Intensive Workshop* (publicity material, 2021)

- * Okazaki, I., and M. Abbott, *Mediation and Conflict Management Intensive Training* (One Pacific Dispute Resolution, Training Report to Central Desert Regional Council, 2016)

- * One Pacific Dispute Resolution, *Introduction to Governance Training: Katherine [Northern Territory]* (Training Report, 2018)

Zariski, A., *Unit 12 Indigenous Dispute Resolution, University Course Overview* (Athabasca University, Canada, 2022)

Newspapers, magazines, and other media

- * Allison, F., *“Too Much Money is Spent on Jails and Policing”*: What Aboriginal communities told us about funding justice reinvestment to keep people out of prison (The Conversation, Australia, May 2023); available online at <https://theconversation.com/too-much-money-is-spent-on-jails-and-policing-what-aboriginal-communities-told-us-about-funding-justice-reinvestment-to-keep-people-out-of-prison-200531>
- * Atkinson, T., *Can I Call You That? A guide to terminology when referring to Aboriginal and Torres Strait Islander People* (Fashion Journal, Australia, October 2020); available online at <https://fashionjournal.com.au/life/can-i-call-you-that-a-guide-to-terminology-when-referring-to-aboriginal-and-torres-strait-islander-people/>
- * Australian Human Rights Commission (AHRC), *First Nations Commissioner calls for community-led solutions to Alice Springs unrest* (AHRC, media release, February 2023); available online at < <https://humanrights.gov.au/about/news/media-releases/first-nations-commissioner-calls-community-led-solutions-alice-springs>>
- * Brigg, M., and M. Graham, *Whitewashing Australian history: How the ‘history is calling’ ad distorts Indigenous existence before colonisation* (ABC Religion and Ethics, December 2022)
- * Brown, C., C. Shaw, K. Glynn-Braun, and S. Campbell, *Some context missing from the Mparntwe Alice Springs ‘crime wave’ reporting* (The Conversation, February 2023)
- Cox, D., *The Search for the World’s “Missing” Genomes: Enormous strides have been made to unravel the secrets of the human genome, so why are we missing the genetic information of most of the planet?* (BBC News, UK, February 2023); available online at <https://www.bbc.com/future/article/20230227-the-search-for-the-worlds-missing-genomes>
- * Edwige, V., J. Alexi, B. Selkirk, and P. Dudgeon, *Australia Needs to Decolonise its Mental Health System and Empower More Indigenous Psychologists* (Guardian Newspaper, Australia, June 2022); available online at <https://www.theguardian.com/commentisfree/2022/jun/02/australia-needs-to-decolonise-its-mental-health-system-and-empower-more-indigenous-psychologists>
- * Garrick, M., *NT independent politician Yingiya Guyula wants to see Elders given authority to help offenders heal* (ABC News, March 2023); available online at < Website: <https://www.abc.net.au/news/2023-03-31/nt-independent-politician-yingiya-guyula-crime-offenders/102172150>
- * Graham, M., and M. Brigg, *Why we need Aboriginal political philosophy now, more than ever* (ABC Religion and Ethics, November 2020)
- Singh, M., *It’s Time to Rethink the Idea of “Indigenous”* (The New Yorker, USA, February 2023); available online at < <https://www.newyorker.com/magazine/2023/02/27/its-time-to-rethink-the-idea-of-indigenous>>
- * Wood, A., *Why Australia won’t recognise Indigenous customary law* (ANU College of Law News, 2016); available online at <https://law.anu.edu.au/news-and-events/news/why-australia-wont-recognise-indigenous-customary-law>

Theses

Bishop, J.H., *Ngirrwut for Mookununggunuk – The Survival of Koongurrukun Knowledge Transfer in the 21st Century*. (PhD Thesis, Batchelor Institute, Northern Territory, Australia, 2022)

Other

* Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS, Australia, 2022)

* Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Australia's First Peoples* (undated); available online at <https://aiatsis.gov.au/explore/australias-first-peoples>

* Australian Psychological Society, *Apology to Aboriginal and Torres Strait Islander People from the Australian Psychological Society* (Melbourne Convention and Exhibition Centre, Australia, 2016); available online at https://psychology.org.au/news/media_releases/15september2016

Autonomous Region of Bougainville, *Bougainville Peace Agreement* (2001)

Bougainville Referendum Communications Committee, *Joint Key Messages, No 1 Fact Sheet* (2016)

Bougainville Referendum Communications Committee, *Joint Key Messages, No 2 Fact Sheet* (2016)

* One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020)

* Terri Janke and Company, *Aboriginal and Torres Strait Islander Cultural and Intellectual Property Protocol* (University of Newcastle, Australia, 2023)

Toner, P., *W. Lloyd Warner, A Black Civilization* (STUAnthroBlog, St Thomas University, Canada, 2017), available at <https://wp.stu.ca/anthropology/2017/09/29/w-lloyd-warner-a-black-civilization/>

Truth and Reconciliation Commission (Republic of South Africa), *Political Party Submissions* (1996)

United Nations, *Declaration on the Rights of Indigenous Peoples* (UN General Assembly, Resolution 61/295, 2007)

United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN, A/RES/70/1, 2015)

Appendix B

Targeted review of selected evaluations and case studies

The attached evaluation sheets are based on the following common indicators:

- *Name of original program/service (that is the subject of the evaluation/case study)*
- *Location of program/service (including State/Territory; town; urban, regional, remote)*
- *Author/s of original review/evaluation (including whether the author/s identify as First Nations Yes/No) – where this is not stated, it is marked as “NS”. This is based on a strict reading of the document to provide some indication of such acknowledgment in publications. For example, in 2016 Junkuri Laka Mornington Island, Junkuri Laka is known to be the local community council and can be expected to include local First Nations people; however the document does not clarify this and is therefore reported as “NS”.*
- *Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation. This reports on the A/DR processes reported from the subject program/service, as well as the evaluative process used in the report.*
- *Aims/objectives of review/evaluation*
- *Are financial considerations a key measure?*
- *Objectives of original review/evaluation (including NS if “not stated”)*
- *Types of processes in original review/evaluation (including NS if not stated)*
- *Outcomes and findings of original review/evaluation*
- *Key themes (as identified within the evaluation/case study)*
- *Sample/useful quotes (selected as representative of the evaluation/case study)*

“Cost benefit analysis” is represented by the acronym “CBA”

2000 ATSI Women's Task Force Queensland

Aboriginal and Torres Strait Islander Women's Task Force on Violence, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Report to Queensland Government, Australia, 2000)

Name of original program/service

- Women's Task force on Violence

Location of program/service (including State/Territory, town; urban, regional, remote)

- QLD – Non specific

Author/s of original review/evaluation (including First Nations Yes/No)

- Members of Task Force
- NS

Brief description of program/service (e.g., types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Advisory group not DR
- Established by Qld Gov / Department of Aboriginal and Torres Strait Islander Policy and Development

Aims/objectives of review/evaluation?

- Advise on development and implementation of programs
- Advise on whether changes to law need be made
- Advise on where customary law should be recognised within current laws
- Identify issues leading to violence against women
- Identify strategies aimed at addressing issues raised

Are financial considerations a key measure?

- Yes
- Not stated but are mentioned

Objectives of original review/evaluation (including NS if "not stated")

- As above

Types of processes in original review/evaluation (including NS if not stated)

- No specific conflict management processes
- Qualitative methodology – face to face meetings and written submissions

Outcomes and findings of original review/evaluation

- See separate document –
"1999_ATSI_Women's_Task_Force_on_Violence_Summary_&_useful_quotes"

Key themes

- Reduction in violence
- Influences of culture and history

More summary information: 1999_ATSI_Women's_Task_Force_on_Violence_Summary_&_useful_quotes', available on Research Project shared drive includes more information.

2005 Koori Court Victoria

McAsey, B., 'A Critical Evaluation of the Koori Court Division of the Victorian Magistrates' Court' (2005)
10(2) *Deakin Law Review* 654

Name of original program/service

- Koori Court Division of the Magistrates Court, Victoria

Location of program/service (including State/Territory; town; urban, regional, remote)

- Victoria
- Shepparton, Broadmeadow, Warrnambool
- Urban

Author/s of original review/evaluation (including First Nations Yes/No)

- Bridget McAsey
- Not Stated

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- The Koori Court Division of the Magistrates Court functions as a sentencing court
- Its purpose is to enable greater participation of the Aboriginal community during the sentencing process (of those who plead guilty) through a less formal and technical process than the Magistrates court within the boundaries of the *Magistrates' Court (Koori Court) Act 2002 (Vic)* and the *Sentencing Act 1991 (Vic)*.
- The Koori Court allows for Aboriginal Elders or other respected Aboriginal persons to sit alongside the Magistrate during the proceedings and consult with the Magistrate with regards to the appropriate sentencing of the offender. The court is designed for all parties to sit around an oval table and all participants are able to ask questions at any time during the process, which enables the active participation of the offender, their family members present and other Aboriginal persons present.
- It should be noted that this is not exclusively run by the Indigenous community but is a division of the current legal system and non-indigenous participants can include the Magistrate, Correctional Services representatives, Prosecutor and offender's solicitor, clerks etc.
- The Koori Court was developed by legislators through the enactment of the *Magistrates' Court (Koori Court) Act 2002 (Vic)* and has been in operation since its enactment.

Aims/objectives of review/evaluation

- The aim of this review was to assess and evaluate the inclusivity and responsiveness to the Aboriginal communities' needs in this area and to assess whether the court actually transfers any power to the community it aims to empower.

Are financial considerations a key measure?

- Not stated; no inclusion in stated aims
- Funding of the Koori court is mentioned (pp. 663, 667) in relation to who controlled and funded the overall process, the lack of funding for the Indigenous community to independently develop framework for the court, and the way decision making and funding being in the hands of the government inhibits the empowerment for Aboriginal people and their community

Objectives of original review/evaluation (including NS if "not stated")

- To look at the legislative framework, how it is translated into procedure, and the development of the court to assess whether there is sufficient consideration given to the wants and needs of the Aboriginal community.

Types of processes in original review/evaluation (including NS if not stated)

- This review analysed qualitative data collected in the form of observations of the writer during Court sittings along with interviews of people involved in the division. It also utilised an analysis of primary sources e.g. legislation, and secondary sources e.g Royal Commission reports, media reports, books and articles.

Outcomes and findings of original review/evaluation

- The power of the Court under s 4D (6) “the Koori Court Division may regulate its own procedure’ needs to be vested in the Koori community to create a responsive Division.
- The physical formation of the court facilitates a more culturally responsive way to conduct the proceedings, allowing for open dialog between all parties.
- Community consultation, while apparent, was/is subjected to limitations.
 - Elders not included in reference group to develop the framework
 - Requirement of “training” for Elders who sit on the Court thereby undermining their knowledge
 - Lack of input from Koori offenders preventing the system from being based of a truly representative notion of what it requires
 - Overall power to determine sentence rests with Magistrate d
- Most significant aim of the court which could be improved is self-determination
- Exclusive involvement of Aboriginal community organisations may place limitations on the Koori Court if they are accepted as being representative by the community.
- The Koori Court focuses on rehabilitation and adequately allows the context of the offenders situation to be considered through the open dialog that occurs during the process.
- Once of the most progressive elements of the court is the significance in community building
- Some community consultation did occur during the development of the Court and has continued with the most success being the role of the Elders in the process
- There are discrepancies with implementation process across the 3 locations, with notably Warrnambool being the most impacted by lack of education about the Court during its establishment.
- Referral process is largely by ‘word of mouth’ leaving a gap in the referral system which could be more comprehensive.
- More equal power should be devolved to the Koori community with regards to the development and procedure of the Division.

Key themes

- Cultural responsivity
- Community consultation
- Self-determination
- Community control
- Community building

Sample/useful quotes

“It is questionable however, why Elders from the community were not included in the Reference Group, which would have increased the potential of the Division to be truly culturally relevant and to have more effectively addressed the fundamental power imbalance between the criminal justice system and the Aboriginal community by more fully incorporating leaders of that community.” Pg 662

“[T]he Magistrate has the power to make the ultimate determination on sentence, despite what the Elders may think is appropriate.” Pg 663

“The limitations of the development process of the Division such as the absence of formal involvement by the Elders and the fact that the Koori community was not given the chance to independently develop a framework for the Division shows that self-determination in the Division was somewhat limited to being an administrative policy.” Pp. 670-71

Overview

- Part I - Introduction

- Part II

This review gave an overview of the legislation that created the Koori court including some key provisions of the Act, an outline of the physical makeup of the court along with who participates in the proceedings and a description of how the Koori court operates differently to the Magistrates court.

