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"Yengarraheen Narrloo: Developing an Aboriginal Dispute Resolution Program for NSW"

by

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Submitted as part of course requirement for

Bachelor of Health Science (Aboriginal Health & Community Development)

School of Indigenous Health Studies, Faculty of Health Sciences

October 1999

Supervisors signature: Tim Earnshaw
“Yengarrahween Narrloo: Developing an Aboriginal Dispute Resolution Program for NSW.”

Frontpiece: “Yengarrahween Narrloo”
Reproduced from a painting (1999) by Immibowkaramilbun specifically for this thesis. ‘Yeengarrahween Narrloo’ are words from the Aboriginal language, U’Alarai (North-West NSW). In English, they loosely translate, ‘Ritual of Healing Talk for Fighting People, Around Sacred Fire’.
Abstract

Dispute Resolution has become an integral part of the legal system in Australia. However, disputes in Aboriginal communities regularly remain unresolved and often intensify to violence and injury. The literature review discusses the existing literature, reports and reviews on Aboriginal Dispute Resolution issues including Aboriginal perspectives and the effects of colonisation. It shows that Australian history has been based on racism and ethnocentrism and the impact of this on contemporary issues for Aboriginal people. It defines ‘western’ Dispute Resolution philosophy, the impracticality and inappropriateness of utilising ‘western’ Dispute Resolution programs for Aboriginal people without specific adaptation and modifications. The effects of language, specifically Standard English versus Aboriginal English, legalistic language and the consequences on communications for Aboriginal people. This research is a qualitative study examining the outcomes and satisfaction levels of Aboriginal people who have experienced the Dispute Resolution process designed for Aboriginal people in WA and Qld. The rhetoric and realities of these programs are also debated. In examining these two existing Aboriginal Dispute Resolution Programs and incorporating Unstructured Key Informant Interviews and Client Feedback Assessments of a narrative style, underpinned by Critical Social Theory, this research attempts to answer the question of whether such programs are useful in Aboriginal Dispute Resolution. In doing this, the thesis presents the reasons of "Why is there a necessity for a distinct and separate Dispute Resolution Program for N.S.W. Aboriginal Communities?".
Declaration

I hereby certify that the work embodied in this thesis is the result of original research and has not been submitted for a degree to any other University or Institution. It does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education.

Signature  \underline{Chussi Ngemlele}
Date       \underline{11-15-97}
Dedication

DREAMING

(Past, Present and Future)

The continuation outside of time is the Dreaming;
The Dreaming is the land and the life that is one with the land;
The people from the land are one with all that is made of the land;
Our ancestors speak with 'us-of-the-Dreaming', to give and keep the lores;
The lore is the strength and privilege of life that is given through the Dreaming;
The freedoms of the land are granted neither by wealth or force but through the lore;
Our Wise Ones gain their wisdom and knowledge from the Dreaming, power from the Ancestors; And strength from the land, as do all our people. The lore; the land; all living and Spiritual things; Past, present and future; Our lives and those after; all belong to the Dreaming.
It is all connected.

As told by Larnabrewillaring in 1956
Translated by Immibowkaramilbun in 1962

Yuungarla Larnabrewillaring

This thesis is dedicated in memory of my grandmother,
who always wanted the best for me;

In memory of my father, who always demanded the best of me;

In memory of my husband who gave the best to me;

To my son, who continues to do the best he can for me;

And to all the people though out my life,
who have depicted human nature at it's worst toward me,

I also dedicate this thesis to them;

To the loving and the not so loving,

All these encounters have given me remarkable strength and determination
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I wish to acknowledge the assistance I have received from various persons during the preparation of this study. I would like to express appreciation to my supervisor, Tim Earnshaw for his useful suggestions and assistance throughout my honours project.

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The research for this study would not have been as comprehensive or as far-ranging, without the generous support of the NSW Law Foundation; my thanks also goes to Catherine Lloyd for her support, advice and encouragement.

I am especially indebted and grateful to Marion Kickett for generously sharing her friends, networks, her own valuable time with me, in my endeavours of research in Western Australia, her encouragement and support over the last four years and her continuing friendship.

To the participants, who for confidentiality reason I can not name, I thank for their time, trusting me with their stories, accepting me without question and sharing the Undumbullun.

To all those that assisted in my field work and research, giving time, knowledge, information, kindness and hospitality I thank, especially: Anne Mathews, Derek Jackson, Tracey Pollock, Maryanne Hall, Kurt Noble, Harriet Sporne, Dean and Shelly Duncan, Denis Duncan, Andrew Hughes (Kuulpa), Venis Collard, Uncle Andy Nebro, Peter David (Kuulbarri), Leon Harpe, Helen Waghorne, Paul Adardice, Lorraine Robertson, Helen Blaszczyn, Claudette Bolton, Maisie Eades, and Ted Farmer.

I would also like to thank Liz Humphries and James Campbell of the Student Representative Council for the their support, advice and advocacy over the last few weeks of preparation of this thesis.