- Part III

This review then provided an analysis of the aims of the Division and how these aims were formulated, looking specifically at whether the aims were inclusive and reflexive to the needs of the Aboriginal community. This included an evaluation of whether the Aboriginal community were consulted and included in the inception of the court, who funded and controlled the decision making with regard to the overall process, and whether there was adequate weight given to the input of the Aboriginal participants. It also evaluated whether the aims of the Division truly provided a mechanism which created increased community control over issues and problems within the Indigenous communities and whether this was a tool which promoted self-determination.

- Part IV

Analysed the effectiveness of the processes that are used within the Koori Court and whether they meet the overall aims of the Division. This was done through looking at the specific aims and providing a reflection on how the Court did or did not achieve these aims through the use of personal observation of court proceedings and interviews as well as an examination of other materials.

- Part V

Examines and answers some critiques of the Koorie Court such as it being a 'soft option', it being 'unfair' that one particular ethnic group is able to access such processes but is not an option for others and the requirement for the offender to plead guilty to access this Court.

- Part VI - Conclusion

2010 Browning Mornington Island Restorative Justice (MIRJ) Project

Browning, M., *Interim Evaluation Report: Mornington Island Restorative Justice (MIRJ) Project* (Report to Commonwealth Attorney-General, 2010)

Name of original program/service

- Mornington Island Restorative Justice Project

Location of program/service (including State/Territory, town; urban, regional, remote)

- Queensland, Mornington Island; remote

Author/s of original review/evaluation (including First Nations Yes/No)

- Mark Browning
- NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Pilot program
- Mediation / restorative justice
- Managed by Queensland Department of Justice and Attorney General
- Established in 2008
- Case study suggests involvement of Elders and Respected members of the community.

Aims/objectives of review/evaluation?

- Seek feedback from the Mornington Island community about the project;
- Make an interim assessment of the service; and
- Determine the capacity of the community to operate a viable restorative justice service.

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- The purpose of the review was to “properly consider” if this program could be a permanent service
- Assess the benefits and costs
- To be only an interim report rather than ‘full and robust’ (pg 2)

Types of processes in original review/evaluation (including NS if not stated)

- Observations of practice
- The use of qualitative data collected by interviews using semi structured questions and analysis
- Quantitative by way of cost benefit analysis

Outcomes and findings of original review/evaluation

- Found significant progress in meeting objectives underpinned by high level of support through the use of DR staff, and a strong partnership with Elders and Respected members of the community
- Strong support of the community members and justice agency officers and magistracy
- Positive return on investment CBA
- Under program design and implementation, the report concluded that MIRJ is “culturally appropriate” through the “development and use of Elders Rules, knowledge of Elders rules and support of the rules. + Staff have an appropriate cultural knowledge and experience to deliver services
- Strong held perception that peacemaking process has reduced family conflict and prevented violence – through qualitative survey questions + Improved support by family’s in resolving disputes.
- Views of Elders and respected community members that the program has helped to prevent people from contact with the criminal justice system.
- Community ownership of the program was viewed as coming from the referral of matters by community members. The community referrals was seen as evidence of community awareness
- Issue with referral process due to the low numbers of court referred mediations.
- Issue with the engagement of young people and women Elders in the program.

Key themes

- Reducing conflict and disputes
- Reducing contact with the criminal justice system
- Cost benefit
- Community ownership
- Community responsiveness

Sample/useful quotes

Page vi: The MIRJ policy and procedures in the form of the “8 steps to mediation” which includes the Elders’ Rules, and better practice guidelines for Indigenous ADR, was used as context for assessing the program design, implementation and operation.

Page vi: The evaluation also found that Mornington Island MIRJ staff have an appropriate skill mix, cultural knowledge and experience to deliver MIRJ services, and to support and supervise local mediators.

Page 35: MIRJ is a culturally appropriate service for its time, and it has a high degree of strategic alignment with national and state law and justice policy. There is strong support for MIRJ from community members and officers representing justice agencies and the Magistracy.

2011 “Ponki” Victim Offender Mediation Tiwi Islands

Okazaki, I., *The “Ponki” Victim Offender Mediation Program on the Tiwi Islands* (Presentation, Conference: Criminal Lawyers Association Northern Territory, 2011)

Name of original program/service

- The “Ponki” Victim Offender Mediation Program

Location of program/service (including State/Territory, town; urban, regional, remote)

- The Tiwi Islands, Northern Territory, Remote
- Berrimah Correctional Centre, Darwin, Northern Territory, Correctional Facilities.

Author/s of original review/evaluation (including First Nations Yes/No)

- Ipepi Okazaki
- Not stated

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First nations people) and its dates of operation

- Enhanced Mediation program – utilising westernised model of mediation but which has been designed and enhanced by Tiwi graduates of NMAS to incorporate strong Tiwi tradition.
- Requires representatives of all four main skin groups to be present as mediators when facilitating a mediation. This was introduced as a way to overcome conflict of interest issues and fair representation.
- Purpose is to deal with conflict. It is used in three ways
 - When a long term prisoner wants to return to the island
 - When young person commits crime
 - General community conflict
- Delivery is solely by members of the Tiwi community who have undergone mediation training and have been named “Ponki Mediators”. Mediations are also done in language.
- When Delivery is done on in the Tiwi Is ceremonies may be undertaken as a final stage.
- Community Justice Centre facilitates the prison mediations.

Aims/objectives of review/evaluation

- Not stated
- By looking at the overall structure of the presentation/report:
 - Aims appeared to be looking at the benefits of community founded programs such as this, and
 - Highlighting the benefits of incorporating cultural values, priorities and governance structures within dispute resolution programs, particularly for offenders

Are financial considerations a key measure?

- No stated; no monetary aims

Objectives of original review/evaluation (including NS if “not stated”)

- NS

Types of processes in original review/evaluation (including NS if not stated)

- Mediation

Outcomes and findings of original review/evaluation

- The enhanced mediation program strengthened western mediation models through the incorporation of Tiwi culture, knowledge and understanding.
- The correctional centre conferencing program, run by the “Ponki Mediators”, which aims to provide an opportunity between victims family’s and offenders has seen a significant reduction of recidivism of offenders. (from approx. 45% to 4%)

- Mediation provides an opportunity to for offenders to gain understanding through accountability which is also known by the community.

Key themes

- Kinship relationships and the obligations and duties which these relationships place on individuals and the community at whole. This creates a need to resolve conflicts and this need is exacerbated by the community's size and remote locality.
- Recidivism rates in NT; how a reduction of the risk of recidivism can be achieved.

Sample/useful quotes

Page 4: 'The prioritisation of "relationships" and the "community" in Indigenous dispute management processes contrasts to the dominant culture or western processes, where the emphasis is often on the "dispute" or the "individual."

'Page 13: 'The common misconception of offering a western victim offender mediation is that only the victim and the offender attend such mediations and only a limited number find out the outcome... However the Ponki model provides a solid way of ensuring that all skin representatives know what the outcome was at the end of the mediation and every one can share the one story and ensure good will promises made at mediation can be properly enforced back in the community.'

2012 Alice Springs Family Group Conferencing

Arney, F., K. McGuinness, and M. Westby, *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs* (Menziess School of Health Research, Report to the Northern Territory Department for Children and Families, 2012)

Name of original program/service

- Family Group Conferencing Program

Location of program/service (including State/Territory, town; urban, regional, remote)

- Alice Springs, Northern Territory, Regional

Author/s of original review/evaluation (including First Nations Yes/No)

- Associate Professor Kate McGuinness - NS
- Mark Westby - NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- FDR model of conferencing run by the Department for Children and Families
- Involves Aboriginal Co-Convenor along with the immediate and extended family of the child(ren) involved, however run with both Indigenous and non-Indigenous staff
- Purpose of the program is to allow immediate and extended family of a child to be responsible for the decision-making regarding child protection issues

Aims/objectives of review/evaluation?

- To describe the role of the Menziess School of Health Research's child Protection Research Program within the program.
 - Focus on implementation of the current Family Group Conferencing in Alice Springs

Are financial considerations a key measure?

- Yes, although not mentioned as a key measure directly.
- Many references to the funding of the project throughout the review.

Objectives of original review/evaluation (including NS if "not stated")

- Yes - To evaluate the model of FGCs
- Under heading "Aims and purpose of the report" only vague information was provided as to the objectives of the report.
- Under heading "Implementation concerns" it stated the author was asked "to determine the strengths and weaknesses of the model and determine the next steps for the Group" in light of significant funding issues that arose. – 17

Types of processes in original review/evaluation (including NS if not stated)

- NS
- Review states that the report was collated using information collected during the course of Menziess' involvement in the FGC pilot incl. meeting minutes, referrals, conference data, survey and focus group information, program materials etc.

Outcomes and findings of original review/evaluation

- FGCs are able to be convened in timely fashion and see high levels of satisfaction from participants.
- Key concern is securing on going funding.
- Outcome evaluation and implementation and quality assurance process is essential to any establishment of FGC program.
- Key to the implementation of FGC is the location, both from a referral and service provision perspective. Requires sensitivity to neutral locations for conferencing to promote family engagement.

- Widespread roll out of FGC in the Northern Territory requires implementation monitoring and support to be provided. Recommends a centralised support and monitoring mechanism.

Key themes

- Reduce rates/need for child protection
- Reducing matters before the courts
- Community engagement
- Best practice approach

Sample/useful quotes

Page 42: ‘Research examining the outcomes and impacts of FGC has been rather more equivocal in its findings than have the results from process evaluations. For example, studies using systems data (renotifications, re-substantiations and placement in out-of-home care) have not necessarily found reduced rates of child maltreatment following a conference. While this may be an artefact of study design, it may also be due to poor implementation practices with regard to conferences.’

2012 Venables Mornington Island Restorative Justice (MIRJ)

Venables, P., *Mornington Island Restorative Justice (MIRJ) Project: Report on its Development, Implementation and Transition to Community Management 2012 – Working towards a mediation model, responsive to the needs of extended families in discrete, remote Aboriginal Communities in Queensland* (Report to Commonwealth Attorney-General, and to Queensland Government, 2012)

Name of original program/service

- Mornington Island Restorative Justice Project

Location of program/service (including State/Territory, town; urban, regional, remote)

- Mornington Island, QLD, remote

Author/s of original review/evaluation (including First Nations Yes/No)

- Phil Venables
- NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Pilot program
- Mediation / restorative justice
- Managed by Queensland Department of Justice and Attorney General
- Established in 2008
- Case study suggests involvement of Elders and Respected members of the community.

Aims/objectives of review/evaluation?

- NS

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- NS

Types of processes in original review/evaluation (including NS if not stated)

- Mediation, restorative approaches
- NS; However the use of many quotes within the report of individuals indicates a qualitative analysis was undertaken.

Outcomes and findings of original review/evaluation

- The project has promoted partnership between government and Elders representing the community
- Conflict is of central concern to the community. Mediation model was developed through consultation with Elders and other representatives
- A forum for Elders to re-engage with their young people has been created through empowering the kinship system.
- 95% of mediator assisted interventions have been successful.
- Number of people appearing in court (formal criminal justice system) has not decreased. This is due to most appearances being for breach of the alcohol restrictions and ‘more appropriate and wide ranging responses are required’ regarding these appearances. (Page 47)
- Mediation has demonstrated effectiveness but has potential to have further reaching benefits; however it remains underutilised.

Key themes

- Kinship, family and community support
- Trust and community involvement
- Self-determination

Sample/useful quotes

Page 19: ‘An inter-departmental steering committee established the project’s scope and objectives and provided initial support to the Project Manager who was appointed in May 2008. Local approval to proceed followed initial discussions with the Junkuri Laka Justice Association, Mornington Island Shire Council, and other service providers.’

Page 19: ‘In response, the level of mistrust was acknowledged as a feature of the relationship until outcomes became more demonstrable. It was put strongly to participants that, for these very reasons, success was dependant upon family involvement more so than on Government involvement, especially as it concerned a topic central to kinship.’

Page 25: ‘The model relies on kinship, cultural and local family knowledge as an essential resource. The primary authority to run the project was provided in the consultation and by the Elders who established their rules and endorsed the process. The authority for mediators to act in their role is provided by the families through their leaders or spokespeople or the individuals involved themselves.’

Page 26: ‘Regarding the involvement of project staff members not connected by kinship, present at the mediations and found to provide “an outward sign of impartiality” – “There were however a number of instances where Elders informally and independently intervened at critical stages in planning to save a mediation from failure. Their role here came by way of kin connection and could not have been performed by mediators not connected by kinship.’

Page 27: ‘There were many situations where mediation was not accepted by one or both parties even where there was an expressed desire for the conflict to end.’

2014 Brunton Mornington Island Restorative Justice Project

Brunton, C., *Mornington Island Restorative Justice Project Evaluation, Final Report* (Report to the Mornington Island Community, and to the Commonwealth Department of Prime Minister and Cabinet, 2014)

Name of original program/service

- Mornington Island Restorative Justice Project

Location of program/service (including State/Territory, town; urban, regional, remote)

- Mornington Island, QLD, remote

Author/s of original review/evaluation (including First Nations Yes/No)

- Mark Brunton
- NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Mediation / restorative justice
- Managed by Queensland Department of Justice and Attorney General
- Established in 2008

Aims/objectives of review/evaluation?

- To present key findings of an evaluation of the project

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- Assess how well it is meeting objectives (as point below)
- Assess impact particularly in relation to community safety
- Assess what worked well and why
- Assess challenges and how to overcome
- Determine unexpected outcomes if any
- Garner views on development and future transition to community management – sustainability
- Assess the cost effectiveness relative to mainstream criminal justice response

Types of processes in original review/evaluation (including NS if not stated)

- Mediation and restorative processes
- Evaluation included fan assessment of success in the following areas:
 - Reducing people’s contact with the formal criminal justice system i.e. police and courts;
 - Helping the community to manage conflict without violence;
 - Helping the justice system better meet the needs of Mornington Islanders;
 - Encouraging the community to take ownership of mediation / peacemaking; and
 - Increasing people’s happiness with the justice system for victims, offenders, their families, and the wider community.
- Interviews with key stake holders and desktop review, Fieldwork, qualitative discussions.
- Data analysis re CBA
- Workshop and feedback of results with community
- Three local indigenous practitioners were employed to undertake the interviews

Outcomes and findings of original review/evaluation

- Strengths – High level of community ownership; high degree of confidence and trust in process; mediation is helping more than police and courts; helps restore family relationship and healing community; helps to restore Elder authority amongst adults; police are supportive.
- Improvements – Proactive engagement of youth; broader representation of families in mediator pool; more women mediators; succession planning needed; marketing needed; referral pathways;

communication between service providers; attention on mediation agreements being more sustainable and support for people to undertake the behaviours it sets out.

- All key families need to be represented in mediator pool; community engagement and perceptions of community ownership are fragile and easily eroded – constant monitoring is required; nearly half want the future service to be run by local people and an outside mediation coordinator to take “back seat”; succession planning needs to be built into each process/activity; secondary data suggests reduction in ‘crimes against the person’; increase in school attendance and enrolment.

Key themes

- Community ownership / community engagement
- Violence reduction
- Safety and trust
- Cost benefits
- Self-determination

Sample/useful quotes

Page 20: ‘... community engagement and perceptions of community ownership are fragile and easily eroded – constant monitoring is required’

2014 Independent Cost Benefit Analysis Yuendumu

Barrett, G., and A. Daly, *Independent Cost benefit Analysis of the Yuendumu Mediation and Justice Committee* (Report to Commonwealth Department of Prime Minister and Cabinet, 2014)

Name of original program/service

- Yuendumu Mediation and Justice Committee

Location of program/service (including State/Territory, town; urban, regional, remote)

- Yuendumu, Northern territory, Remote

Author/s of original review/evaluation (including First Nations Yes/No)

- Professor Anne Daley – NS
- Greg Barrett – NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- The Yuendumu Mediation and Justice Group facilitates Indigenous-led agreement making approach to disputes and supports members to negotiate agreements. This stemmed from earlier mediation activities by the Central Desert Regional Council.
- The Committee is made up of Elders and other respected Indigenous people.
- Aim is to strengthen family relationships, develop strategies which will help to promote community safety and address family violence.
- Engages in Family group mediations, referrals to specialised services, Bush courts regarding outcomes for offenders, prison visits.
- Operating since November 2011

Aims/objectives of review/evaluation

- To identify and value the economic impact of the Yuendumu Mediation and Justice Committee
- To inform future decisions of the government concerning funding

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- As above

Types of processes in original review/evaluation (including NS if not stated)

- Mediation
- Statistical analysis; use of project logic (Logframe) of inputs, project activities, Outputs and outcomes, purpose, goal.

Outcomes and findings of original review/evaluation

- The CBA found reduced costs/ benefits for the below factors:
 - NT Community Justice Centre – due to the YM&JC helping community to resolve own disputes
 - Court costs – Arrests have reduced since YM&JC project established
 - NT Police – reduced violence since YM&JC minimising police numbers required
 - Prison Costs – YM&JC reduced imprisonment of offenders
 - Housing Costs – YM&JC reduced conflict which led to damage being incurred to property
 - Impact of Community Violence on Child Welfare – Increased productivity due to less exposure to violence
 - Improved school attendance rates – due to reduced violence

- Increased productivity of Yuendumu community resources and activities – community aimed projects able to be reinstated due to reduced conflict
- Increased health outcomes – through improved community safety
- Net Present Value (NPV) whereby the value of benefits exceeds the costs of \$14,163,000.
- Even with a substantial discount of 50% there was still high benefit to the community.
- Distribution not a critical issue as there are no large uncompensated costs associated with the YM&JC.

Key themes

- Conflict and Violence in the community being reduced when the Yuendumu Mediation and Justice Committee was established.
- Peace is integral to the continued benefits seen by the community.
- Community based conflict resolution has substantial benefit to both the community and economically.

Sample/useful quotes

Page 13: ‘Peace in Yuendumu releases resources for their next best use. These are principally Commonwealth and Northern Territory government resources. For example, the YM&JC has reduced the cost of policing, courts, prisons, health care, education, etc in Yuendumu and Alice Springs.’

Page 13: ‘Peace in Yuendumu allows the resources and activities in Yuendumu to be more productive. For example, the YM&JC has helped improve school attendance, sports events are now being held, community services (shops, clinic, childcare, etc) are open more often, community organisations can operate more fully (community corporations such as the GMAAAC are now able to meet and elect office holders), etc.’

Page 27: ‘This CBA provides a strong support to investing in the YM&JC beyond 2014.’

2016 Junkuri Laka Mornington Island Restorative Justice Project

Junkuri Laka (Wellesley Islands Aboriginal Law Justice & Governance Association), *Independent Cost benefit Analysis of the Mornington Island Restorative Justice Program* (Report, 2016)

Name of original program/service

- Mornington Island Restorative Justice Program

Location of program/service (including State/Territory, town; urban, regional, remote)

- Mornington Island, Queensland, Remote

Author/s of original review/evaluation (including First Nations Yes/No)

- NS

Brief description of program/service (e.g., types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Mediation
- As other case studies
- 2008

Aims/objectives of review/evaluation?

- NS

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- NS

Types of processes in original review/evaluation (including NS if not stated)

- Mediation and restorative approaches
- Valuing social impacts in economic terms

Outcomes and findings of original review/evaluation

- Net Benefit value of \$17,354,000.00

Key themes

- Economic savings for the wider community.

Sample/useful quotes

Page 2: ‘The benefits included in the CBA are the resources that the MIRJ program frees up for other economic opportunities. The peace provided by the MIRJ program reduces the Mornington Island use of services provided by police, courts, prisons, healthcare, and housing. This frees these services up for the use of other Queenslanders.’

Page 2: ‘Absence of conflict allows the community’s assets to be more productively used for the benefit of Mornington Islanders. This includes better health and education improving the productivity of Mornington Islanders over a lengthier lifespan.’

2016 Limerick Aurukun Restorative Justice Project

Limerick, M., *Evaluation of the Aurukun Restorative Justice Project: Review of Implementation* (Report to the Queensland Department of Justice and Attorney-General, 2016)

Name of original program/service

- Aurukun Restorative Justice Project

Location of program/service (including State/Territory, town; urban, regional, remote)

- Aurukun, Queensland, remote

Author/s of original review/evaluation (including First Nations Yes/No)

- Dr Michael Limerick – NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Established in late 2013 with mediations commencing in March-April 2014
- Model of Peacemaking evolved through a practice of mediation and other related peacemaking methods.
 - Mediations
 - Group to Group mediations
 - Conflict coaching and shuttle diplomacy
 - Group facilitation and negotiated settlements

Aims/objectives of review/evaluation?

- to adapt and improve the arrangements for further implementing the Project, taking account of the evaluation findings and any associated recommendations;
- to inform the implementation of future peacemaking projects in other Indigenous communities (including the upcoming initiative to build the capacity of Community Justice Groups), applying the lessons of Aurukun (and Mornington Island) to increase their prospects of success.

Are financial considerations a key measure?

- Yes – not initially stated in wide spread discussions
- Mention of financial considerations and in particular funding:
 - Recommendation 14
 - Program funding documents were reviewed in the “Desktop review”
 - Limitations of initial stages (design) of the project due to lack of funding pg 21-2
 - Discussion of the funding for initial stage of project 2.2 pg 19
 - Funding for training and support was heavily discussed at 6.4 pg 71-2
- This evaluation is particularly sensitive to issues such as community engagement and inclusion (and the possible consequences when those are inadequate)

Objectives of original review/evaluation (including NS if “not stated”)

- a) measure the quality of the processes used to inform the design and implementation of the ARJP;
- b) compare the extent to which the program as implemented (and operating) is consistent with the culturally inclusive model of mediation developed in consultation with the community;
- c) determine whether the Project achieved its short term and medium term goals;
- d) identify factors that inhibited or facilitated implementation and operation of the ARJP, and the capacity of the ARJP to successfully achieve its goals;
- e) identify any unintended outcomes of the Project;
- f) provide guidance and recommendations to government and the Aurukun community to ensure the ARJP is fully equipped to achieve its long-term goals, and transition to a community-run service where appropriate.

Types of processes in original review/evaluation (including NS if not stated)

- Mediation
- Examination of project-level data
 - Desktop document review
- Qualitative: interviews with project staff
 - 19 Interviews and focus groups
 - 38 participants
 - 20 Indigenous / 18 non-Indigenous
 - 18 Women / 20 Men
- Analysis of quantitative data about the impact of the project

Outcomes and findings of original review/evaluation

- An original plan for an extensive period of community consultation and co-design stage was cut short due to lack of funding and contributed by community need for mediations to start.
- While strong community support for the project there were some issues during implementation due to lack of co-design phase
- Aurukun Peacemaking model evolved through practice of mediation and other peacemaking methods, influenced by the Mornington Island Model and 12-step facilitative model, with unique features or centrality of kinship, involvement of elders and respected community members, group-to-group mediations, co-mediator by neutral ‘outsider’.
- Acceptance of this is high but there were limitations on the implementation mainly due to lack of funding to undertake extensive co-design with community members.
- Project weaknesses include constraints on resources, training and operational planning. Minimal policies or procedures which document service delivery (has an impact on training ability) and data collection for monitoring and evaluative purposes. No referral form for agencies.
- Community engagement was high however could have increased engagement with community organisations, government, NGO’s to increase awareness and referral.
- Success rate of peacemaking interventions at 68% but no relevant benchmarks to measure success. No data detailing satisfaction of the program. Lack of data to evaluate the progress in achieving long-term outcomes.
- Formal training is minimal and recruitment of Elders and respected community members can be seen to be challenging. Formal training required to build adequate pool of community co-mediators.
- Staffing, facilities and resource levels are low.

Key themes

- Community engagement / Ownership of process
- Success of program as means to inform future programs
- Data collection
- Community consultation

Sample/useful quotes

Page 44: ‘Despite the curtailed engagement around the model design, the evaluation team found that the mediation project enjoys a strong level of awareness and apparent acceptance in the Aurukun community.’

Page 34: ‘[T]he Aurukun peacemaking model as conceived in its ideal form appears consistent with current frameworks for best practice Indigenous dispute resolution. However, the implementation of the model has not yet reached maturity in its intended ideal form.’

2020 Ali Curung Project Final Report

One Pacific Dispute Resolution, *Ali Curung Project: Final Project Report (2020)*

Name of original program/service

- Ali Curung “Peace Project”

Location of program/service (including State/Territory, town; urban, regional, remote)

- Ali Curung, Northern Territory, remote.

Author/s of original review/evaluation (including First Nations Yes/No)

- One Pacific Dispute Resolution
- No individual author listed [NS]

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- ‘Peacemaking’ is reported to encompass various dispute resolution tools such as:
 - Conflict coaching
 - Shuttle diplomacy
 - Facilitated mediation
- Purpose of the project is to establish conflict management process which is effective and culturally astute; aims to reduce conflict and violence and reduce contact with the criminal justice system.
- Commenced in November 2018
- Community mediator was appointed [Madhu Panthee (NS)], along with Elders.
- Community consultation and co-design was included in the implementation stages

Aims/objectives of review/evaluation?

- Not well stated
- See quote from page 5

Are financial considerations a key measure?

- No

Objectives of original review/evaluation (including NS if “not stated”)

- NS

Types of processes in original review/evaluation (including NS if not stated)

- All recognised processes ‘form conflict coaching to shuttle diplomacy to facilitated mediation’ (page 5)
- Evaluation processes NS

Outcomes and findings of original review/evaluation

- Not clearly stated; report appears to be more informative than analytical.

Key themes

- Community resilience to conflict
- Ways to improve self determination
- Community collaboration within the project and community engagement.

Sample/useful quotes

Page 5: ‘This report focuses on the community dispute and how building resilience to conflict and capacity to manage conflict directly supports fundamental peaceful self-determination principles, and manage issues facing Indigenous communities including status, entitlements, treatment and aspirations as part of self determination.’

Page 14: ‘It is important to be aware that trauma –informed peacemaking projects are not a sprint, it is more about endurance and being with the community through the dark times and also to celebrate the triumphs.’

Page 12: ‘Again, the peace project gradually built the trust among the people outside the community and provided assistance and referrals to manage outstanding legal matters (mediators cannot provide legal advice) and referrals to trauma services for grief counselling and assisted communication with their family members who were incarcerated.’

2020 Cost Benefit Analysis Galambany Court

Daly, A., G. Barrett, and R. Williams, *Cost Benefit Analysis of Galambany Court* (Report to ACT Justice and Community Safety Directorate, 2020)

Name of original program/service

- Galambany Court

Location of program/service (including State/Territory, town; urban, regional, remote)

- Canberra, ACT, urban

Author/s of original review/evaluation (including First Nations Yes/No)

- Professor Anne Daly – NS
- Greg Barret – NS
- Rhian Williams – NS

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- The Galambany Court is a specialised sentencing court
- It is run by the ACT government
- Panel of Aboriginal and Torres Strate Islander Elders and respected community members assess the offender
- 2004 the circle sentencing court was established, now known as Galambany Court

Aims/objectives of review/evaluation

- Cost Benefit Analysis to determine the economic value of the program ie. to determine the degree to which the economic value of benefits exceeds the economic value of costs.

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- Purpose of the CBA was to identify and value the economic impact of the Galambany Court

Types of processes in original review/evaluation (including NS if not stated)

- Circle sentencing
- Desktop review
- Interviews with key stakeholders
- Review of key documents

Outcomes and findings of original review/evaluation

- The Galambany Court has a Net Present Value of \$7,413,000.00 (value of benefit exceeding the cost) without discounts. Even with significant discount of 50% the Galambany Court ‘provides an exceptional worth in economic (efficiency of resource use) terms.’ (page 40)

Key themes

- Economic benefit and costs
- Distribution of benefits and costs and the connection to wider social structure.
- Building positive social capital as factor to improve outcomes for Aboriginal and Torres Strait Islander people

Sample/useful quotes

Page 40: ‘As the Court can absorb a 50% reduction in the already conservative estimates of benefits, the conclusion that it is a worthwhile program is strong. The sensitivity analysis shows that the estimates are very robust as is the conclusion that Galambany Court provides a substantial net benefit to Australia.’

Page 18: ‘Galambany Court works with Aboriginal and Torres Strait Islander social capital and Indigenous Cultural Authority (Cunningham et al 2013) to build security, trust and confidence. Building on positive Aboriginal and Torres Strait Islander social capital is crucial to the success of Aboriginal and Torres Strait Islander people within the wider society’

Page 41: ‘This CBA supports a wider use of circle sentencing courts. Galambany Court delivers a net benefit of \$7.4 million to the Australian Capital Territory over the ten years. With a benefit cost ratio of 3.25:1 (or a \$3.25 return for every dollar spent), Galambany Court is a very efficient use of the Australian Capital Territory’s resources.’

2020 Tennant Creek Mediation Case Studies

One Pacific Dispute Resolution, *Tennant Creek Mediation Case Studies* (2020)

Name of original program/service

- Tennant Creek Mediation

Location of program/service (including State/Territory, town; urban, regional, remote)

- Tennant Creek, Northern Territory, Regional

Author/s of original review/evaluation (including First Nations Yes/No)

- Once Pacific Dispute Resolution – No individual author named [NS]

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Mediation program
- NS – refer to Tennant Creek 100 day project report
- NS – refer to Tennant Creek 100 day project report

Aims/objectives of review/evaluation?

- N/A – is a selection of case studies, not an evaluation
- Can be seen from the overall report the purpose was to provide information about culturally appropriate skills which can be used within mediation programs

Are financial considerations a key measure?

- N/A

Objectives of original review/evaluation (including NS if “not stated”)

- N/A

Types of processes in original review/evaluation (including NS if not stated)

- Mediation

Outcomes and findings of original review/evaluation

- N/A
- This was a guide intended to be a resource for mediators, including specific techniques/tools; recommendations for what worked and what didn't; derives from findings from associated evaluation, the 100 day project.

Key themes

- Cultural knowledge
- Skills
- Effective practice

Sample/useful quotes

See above

2020 Tennant Creek Peace Project 100 Day Project Report

One Pacific Dispute Resolution, *Tennant Creek Peace Project: 100 Day Project Report (2020)*

Name of original program/service

- Tennant Creek Peace Project

Location of program/service (including State/Territory, town; urban, regional, remote)

- Tennant Creek, Northern Territory, Regional

Author/s of original review/evaluation (including First Nations Yes/No)

- Once Pacific Dispute Resolution – No individual Author provided [NS]

Brief description of program/service (eg, types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Community mediation program
- Purpose was to de-escalate intrafamily conflict and community unrest. Became an educative modelling tool, helping to heal family and community relationships. Promoted collaborative participation of community to inform strategies for future peacemaking development.

Aims/objectives of review/evaluation?

- NS

Are financial considerations a key measure?

- No

Objectives of original review/evaluation (including NS if “not stated”)

- NS

Types of processes in original review/evaluation (including NS if not stated)

- Mediation
- NS

Outcomes and findings of original review/evaluation

- Community ownership of conflict resolution was absent at the beginning of the project. Lack of community ownership leads to heavy reliance on organisations and other entities to deal with disputes and unmanaged conflicts.
- Ownership was found to be the most complex element in the community mediations. Many barriers to people stepping into the role of peacemaker included fear of being blamed for taking sides; expectations the parties will resolve it themselves; people being overwhelmed due to the interpersonal conflicts; uncertainty about how a conflict can be resolved peacefully; normalisation of ‘minding one’s own business’.

Key themes

- Trust, Balance
- Ownership
- One Story

Sample/useful quotes

Page 6: ‘From the outset the project conceded that the best operator and the best entity to establish a permanent project in the future must be community led, community owned and community controlled.’

Page 9: ‘Without community ownership of mediation services risks and gaps will further deepen, to disempower the communities agency and for de-escalation of conflict, in sponsoring holistic objectives around community safety, family and community wellbeing, problem solving and self-determination.’

Page 9: ‘For a sustainable peaceful community, members of the community must increasingly be able to identify their roles in resolving conflict and be able to see where they can fit, a role that many Indigenous community members are familiar with as ‘peacemakers’. Conflict is everybody’s business, as the impacts of its escalation (violence, avoidance and trauma) affect everyone living in Tennant Creek either directly or indirectly.’

2021 Myuma Group Community Justice Groups (Queensland)

The Myuma Group, *Evaluation of Community Justice Groups, Phase 1 Report* (Report to Queensland Department of Justice and Attorney-General, 2021)

Name of original program/service

- Various Community Justice Groups

Location of program/service (including State/Territory, town; urban, regional, remote)

- Various locations, Queensland, non-specific

Author/s of original review/evaluation (including First Nations Yes/No)

- Myuma Pty Ltd
- No individual author / NS

Brief description of program/service (e.g., types of DR; purpose; whether delivery is by First Nations people) and its dates of operation

- Community Justice Groups
- N/A

Aims/objectives of review/evaluation?

- The purpose of the report was to provide background and context about CJGs in relation to how they are being implemented and how they may be improved.

Are financial considerations a key measure?

- Yes
- Purpose was to evaluate the input / output of the programs with the intent of identifying financial and community benefits.

Objectives of original review/evaluation (including NS if “not stated”)

- Overall Evaluation Question:
 - How is the CJG Program working? What difference is it making?
- The objectives of the Evaluation were to determine the extent to which:
 - the CJG program, including the DFV program, is operating as intended across Queensland
 - communities are addressing justice-related issues and community goals and in what ways. What is working well in what contexts?
 - communities are safe and contacts with the criminal justice system have been reduced. Who are the strategies working for? What would it take for good outcomes with others?
- Focused was on:
 - implementation (inputs)
 - the services being delivered (outputs)
 - the changes for individuals, families and communities (outcome and impacts).

Types of processes in original review/evaluation (including NS if not stated)

- Includes various A/DR processes
- Approach, ethics and evaluation data collection was outlined as
 - Approach: (a) A strengths-based, storytelling approach using ‘Appreciative Inquiry’ methods (b) A ‘Developmental Evaluation’ approach to assist emerging initiatives in some locations (c) A ‘principles-focused’ approach to cater for diversity across CJGs (d) Participatory planning and co-design in conducting local evaluations (e) Respecting and strengthening Indigenous data sovereignty (f) Mixed methods approach, across local and Statewide components
 - Ethics: DJAG has not required that Myuma’s ethical protocols receive a formal approval from a Human Research Ethics Committee (HREC). Instead, the Evaluation Management Team reviewed and approved the ethics protocol in June 2021.
 - Evaluation Data: Desktop review, Survey, Quantitative interview – all sources tabled with locations.

Outcomes and findings of original review/evaluation

- CJGs can deliver a wide range of outputs depending on community needs where localised configuration to community is present.
- Well run and empowerment-focused organisations are able to engage in higher quality financial management, HRM, data collection and training and development.
- Funding is essential to enable CJGs benefit to the community

Key themes

- Empowerment focus with regards to programs
- Funding is crucial
- Adequacy of resources

Sample/useful quotes

Page 9: ‘The evaluation found that CJGs differ greatly in their level of organisational maturity in areas such as governance, financial management, human resource management, data collection and staff training and development. The Local Evaluations showed that well-run and empowerment-focused auspicing organisations can assist CJGs greatly in this regard.’

Page 9: ‘CJGs play an especially important role in building cultural capability and connections for agency staff, while also providing logistical and practical support for many agencies to understand the community and engage with community members.’

Page 10: ‘Funding for CJGs is the most important Program input to enable CJGs to do their work.’

2022 Literature review on Yarning Circles in a Criminal Justice Context

Taylor, H., L. Bartels, M. Crowe, and V. Marshall, *Literature Review on Yarning Circles in a Criminal Justice Context* (Report for Australian National University Centre for Social Research and Methods, 2022)

Name of original program/service

- Multiple programs

Location of program/service (including State/Territory, town; urban, regional, remote)

- Various – ACT – non-specific
- 18 programs identified through researchers' Boolean search
- Yarning Circles for justice – featured in report
 - Designed in partnership with community, provided by community

Author/s of original review/evaluation (including First Nations Yes/No)

- Dr Helen Taylor – No
- Lorana Bartels – No
- Dr Virginia Marshall – Yes
- Maddison Crow – Yes

Brief description of program/service (e.g., types of DR; purpose; whether delivery is by First nations people) and its dates of operation

- Yarning Circles
- YCJ - It seeks to engage participants in building capacity, to manage daily life outside prison, empower them to re-establish crucial links to community and culture, and restore positive relationships with friends, family and peers.

Aims/objectives of review/evaluation?

- Options for the use of yarning circles for adults engaged in justice system with aim to reduce incarceration / recidivism
- Options for the use of yarning circles as delivery method of criminogenic interventions
- Recommendations regarding future evaluations of yarning circles in ACT

Are financial considerations a key measure?

- Yes

Objectives of original review/evaluation (including NS if “not stated”)

- As above

Types of processes in original review/evaluation (including NS if not stated)

- Yarning circles
- Boolean search to identify programs
- Qualitative methods re interviews

Outcomes and findings of original review/evaluation

- Need to consider the scope of issues explored within yarning circles.
- Need for long term funding
- Need for research to be undertaken and designed in collaboration with community
- Lack of research on impact of yarning circles
- Evaluations should adopt
 - Mixed method design
 - Local input into programs design and implementation to match community needs
 - Clear and measurable objectives
 - Pre and post program data to measure impact

Key themes

- Community engagement / ownership
- Connection to culture and cultural identity
- Ownership of evaluation
- Reduction in rates of incarceration / recidivism

Sample/useful quotes

Page 10: ‘Firstly, the men’s and women’s groups are built on a strong cultural foundation, with a clear focus on reconnecting clients with culture, as strengthening cultural identity was seen to be an important component in implementing lasting change. This was achieved through ensuring that community Elders were part of the process at every stage, as well as providing clients with the opportunity to experience bush healing. Community Elders are present at the group meetings and promote cultural identity and educate younger generations.’

Page 33: ‘There was generally a paucity of research explicitly demonstrating the impact of yarning programs and the reasons for this were examined. This suggests that further research is required to evaluate programs of this nature. It is vital that such research be undertaken by and designed in collaboration with the local Aboriginal and Torres Strait Islander community, to ensure its methodology is appropriate and consistent with an Aboriginal and Torres Strait Islander worldview ...’

Appendix C

Commissions of Inquiry – relevant extracts

Law Reform Commission Report No 31, *The Recognition of Aboriginal Customary Laws* (Final Report, 1986) Vols 1 & 2.

This report includes paragraph numbers and no page numbers. The report's total number of pages is 737 and, where references to page numbers are included, they are presented in the format of #/737.

Extracts 1986 Customary Law

'28. Dispute Settlement in Aboriginal Communities'

Edward River: pages 419-423/737; paragraphs 694-706³⁷³

Yirrkala: pages 423-425/737; paragraphs 707-712³⁷⁴

Strelley: pages 425-427/737; paragraphs 713-718³⁷⁵

General Conclusions: pages 427-428/737; paragraphs 719-720

'Edward River

694. **Background.** Edward River is a remote Aboriginal community, with a population of approximately 350-380, situated on the western side of the Cape York Peninsula. It is 130 kilometres south of the mining town of Weipa and 550 kilometres north-west of Cairns. It was established as a mission of the Anglican Church in 1939 and was run as a mission until relatively recent times. It is an Aboriginal reserve under the Aborigines Act 1971 (Qld) and has an Aboriginal court established under that Act.

695. **Dispute Resolution.** Disputes at Edward River, which do not necessarily involve offences against the general legal system, are dealt with in three different ways. More serious offences committed by Aborigines and all offences committed by non-Aborigines are dealt with by the ordinary Queensland court system. These constitute a very small percentage of offences committed by Aborigines. Much more commonly, inter-Aboriginal disputes are dealt with either by the local Aboriginal Court or in accordance with 'old custom' or 'Murri law' methods of resolving disputes. There is much overlap between matters dealt with in the Aboriginal Court and those matters which would formerly have been resolved in accordance with 'old custom'. For example, the 'old custom' way of resolving disputes could often involve a fight between one Aborigine and another. Each person might then come before the Aboriginal Court charged with assaulting the other, an offence under the Reserve by-laws. The features of these two separate systems of resolving disputes and the interaction between them will be briefly outlined here.

696. **'Old Custom' or 'Murri Law'.** In essence, 'old custom' is the Aboriginal way of resolving disputes at Edward River which arise as a result of transgressions of local rules of behaviour. The Aboriginal court system on the other hand is seen as the 'white man's' way of assessing transgressions and applying punishments to them. 'Old custom' law as it operates at Edward River has an unwritten but well understood code of behaviour or 'right conduct', and there are clear procedures to be followed by those seeking redress for breaches of the code. Common breaches of conduct that would require some form of action include:

1. Omission of kinship duties — principally revolving around the distribution of food and gifts.
2. Mistreatment — this usually arose in domestic context and involved unfair physical violence.
3. Infidelity.
4. Breaches of bestowal expectations and arrangements.
5. Insult — this could involve using the personal name of a recently deceased person or swearing with the intention of provoking someone else.

³⁷³ This section of the Commission's report relies on the following: Taylor, J. Submission 388, 11 October, 1983.

³⁷⁴ This section of the Commission's report relies on: Williams, N., *Two Laws: Managing Disputes in a Contemporary Aboriginal Community*, (based on PhD Thesis, Canberra, 1973).

³⁷⁵ This section of the Commission's report is based in part on evidence provided by Bucknall, J., *Transcript*, 23-24 March 1981.

6. Threatening or causing injury.
7. Trespass — for example encroaching into another's country or the resources of that country.
8. Failure to consult or to acknowledge rightful decision-making authority.
9. Homicide.
10. Breaches of ceremonial ritual codes.

697. **Responses to 'Wrongs'**. Certain breaches (e.g. breaches of taboo) brought automatic retribution by way of supernatural agencies. However breaches which imposed a responsibility on a person or group of persons to act were likely to have one of three outcomes. First, the aggrieved person may decide to do nothing about it. Secondly a person might seek private redress, which involved a conscious decision not to resolve the matter in public but focussed on retaliation and punishment? Seeking private redress often resulted in long-running disputes, with the effect of exacerbating relations between the disputants. The third way in which a person could seek redress of a breach of the code of behaviour was to have the matter resolved publicly. A dispute that became public was usually resolved to the parties' satisfaction so that the problem with private redress, of long-running feuds and paybacks, did not arise.

Public disputes most commonly eventuated in the omission of kinship duties, in breaches of bestowal expectations and arrangements, in instances of insult or real or threatened injury and occasionally in cases of infidelity, trespass and homicide.

698. **Public Dispute Resolution**. As observed by Taylor, this form of resolution has a number of clearly identified stages. Not all disputes necessarily go through each of these, as some may be resolved along the way. But generally a dispute resolution would contain each of six stages:

- Declaration — a public announcement by the aggrieved person setting out the details of the transgression.
- Rejoinder — denial or counter-charge by the accused.
- Argument — public disputation between the parties during which they would both usually be armed with their fighting weapons: 'both disputants would stride up and down gesticulating, arguing loudly and waving their weapons in a threatening manner'. During this stage other persons standing in special relationships to the disputants would arrange themselves in such a way that they could assist either party in the dispute if required.
- Insult and physical combat — this generally involved fighting with weapons between the parties, often escalating as other persons aligned with each of the disputants became involved. During this phase certain persons were expected to play the role of 'blockers'. 'Blockers' sought to ensure that disputes and the fighting did not get completely out of hand and they attempted to contain the dispute to the parties involved. To some extent they acted as umpires in the dispute, first attempting to stop violence and then, if physical conflict followed, ensuring there was no foul play.
- Separation — this occurred as a result of a number of factors including physical exhaustion, the need for injuries to be treated, satisfaction obtained by each of the disputants and the feeling that the matter had been resolved:
- The Edward River notion of fair play stressed that those who initiated trials-at-arms should come away bearing equal injuries irrespective of the nature of the wrong action that triggered the combat in the first place.
- Reconciliation — this was indicated by the return of normal relationships between the parties.

699. **Changes to Public Disputing**. Taylor suggests that such public methods of resolving disputes have changed little over the last 40 years, although of course there has been some impact caused by the responses of non-Aboriginal staff and the impact of their views on Aboriginal people. The lay-out of the village and the fact that there are now houses with clearly defined territorial areas attached to them and roads through the community has also had some impact. Public disputes generally occur in the public areas rather than in a person's private yard, and the use of weapons in disputes is still common. In fact the underlying threat of violence is a crucial feature in all public disputing. The role that customary methods of disputing play at Edward River has become more complicated with the more ready availability of alcohol. Alcohol can be involved in 'old custom' disputing but it also has the general effect of increasing tensions between people resulting in fights. It is also the cause of a large number of offences coming before the Aboriginal court.

700. ***The Aboriginal Court.*** The system of Aboriginal courts which operates on reserves in Queensland is set out in more detail in chapter 29.2839 At Edward River an Aboriginal Court, constituted by two or more Aboriginal Justices of the Peace or members of the Aboriginal Council, may hear charges against Aborigines resident on the reserve for breaches of the regulations and by-laws applicable to that reserve. These rules are essentially of a local government kind, but there are also general provisions concerning the conduct and behaviour of Aboriginal residents. New legislation dealing with Aboriginal courts was enacted in 1984, but the courts continue to operate in much the same way. In a sample of cases coming before the Edward River Court Taylor found that 93 people (86 men and 7 women) appeared on a total of 106 charges. The offences committed fell largely into two categories: 41 (38%) of the charges laid were directly associated with verbal or physical assault while 54 (51%) of the charges related either to the importation of alcohol onto the reserve or its consumption there, not all of the first category of cases can be said to have a customary basis certainly a number of them resulted directly from the various stages involved in a public dispute.

In many instances the charges themselves arose out of an evolving and culturally indigenous system of dispute resolution. The true causes of these disputes lay elsewhere and the appearance of people before the court was often times just a coda to a process that perforce had to function independently of the introduced court system.

701. ***Range of Cases Heard.*** Taylor divides the cases coming before the Aboriginal Court into three kinds. There are those cases which involve contravention of the community's by-laws which are essentially of a local government kind e.g. relating to health, hygiene or government property. Secondly, there are those charges which result directly from 'old custom' disputing. Often no charges were brought as a result of a public dispute, either because the matter did not come to the attention of officials or because it was not considered by them as sufficiently serious to justify laying charges. The third type of case involved fights and disturbances following the consumption of alcohol. There was a significant overlap between the second and third categories.

702. ***Interaction Between 'Old Custom' Disputing and the Aboriginal Court.*** The introduction of an Aboriginal court at Edward River in 1965 had an impact on the level of old custom disputing. Aboriginal residents took into account the fact that certain conduct, even if part of 'old custom' dispute resolution, might involve an appearance before the Aboriginal court with, for example, the risk of higher fines for each appearance. Taylor states that the Aboriginal court at Edward River played a totally different role depending on whether one looked at it from the viewpoint of Aborigines or from that of the staff of the Department of Aboriginal and Islander Advancement.

In the view of the Aboriginal residents the court's most important function lay in the avenue it provided for reconciling the consequences of 'old custom' dispute settling with European notions of law and order. Since the legal codes over which the court was empowered to act did not include customary law except for a strongly worded paragraph on sorcery ... the only way Edward River people could obtain redress for breaches of their traditional codes was to engage in old custom disputing. But 'old custom' disputing, as people well knew, evoked negative reactions from the Europeans. Hence the processes of the court provided a way of 'making level with the staff'. The court did more than simply propitiate European sensibilities concerning the incidence of abusive language, threatening behaviour and physical assault. It also helped to control the degree to which individuals sought redress through 'old custom' disputing

However, it was an important shortcoming that the court did not provide any avenue for certain breaches of Aboriginal codes of conduct to be dealt with. The non-Aboriginal staff had a completely different view of the Aboriginal court and the function it should perform:

In the DAIA view, the Aboriginal court was both a training device intended to give Aborigines experience of the legal processes of the wider Australian community and a means of enforcing behaviour thought to be necessary and desirable in a group that officially was supposed to be assimilating to the way of life of the donor culture.

703. ***Non-Aboriginal Perceptions of 'Old-Custom' Disputing.*** This difference of views has a number of wider implications for Aboriginal people:

When DAIA staff failed to recognise 'old custom' disputing for what it was and instead interpreted it as 'lawless' or 'primitive' behaviour, then every instance of an 'old custom' dispute coming before the Aboriginal Court as a breach of the peace provided verification for a strongly held though unofficial view, namely, that the Edward River people were not yet ready for independence and responsible self-management. While this misperception existed and while no alternative forum was provided for the

resolution of 'old custom' disputes, it would seem that Edward River people would never be trusted with the management of their own affairs.

704. **Perceptions of Violence.** A further important difference in perception between the Aboriginal members of the community and the white staff related to the attitude to fighting and personal assaults. In Taylor's view most Aborigines did not consider that fighting should be of any concern to the Aboriginal court or to outsiders. It was a way of resolving personal differences, well accepted by all parties. Taylor doubts whether any charges concerning fighting would have been brought if the incident in question had not been drawn to the attention of Europeans in some way. Several fights attended by the Aboriginal police did not result in any charges being brought because no senior non-Aboriginal member of staff was present. The latter, by contrast, took the view that fighting and other disturbances including arguments and bad language threatened the peace and good order of the settlement and therefore should be dealt with by the Aboriginal court. This attitude had brought changes to traditional disputing methods:

In deference to European sensibilities regarding violence they attempted to tone down the level of violence manifested in disputes and created territorial canons to suit the settlements physical structure and to lessen the likelihood of the non-involved being injured. As well they accepted the fact that they would have to pay a penalty whenever disputation took a violent turn.

705. **Non-Aboriginal Offences.** There was some resentment that what Aboriginal residents perceived as wrong doing by staff could not be dealt with by the Aboriginal court. Even if the Aboriginal court had had jurisdiction over such staff, some of these cases would not have fallen within the jurisdiction of the court, or even constituted a criminal offence. The result was that Aboriginal members of the community tended to seek their own ways of resolving such problems. For example, on the occasions when personal relationships between members of the Aboriginal community and the white staff created tensions, the community was able to exert pressure to have staff removed by notifying senior officials of DAIA or local politicians. In this area of community concern the court was seen as totally inadequate.

706. **Summary.** As observed by Taylor, 'old custom' disputing at Edward River is still carried out in much the same way as it was before the mission was established in 1939. Some changes have occurred, under the influence of the staff and also through the operation of the Aboriginal court. Despite these influences the resolution of disputes in a public way is still common. The Aboriginal court as it currently operates hardly provides a mechanism for resolving such disputes, as it contains no provision for airing personal grievances and seeking a satisfactory solution. Public disputing causes concern not only to the staff but also to many Aboriginal members of the community who consider aspects of the disputing process to be unsatisfactory, especially the violence and injuries suffered. There is .for example often criticism by Aborigines of the Aboriginal police for not doing their job properly and preventing fights from occurring, and there is strong feeling over the effect that alcohol is having. The Council at Edward River have never attempted to draft its own by-laws.²⁸⁴⁹ Several factors account for this, including the lack of available drafting expertise, uncertainty as to whether the Aboriginal court is an appropriate forum, lack of knowledge of the right to propose by-laws and a general over-dependence on the non-Aboriginal DAIA staff. Taylor suggests that it may be possible to prepare by-laws which take account of customary practices, although finding someone to articulate the customs to the satisfaction of both Aboriginal residents and staff might be difficult.

Yirrkala

707. **Background.** The Yirrkala Community, consisting of a number of clan groups, is situated in North-east Arnhem Land (NT) and is a former mission of the Methodist Church. Yirrkala and its outstations have a population of approximately 700-800 Aborigines as well as non-Aboriginal support staff. Until the late 1960s it was an isolated community, but now the modern mining town of Nhulunbuy (pop 4000; established 1972) is within easy reach. Nhulunbuy contains the regional police station and court. Transport to other major centres by air is also readily available.

708. **Dispute Resolution Process.** A detailed study of dispute resolution mechanisms at Yirrkala was undertaken by Dr Nancy Williams, based on fieldwork in the late 1960s and early 1970s. The study

reveals that the Yirrkala people have a sophisticated and ritualised process of dispute resolution, based on the use of intra-and inter-clan moots. The grievances of the disputants may, and in many cases would, have already been publicly announced or become widely known with such publication normally occurring in one of the following ways:

- verbal declaration;
- verbal declaration accompanied by some threat of physical injury;
- assault;
- destruction of property.

Once a grievance becomes public in this way it has the status of a dispute and the procedures that need to be adopted to resolve it become important. According to Dr Williams there are 5 basic characteristics of the dispute settlement process at Yirrkala:

1. Intervention and subsequent management by a clansman with political authority who is senior to both the disputants;
2. Gathering and checking evidence by the intervening clansman;
3. Obtaining an admission of all culpable acts (the 'true story');
4. Confirmation of findings and of action taken by those with authority over and responsibility for the principals in the dispute.
5. The application of sanctions

An integral feature of this process is the moot, in which the disputants and interested parties are brought together so that the matter may be discussed. All or only some of the five characteristics of dispute resolution may occur within the moot, although it is likely that some preliminary work to gather information will have been done beforehand and that follow-up work will be required afterwards. The moot itself is an organised procedure, and as witnessed by Dr Williams, had four distinct phases:

- Statements of the offence and relevant law by those with jurisdiction.
- People address themselves to the specific allegations in the case under consideration. They may mention any other allegations they consider pertinent, and they judge the consequences of alleged acts.
- Response to the allegations. The convener urges the defendant to admit the extent of his or her culpable acts. The defendant, who was the agent of the culpable act, responds.
- Statements about the outcome, and the composition for the dispute may be made by a number of people but should include the convener, the offender, and the aggrieved person.

Williams comments that:

... the relationship between modes of disputing and procedures of dispute settlement is clear ... Brothers-in-law (sisters' husbands) offered restraint as well as exhortation to settle the dispute, and subclan and clan leaders offered to manage the procedures of dispute settlement that would provide a satisfactory outcome

709. ***Kin Obligations.*** Disputes at Yirrkala covered a wide range of matters, including failure to fulfil obligations to kin,²⁸⁵⁶ domestic disputes, including disputes both as to existing and prospective marriages and other matters. While breaching contractual obligations is listed by Dr Williams as a primary cause of grievances or disputes, she notes that other causes of dispute were (1) the failure to recognise a person's specific rights over certain women, land, natural resources or ritual objects, (2) breaches of religious restrictions, (3) the failure to carry out sanctions imposed during a previous dispute and (4) allegations of sorcery. In her view, physical assault is not regarded as an offence in itself. Rather it is seen as related to some other underlying issue.

710. ***Sanctions.*** Sanctions imposed in the dispute resolution process have changed over time. There is now greater emphasis on non-physical sanctions although physical sanctions have not disappeared completely. The likelihood that persons handing out physical punishments may be dealt with under Northern Territory law appears to be at least one — if not the main — reason for this change. The sanctions more readily applied are temporary exile from the community, usually to outstations, restitution, usually by monetary compensation, and temporary removal from employment.

711. ***Role of the General Legal System.*** Aboriginal modes of dispute resolution at Yirrkala continue to be affected by the general legal system, and conflicts occur. However the local people, according to

Dr Williams, had developed their own methods of attempting to resolve the jurisdictional issue. by distinguishing between those matters where they expected the general legal systems, to intervene, and those matters they considered they should deal with without such intervention. In this way the authority of the clan leaders within a defined jurisdiction is sought to be maintained. A distinction is drawn between ‘little trouble’, including ‘grievances that arise out of a breach of kin-defined rights or duties’, and ‘big trouble’ which refers to situations involving ‘physical assault which resulted in serious injury or death and thereby made the act of assault highly visible’

The consistent conjunction of remarks about big trouble and Australian legal intervention [by Aborigines] indicated that the defining attributes of this category were derived from those acts which Yolngu had observed were most likely to be followed, if they were noticed, by intervention of white Australian authorities

Intervention by white authorities in other than ‘big trouble’ as defined was resented because it was regarded as an encroachment on Aboriginal jurisdiction. Generally, the police did not in fact intervene in purely Aboriginal disputes, thus reinforcing the Aboriginal view. The community did however, reserve the right to call in the police when they required their assistance, and this right was perceived by them as an adjunct to their own power.

712. **The Current Situation.** Since Dr Williams’ fieldwork was done, much has happened at Yirrkala. There are now 16 outstations where up to 250 Aborigines live at different times of the year. But there is still much debate and reflection on achieving better cooperation between what are perceived as two co-existing systems of law there. One result of this ongoing discussion is the so-called Yirrkala proposal, discussed in Chapter 31. But the Commission has been told that the methods of resolution of disputes outlined by Dr Williams continue to operate along much the same lines, although they may now involve smaller family groups rather than larger meetings or moots.

Strelley

713. **Background.** The Strelley Community, 2864 comprising 500-600 people, is situated about 40 kilometres inland from Port Hedland (WA) although in recent years there has been a great deal of movement away from Strelley Station so that people are now spread over a number of properties. It is a very self-contained and independent community with strong leadership. No police are stationed there. Strelley has a unique background. The Aboriginal people living there are part of a large group of Aborigines who walked off pastoral properties in the area in 1946. In part the strike was in protest at working conditions and the treatment to which they were subjected, but it was also a protest against the repeal of the Constitution Act 1889 (WA) s 70, which had provided a guarantee of public expenditure on behalf of the colony’s Aboriginal population. This walk-out breached a number of Western Australian laws, in particular the *Native Welfare Act 1905* (WA), and resulted in a number of persons, Aboriginal and non-Aboriginal, spending time in gaol. More recent events have included various mining ventures and the purchase of a number of pastoral properties. The Strelley Community now runs several pastoral properties which employ approximately half the people living there.

714. **Decision-Making and Dispute Resolution.** This struggle for survival has strongly shaped the community’s approach to management of its affairs. Decision-making is on a communal basis: decisions are made in regular meetings involving the whole community, with everyone being given the opportunity to participate. Even dissolution of marriages are apparently formalised or settled at community meetings. The resolution of disputes and the hearing of cases involving offences against local law and order are dealt with in this way. It is not clear if the procedures at community meetings are the same for the different matters dealt with. The Commission has been told that meetings to hear evidence against offenders and to consider punishments involve persons present sitting in a large circle in positions according to their skin group and family relationships. The accused persons will sit inside the circle strategically placed according to the position of the accusers and of their own families who may have to speak on their behalf. Certain persons are assigned the role of negotiators. The meeting is highly organised and all attending understand their role.

It is not a free-for-all; it is not a lot of people accusing — the protocol and the structure is every bit as clearly defined as in a courtroom.

715. *'The Ten-Man Committee'*. In order to deal with law and order problems the community selects what is called the 'ten-man committee'. The committee's function to apprehend and bring wrongdoers before a community meeting. The meeting will then consider the behaviour of the offender and determine an appropriate punishment. The 'ten-man committee' cannot, however, act unilaterally:

It is not a free-for-all; it is not a lot of people accusing — the protocol and the structure is every bit as clearly defined as in a courtroom.

715. *'The Ten-Man Committee'*. In order to deal with law and order problems the community selects what is called the 'ten-man committee'. The committee's function to apprehend and bring wrongdoers before a community meeting. The meeting will then consider the behaviour of the offender and determine an appropriate punishment. The 'ten-man committee' cannot, however, act unilaterally:

... it cannot go off and act by itself. It must have the agreement of the community. In other words, the Committee does not initiate the action; the community initiates the action

The jurisdiction of the 'ten-man committee' is not limited to the boundaries of the community. It regularly visits Port Hedland and other localities to apprehend persons. The range of offences for which persons may be picked up and returned to the community are quite broad: some may involve breaches of kin or community obligations but many are alcohol related. Some young persons are picked up because their drinking habits are considered detrimental to their health and welfare. Alcohol is certainly perceived by the people at Strelley as a major destructive factor to Aboriginal people and their culture.

716. *Links with the General Legal System*. While the activities of the 'ten-man committee' in Port Hedland or elsewhere have no official sanction from the general legal system, the members of the committee have on occasions been assisted by the local police. The extent of this assistance depends, it seems, on the particular personnel stationed at the Port Hedland police station from time to time.²⁸⁷² The activities of the 'ten-man committee' and the lack of any formal liaison with the local police can mean that a person will be dealt with under both systems: by the ordinary courts and by the Strelley community. The Commission had discussions at Strelley about the possibility of formalising the role of the 'ten-man committee' in some way, for example, by its members wearing a uniform or badge of some kind. It was suggested that this may improve the police understanding of who they were and what they were doing and perhaps prevent problems resulting from non-recognition. A further difficulty, of course, is the possibility that certain of the actions of the 'ten-man committee' could involve breaches of the law and leave members of the committee liable for prosecution. Some official recognition of their role may, perhaps, prevent this. There was no clearly expressed view of the community members on the desirability of such changes, most implying that because the system worked satisfactorily at present there was no need to change it.

717. *Sanctions*. While the Commission has little information on the format of the public meetings held at Strelley it has been told of the following sanctions:

- admonition ('growling');
- ridicule or shaming;
- a fine;
- banishment from the community (usually to one of the neighbouring communities);
- community work.

In rare cases physical sanctions are administered ('a little bit of a hiding') but the community apparently does not approve of spearing. On occasions, the community will pay the fine of a person who has come before the Magistrate's court. If this happens the person is regarded as being in debt to the community and may have to perform some community work as a result.

718. *Comment*. Information about the processes of decision making and the informal justice mechanisms at Strelley is limited, but it gives some idea of the way in which the attempts are made to resolve problems and to interact with the general legal system. The reality of the broader legal system is accepted and accommodated, but is not regarded by the people as the way in which they would seek to resolve all their problems. In a similar way to Yirrkala, it seems that certain matters are seen as being within the jurisdiction of the general legal system, while others are to be resolved locally.

General Conclusions

719. **Representativeness of this Experience.** These examples may not be representative of Aboriginal communities around Australia. In some Aboriginal communities new authority structures have been developed, for example, elected community councils. These have a predominantly administrative role and are usually run by younger, school educated Aborigines, but some have come to play an important part in maintaining order and resolving certain kinds of disputes. The role played by a council may depend on the status of the persons elected and the extent to which senior people in the community influence individual council members. It will also depend on the nature of the dispute. It would be more common for matters not related to Aboriginal laws or customs to be dealt with by the elected Council. For example, at Beswick (NT), trouble-makers are barred for set periods of time from the beer canteen by the Council, a decision based on community discussion. The Council determines the penalty and is responsible for ensuring compliance. Council members may also play a role in attempting to 'settle people down' if trouble erupts in the canteen. The Council prefers to play an active role of this kind rather than calling in the police. The Council in consultation with the elders also attempts to resolve other troubles that arise. At Angurugu (NT) the Council unofficially fines individuals for unacceptable behaviour (including interference with Council property) regardless of whether court proceedings take place. In other communities, Councils or individual Council members are regularly involved in mediating disputes. In Central Australia a number of Councils have on occasions requested the Aboriginal Legal Service not to represent individuals charged with offences which are of particular community concern (e.g. 'grog-running' into dry communities). The Legal Services have had little choice except to comply, but this raises difficult issues. On the other hand some communities, in order to distinguish the function of the elected council, have also chosen a tribal council which has primary authority in traditional matters. This has been done, for example, at Yuendumu (NT), Yirrkala (NT), Roper River (NT) and Yungngora Community (Noonkanbah, WA). It appears to be a fairly recent phenomenon.

720. **Conclusion.** Whatever form they may take, there is little doubt that in many Aboriginal communities unofficial methods of resolving disputes operate alongside the general legal system. These may work together to resolve problems: at other times, though less frequently, they are in direct conflict. Generally, the customary processes operating do have an important role to play. If disputes and conflicts within Aboriginal communities can be resolved in unofficial ways this should be encouraged as a preferable alternative to reliance on the general legal system. However these customary processes have their limitations. No longer do they cover the whole range of disputes, conflicts and law and order problems arising within Aboriginal communities, nor do they seek to. The questions whether it is desirable that these customary processes be recognised by the general legal system and whether it is possible to do so, will be considered in Chapter 31.'

Royal Commission into *Aboriginal Deaths in Custody* (Final Report, April 1991)

This is an extensive set of documents (Volumes 1, 2, 3, 4, and 5, plus Appendices) and, in order to select the areas for appropriate focus, this report has relied on the descriptive summaries provided in Volume 3, under the section 'Summary of all the Volumes'. Guidance was also sought from a specific research guide published by the National Archives of Australia.³⁷⁶ Ultimately, key focus has been on Volume 2 ('Part C. The Underlying Issues Which Explain the Disproportionate Number of Aboriginal People in Custody'); Volume 5, Appendix A. (Terms of reference, as variously amended); Volume 5, Appendix C (Methodology); and Volume 5, Appendix D (Sources of Information).

The selected extracts below are from Volumes 1 and 2.

The report includes paragraph numbers without any page numbers. Given the scope and variety of Commission records, it was decided that extracts would include references only to paragraph numbers.

Volume 1

Paragraphs 1.3.4 – 1.3.7; 1.5.2-1.5.4.

‘1.3.4 The fact is that those features which I have mentioned as being found very generally in the lives of those who died are common to the Aboriginal community. In Chapter 11 the report deals with the social indicators of Aboriginal society and in Chapters 12 to 20 I discuss aspects of Aboriginal society today.

1.3.5 What these Chapters show in considerable detail is that the features noted in relation to those who died constantly re-appear in the broad fabric of Aboriginal society.

1.3.6 By all the indicators, as has often been said, Aboriginal people are disadvantaged when compared with any other distinct group in Australian society and with the society as a whole. In these chapters I discuss the economic position of Aboriginal people, the health situation, their housing requirements, their access or non-access to an economic base including land and employment, their situation in relation to education; the part played by alcohol-and other drugs--and its effects.

1.3.7 All these matters are calculated to lower self esteem; but equally important are other legacies of the history of two centuries of European domination of Aboriginal people.’

‘1.5.2 Firstly, Aboriginal people remember this history and it is burned into their consciousness.

1.5.3 Secondly, Aboriginal people have had very different experiences arising out of the taking over of their country. In South Eastern Australia, non-Aboriginal occupation has been longest and most thorough in penetrating the country. Aboriginal people have overwhelmingly been removed from their traditional land and from ceremonial life and the influence of much of the law. Where European penetration came late and was partial, and where not all the land was sufficiently attractive to be occupied, or for other reasons was not occupied, people still live on their traditional land where the law is strong. There are variations in between. Of more recent times, many Aboriginal people have come to the cities but overwhelmingly the Aboriginal population still lives in the rural areas or in discrete communities beyond the rural areas.

³⁷⁶ Nagle, P., and R. Summerrell, *Aboriginal Deaths in Custody: The Royal Commission and its Records, 1987-91, Research Guide* (National Archives of Australia, 2002).

1.5.4 Thirdly, Aboriginal society was local. Groups were small. There were not large social or political units. These two facts---the small scale character of Aboriginal society and the vastly different experiences in different parts of Aboriginal society over the last two hundred years--mean that the perception of Aboriginal people is often different on different questions; of course on some questions there is a unity of perception, but on many a different perception.’

Volume 2 – Chapter 11

Guide

Chapter 11 Some Aspects of Aboriginal Society Today

11.2.5-11.2.6 [Cultural Orientation]; Recommendation 51; 11.10 Indigenous Mechanisms of Social Control; 11.10.7 – 11.10.10 [‘Fighting, Swearing and Other Aggressive Behaviours’]; 11.10.11 [‘Witnessing’]; 11.10.13 [‘The Responsibility of Close Kin’]; 11.10.14 – 11.10.16 [‘Ritualised Expressions of Anger and Distress’]; 11.10.19 [‘The Imputation of Responsibility’]; 11.10.27 [‘Policing’]; 11.12 Aboriginal Identity; 11.12.3.

‘CULTURAL ORIENTATION

11.2.5 The very act of deciding to collect and promulgate social indicators in a particular area is an activity influenced by the values, goals and life experiences of the researchers involved. Accordingly, it should be no surprise that the social indicators available to us frequently reflect the priorities of Western society and of bureaucracies, rather than the priorities of the Aboriginal people themselves. Indeed, the priorities in social indicator data collection which official agencies have may even be contradictory to those of Aboriginal people. For example, the Australian Bureau of Statistics (ABS) Census of Population and Housing includes questions on household size, a topic which many Aboriginal people may consider to be unimportant.

11.2.6 Alternatively, the interpretation of social indicators by Aboriginal people may well differ from the interpretation placed upon them by people of other cultural backgrounds. The household size example is apposite: in some sections of society, housing requirements may reflect the perspectives of the nuclear family, whereas, in some circumstances, Aboriginal people may apply the perspective of a wider family.’

‘Recommendation 51:

That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs:

- a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group;
- b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research;
- c. The requirement that Aboriginal people from the relevant community or group receive the results of the research delivered in a form which can be understood by them; and
- d. The requirement that the research include the formulation of proposals for further action by the Aboriginal community and local Aboriginal organisations.’

...

‘FIGHTING, SWEARING AND OTHER AGGRESSIVE BEHAVIOURS

11.10.7 Marcia Langton and Gaynor McDonald, amongst other writers, have pointed out the central place that rule-governed fighting can play in negotiating Aboriginal social life. McDonald suggests that fights amongst the Wiradjuri people of New South Wales do reveal conflicts and tensions within the Wiradjuri world, but they do not represent its breakdown.⁸³ A fight is about the negotiation of identity and is essentially an act of communication. It informs community members of the current state of play regarding certain others and allows them to devise appropriate responses on the basis of what they have witnessed (or heard about). As such, it is an essential mechanism for negotiating the social order:

[i]n the absence or irrelevance of externally imposed controls, social order has to be continually re-negotiated. Fighting is one of the ways in which re-negotiation (or continuing negotiating) occurs.⁸⁴

11.10.8 Marcia Langton also argues strongly for the need to see not just fighting but also swearing as rule-governed behaviour and as part of an effective process of social control.⁸⁵

11.10.9 The fact that fighting is rule-governed and limited does not necessarily mean, however, that people did and do not find it disruptive and troublesome. David Martin, discussing the first years of the Aurukun mission under MacKenzie and the authoritarianism that was exercised there for forty years, suggests that people themselves made a choice to go in to the mission that was at least in part based on a wish to reduce levels of fighting.⁸⁶ The historical transformations which have been wrought on Aboriginal societies often mean that traditional structures of fighting and aggression have been rendered unworkable, if not counter-productive. In a submission to the Commission it was commented that:

Traditional Aboriginal society experienced inter- and intra-tribal conflict and violence and as part of rituals, initiation and mourning Aborigines engaged in acts of self-mutilation. What needs to be recognised, however, is that this behaviour was structured: it emanated from, and formed part of, the cultural and social order. Since European settlement, the traditional Aboriginal social order has been irrevocably altered. The societal mechanisms and cultural institutions which once sustained and reproduced traditional social life, and which defined the boundaries of violent and conflictual behaviour, are no longer in place. 87

11.10.10 Contemporary dissatisfaction with levels of fighting and violence (particularly domestic violence) in communities has led to the development of some alternative mechanisms for maintaining law and order which are discussed below.’

‘WITNESSING

11.10. 11 An essential component of the rules governing fighting is that there is an audience. The audience acts, firstly, as an agent of control, with spectators acting to ensure that the fight does not get out of hand. An audience also restrains other onlookers from getting involved, prevents fighters from introducing inappropriate weapons, ensures that referees do their job, and stops a fight if the antagonists say they have had enough. Secondly, the presence of an audience legitimates the activity. Spectators are assenting witnesses. It is the presence of witnesses that distinguishes a fight from 'dirty fighting'. The latter--as in the case of so much domestic violence or non-rule governed drunken brawling--characteristically lack an audience to act as agents of social control and can actually threaten the social order.’

‘THE RESPONSIBILITIES OF CLOSE KIN

11.10.13 One of the most important mechanisms of social control in all Aboriginal societies is the reliance placed on the responsibilities of close kin. This is probably one of the major

mechanisms of social control in Aboriginal societies, but one that is least recognised or tolerated by the broader legal system. The dimensions of this responsibility are described by Brady and Palmer in the context of the social organisation of drinking in Yalata, which is a matter of predicting danger and forestalling damaging and potentially fatal interactions.⁸⁹ 'From an Aboriginal point of view it appears that physical harm is deemed to be a consequence of lack of vigilance on the part of others, rather than the drunken excesses of an assailant. Clearly, this has serious implications for the question of detention and people being left isolated, away from precisely those people whose responsibility it is to care for them. Detention itself, as a way of temporarily removing a troublesome person from his fellows, may not of itself be unacceptable to others. But as the experience of the Commission has shown, and as this chapter will demonstrate there are circumstances in which isolation of a person who is intoxicated or for other reasons is at risk can be disastrous.'

'RITUALISED EXPRESSIONS OF DISAPPROVAL OR OF ANGER AND DISTRESS

11.10.14 These are some of the informal methods of social control that people use with varying levels of effectiveness. Brady and Palmer identify one of the alternatives to coercion in Yalata as a ritualised monologue which usually takes place after dark when everyone is in their bush shelters. This is known as a *tjunparni* or 'growl'.

The *tjunparni* is a statement of authority and an expression of dissatisfaction with a promise of subsequent retribution to remedy wrongs if they occur in the future... The institutionalised 'growl' is an important way by which some men and women attempt to establish and maintain authority within their own camps by demonstrating their moral strength and opinions. ⁹⁰

11.10.15 The use of shaming has been noted by writers in many parts of Australia. The essence and effectiveness of shaming, or levelling, as a crucial method of social control lies in the fundamental ways in which the construction of the self in Aboriginal culture is enmeshed in one's place in relation to others. The kind of teasing that Carter discusses for coastal New South Wales, often quite savage, is in fact an effective process of levelling.⁹¹ Ridicule or rejection by one's significant others, therefore, is a powerful attack not just on aspects of status or position but on the very self. The process is also tied to the important place occupied by the peer group in ensuring conformity as well as to maintaining egalitarianism.

11.10.16 The destruction of property, and various forms of self-mutilation are also widespread and rule-governed expressions of grief and distress in Aboriginal societies'

...

'11.10.19 Many of these indigenous forms of social control developed in small-scale groups where they were bound up with religion and age structures.

There is a widespread perception amongst many Aboriginal people that they are no longer adequate in larger forms of settlement, or those parts of Australia in which Aboriginal culture has undergone significant transformation. In material prepared for the Royal Commission in Queensland, Dr Paul Memmott noted how the political and disciplinary power of elders was weakened or destroyed as a matter of policy by the managers of Aboriginal settlements. At Mornington Island (Gununa), for example, unless senior men were prepared to forsake their traditional religious beliefs and join the Church elders, they found themselves in marginal political roles, or else on Palm Island. The dormitory system also operated for many years at Mornington Island to break down traditional kinship responsibilities. The role of the disciplinary relative (whether it be parent or uncle) was usurped by the mission manager, and later the head teacher. This loss of social control by elders was accompanied by the erosion of values concerning traditional social structures, the qualities of leadership, and the desirability

of social control. Consequently, many young people have grown up without respect for--and sometimes even without experience of--traditional leaders and traditional methods of social control.

The weakness or absence of social structure and strong community leaders, and the lack of support from adults for token or unempowered leaders, results in an inability of a community to effectively address and solve major social problems or to maintain social order. This situation has been made worse by the introduction of alcohol into the majority of communities in recent decades.

11.10.20 Dr Memmott emphasises that there is a spectrum of situations in relation to the maintenance of traditional social controls, and particularly over violence. On Mornington Island, social control is no longer in the hands of elders, and traditional fighting models appear to be lost. At Aurukun, the opposite is the case, but fighting models are beginning to break down because of alcohol use.

11.10.21 It may be for these reasons, and particularly in response to unprecedented forces of de-stabilisation such as alcohol, that two completely external agents--the Christian churches and the police--have now become part of the repertoire of social control mechanisms to which people can appeal.'

...

'11.10.27 Various forms of informal social control are still exercised in many Aboriginal communities. In many circumstances, however, such mechanisms are no longer adequate to deal with the kinds of situations that Aboriginal people either create for themselves or find themselves in. Importantly, they are no longer adequate from the point of view of Aboriginal people themselves. New forms of control, therefore, need to be canvassed, but in ways that incorporate rather than exclude indigenous principles of social control. The Julalikari Camp Patrols, including a women's patrol, that now operate in Tennant Creek with the support of the local police is an example of the kinds of social control that have been initiated. The voluntary community policing initiatives of the Julalikari and Gurungu Councils are an example of how creative schemes developed and carried out by Aboriginal people can work to improve police-Aboriginal relations and to lowering the disruption caused by alcohol in town camps. In Adelaide, local Aboriginal residents, particularly the women, have developed an organisation to provide a buffer between young Aboriginal people and the police (see the 'Streetmeet' example in Chapter 30).'

...

'11.12.3 However, for Aboriginal people there remains an understandable hostility towards much of the research which is still performed. Whilst recognising the value to themselves which may be gained from the work of academic and other researchers, Aboriginal people now insist on having control over the research so that what is studied reflects Aboriginal needs and priorities and the process of study meets their cultural requirements.'

Chapter 13 The Criminal Justice System Relations with the Police

13.2 Community Relations and Control; 13.2.7 [*Police Culture*]; 13.2.31 [*Public Violence*]; 13.3 The Historical Basis; 13.3.7 [*Police Culture*].

'13.2 COMMUNITY RELATIONS AND CONTROL

13.2.1 Routine police intervention often acts not just against the interests of Aboriginal people, including their principles of social organisation, but against the very mechanisms for social control that continue to operate within Aboriginal societies. Both these processes--the

undermining of principles of social organisation and conflict with the mechanisms of social control--pose particular problems in relations between Aboriginal people and police.'

...

'ABORIGINAL SOCIAL CONTROLS

13.2.15 Relations with police have been one of many dilemmas for Aboriginal people. Like any other people, they too have a need for the enforcement of some form of law and order to maintain harmony, and to control violence and other unacceptable behaviour within their communities. The traditional ways in which Aboriginal communities coped with unacceptable conduct were very different from those of Western society, and relied far less on the conferring of power and authority on individuals and institutions. Dispute-settling mechanisms included the responsibilities of certain kin to intervene in disputes; an extensively elaborated set of rules for orchestrating disputes, of which fighting and swearing were an integral part; and avoidance and mobility, which were solutions available in traditional Aboriginal society in a way they are not today for many Aboriginal people. The central essence of these mechanisms are identifiable today in communities across Australia, whether these be urban, rural, or remote. I have already discussed the nature of these mechanisms in more detail in Chapter 11. These rules comprise a wide range of Aboriginal mechanisms for social control, and they constitute independent ways of dealing with disorder within Aboriginal groups and communities.

13.2.16 There are at least two ways in which, in contemporary Australia the very operation of these mechanisms for social control creates problems for Aboriginal people, particularly in their interaction with police. One is that the circumstances within which such mechanisms are now being applied have become vastly more complicated than those for which they were developed. Such complexity means that people's ability to deal with social disorder is impaired. It also means that what was once culturally appropriate behaviour may now, in the face of new factors such as easy to access alcohol, produce unintended consequences such as uncontrolled, as opposed to controlled, violence. Additionally, some of the very mechanisms of social control, such as the public nature of Aboriginal social interaction and the concomitant involvement of appropriate kin as monitors, may produce behaviours that are in conflict with non-Aboriginal, largely white, norms and laws. Such behaviours may therefore bring Aboriginal people into contact with the police.

13.2.17 There is another aspect of police practices that has emerged very clearly from the individual cases, namely, the exercise of control. This is related to conflicting definitions, already raised in Chapter 12, between Aboriginal and non-Aboriginal use of public space. Such conflict underlies much of Aboriginal interaction with police.'

...

'Public Violence

13.2.31 As I have stated above, there are aspects of Aboriginal social behaviour which are acceptable to Aboriginal people but conflict with non-Aboriginal (and, at times, Aboriginal) standards of public behaviour. Fighting and loud disputation may well be regarded, in some contexts, as appropriate, if not preferred, processes for resolving disputes. There is ample evidence that such conduct is tolerated to a much greater extent in Aboriginal society than in non-Aboriginal society. There are, however, serious limitations to the extent of such tolerance. As I have indicated earlier in this chapter, certain behaviour, in this case violent behaviour, is equally unacceptable to Aboriginal people as it is to non-Aboriginal people. As I have also stated, in the face of new factors, such as easy access to alcohol, once culturally

appropriate behaviour may now produce unintended consequences, such as uncontrolled, instead of controlled violence.’

...

‘13.3.7 Until very recent times, Australia did very little to recognise the cultural difference of Aboriginal people. Not only was there no recognition of Aboriginal law or custom, but there was little tolerance of Aboriginal norms of behaviour which did not conform to European ideas of decorum. Traditionally, Aboriginal life was lived in the open. With rare exceptions, there was no housing as Europeans know it, and any shelter was simply rudimentary and temporary protection against the weather. As they were excluded from their traditional lands over time, many Aboriginal people moved to country towns. It was in these towns that Aboriginal people came under the censorious gaze of non-Aboriginal people who often found offensive their unconcealed poverty, their apparent obliviousness to European ideas of decorum, their hygiene, their family relationships and their attitudes to property. All this was exacerbated by alcohol, for the consumption of which there were no traditional norms in Aboriginal society, and which, much to the distaste of many Europeans, was absorbed into the public life which Aboriginal people led in the streets and parks and on river banks of towns.

13.3.8 The warfare for the control of the countryside has long since ceased, but in many towns in rural Australia another kind of warfare has continued for control and use of the open space in towns. Rarely has there been negotiation between the contending forces to see whether some accommodation could be found which would allow cultural differences to be maintained without undue violence to the life styles of either side. Instead, non-Aboriginal society, through its armed agents the police, has continually, although never quite successfully, sought to impose its ideas on Aboriginal communities. Some aspects of 'unacceptable' Aboriginal behaviour (by non-Aboriginal standards) have been defined as criminal through the various channels of local government law, street offences, 'protection' legislation and planning laws. For present purposes, the point is simply that through all this conflict the police have had the role of controlling and subordinating Aboriginal people. Issues that cried aloud for solution in a spirit of toleration and negotiation have been handed to police to resolve by the application of the force of the law. Intoxicated persons, usually of little danger to anyone except themselves, were made the responsibility of police, who had neither the training nor the facilities to look after them, instead of being taken into appropriate care.’

...

‘Chapter 20 SELF-DETERMINATION

‘A continuing theme in the preceding chapters is the limited amount of control that Aboriginal people have over the forces that determine how they live. One of the deepest legacies of history for Aboriginal people, and one that has contributed to deaths in custody, is that their lives have been controlled, and in many cases still are controlled, by people who share neither their culture nor their perspectives, because they have not shared their history. Self-determination the gaining by Aboriginal people of control over the decision-making processes affecting themselves, and gaining the power to make the ultimate decisions wherever possible—is, therefore, a key underlying issue considered by the Commission.

The chapter seeks to pose the question 'what is self-determination?'. There is no clear cut definition which is universally agreed. But there is a wide area of agreement that what is involved is empowering Aboriginal people to make many of the decisions affecting their lives and to bring parties to meaningful negotiation about others.

The chapter canvasses the history of the development, by governments, of the self-determination concept, from the 'assimilation' policy adopted by the Commonwealth and States in 1937, through 'integration' to current policies of 'self-determination'. The role of the former Department of Aboriginal Affairs is highlighted. The approaches used in the last two decades in the name of the self-determination policy, such as a variety of consultative mechanisms, are reviewed. Towards the end of the chapter, some emphasis is placed on the role of local government, since Aboriginal people are particularly poorly served at this level as a result of legislative and administrative arrangements determining the provision of services by local government. In Chapter 27, I discuss the path to self-determination.'