Finally and most importantly, my biggest 'thank you' is to my son, Tim who with practical assistance and generous nature has always enthusiastically supported my efforts to study. Without his computer guidance, constructive criticisms, sense of humour, support and consideration, especially over the last two months, this thesis would not have been completed.
### Abbreviations

<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AADR</td>
<td>Aboriginal Additional Dispute Resolution</td>
</tr>
<tr>
<td>AADRS</td>
<td>Aboriginal Alternative Dispute Resolution Service (Western Australia)</td>
</tr>
<tr>
<td>Aboriginal/s</td>
<td>Includes all Aboriginal and Torres Strait Islander peoples</td>
</tr>
<tr>
<td>ADR</td>
<td>Additional (Alternative) Dispute Resolution</td>
</tr>
<tr>
<td>CJC</td>
<td>Community Justice Centre (NSW)</td>
</tr>
<tr>
<td>CJP</td>
<td>Community Justice Program (Qld)</td>
</tr>
<tr>
<td>DOGIT</td>
<td>Deed of Grant in Trust (50 year Government Lease to the community with strict conditions)</td>
</tr>
<tr>
<td>HREOC</td>
<td>Human Rights &amp; Equal Opportunity Commission</td>
</tr>
<tr>
<td>NADRAC</td>
<td>National Alternative Dispute Resolution Advisory Council</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>QLD</td>
<td>Queensland</td>
</tr>
<tr>
<td>SGC</td>
<td>Special Government Committee</td>
</tr>
<tr>
<td>WA</td>
<td>Western Australia</td>
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Why don't white man sit down quiet by fire; not stand up and call other country-fella liar?
What white fella want to talk about fight for? Everybody have plenty, still want more.
He have a big house, money in pocket, yet he not satisfied.
Want to make bigger rocket.
One day, I bet pretty damn soon rocket go straight like spear.
Put man on moon.
Then I bet plenty trouble,
Man and Earth burst like bubble.
People go round like leaf in willy-willy, tear their hair; all sorry and silly, white fella and him piccaninny die in city.
Blackfella in bush he feel pity.
White fella wrong. Call each other liar.
Should have sat down quiet, and talked by fire.

by

Jack Davis
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Chapter 1: Introduction

1.0 Introduction:

The impetus for Aboriginal inter/intra-community disputes and conflicts is embedded in the colonisation of Australia and the social, economic, political and spiritual disruptions Aboriginal peoples, which accompanied colonisation. Aboriginals have experienced grievous loss and heinous torment through forced removal:

- of children;
- of communities;
- of tradition;
- of family;
- of cultural identity; and
- by violent deaths. (Atkinson, 1996)

When considering Aboriginal people in this history of violence, it is necessary to remember how Aboriginal laws operated before colonisation. Aboriginal traditional law (& lore) was, in part, the perpetuation of healing relationships and spirit, which incorporated a constant process of negotiation, mediation and conciliation in regulating and resolving the disputes common in all human affiliations. (ibid)

The occurrences of intra/inter-community conflict is much more complex than just removing dysfunctional behaviour and the healing of individuals. Factors linked to the abatement of Aboriginal conflict include:

- community control over programs and policies;
- the augmenting of caring relationships within families and communities; and
- designing culturally appropriate educational, social and treatment programs.
1.1 Background to the research:

The National Committee on Violence (1990) stated in its report that since the beginning of colonisation, Australia has been built on violence and that violence permeates all life. Contact between Aboriginal and non-Aboriginals through history has been refractory and detrimental to Aboriginal people. It has involved dominance, abuse of power, prejudice, ignorance and ineffectual communication.

With Aboriginal traditional cultural devastation, these cultures are no longer able to function as the primary means of maintaining social order. Australian criminal justice systems have been called upon to maintain social order in Aboriginal communities. The result has been that members of Aboriginal communities have been vulnerable to the cultural ignorance and racism of the criminal justice system and an ineptness of that system to operate judiciously in the Aboriginal context. These issues are deeply ingrained within the Australian legal systems and are the very reasons why appropriate dispute resolution mechanisms are urgently needed.

It is a common belief that Aboriginal people of predominantly mixed descent, who live in Australian cities, country towns and Aboriginal communities, have all but lost tradition cultures. Often lacking the more obvious markers of Aboriginal identity, such as ceremonies and the general use of Aboriginal languages, these communities are regarded as not being "real" Aboriginals. Recent anthropological research refutes these misconceptions (Swain, 1993; Eades, 1995a; Breen, 1996; Trigger, 1997, Neuenfeld, 1998). Through a continuity of community, even when dispersed within large cities, Aboriginal people have maintained continuity of identity and culture quite distinct from that of Australians of European or other ethnic origin, and with many features in common with the cultures of Aboriginals living in more remote areas. (ibid)
1.1.1 Research problem:

Conflicts and violence are a fact of life in the 1990's. Effects can be devastating and unresolved disputes, at the very least, can consume considerable time and money whilst causing severe stress, not only to those involved but also to whole communities. Some studies (Chambers 1988; Atkinson 1990a&b; NSW Domestic Violence Committee 1991; Vernon 1991; Brock 1993; Bessant, et al 1995; Tehan 1996 & Tatz, 1999.) argue that the prevalence of this social conflict can be traced back to the historical processes of dispossession, forced movement and concentration by which different groups of Aboriginal people have been brought together, mostly away from their traditional lands. Added to this, are the pervasive hostilities and racism which Aboriginal people have endured and has adversely affected self-images and traditional cultures.

1.1.2 The research question:

"Why is there a necessity for a distinct and separate Dispute Resolution Program for N.S.W. Aboriginal Communities?"

1.1.3 Justification for the research:

Studies and reports (Chappell &Egger, 1995; ABS, 1992; Walker, 1991) indicate a high number of incidents of conflict and violence in Aboriginal communities in N.S.W. It could be argued that the incidents (symptoms) are caused by the inability to resolve disputes before they become bitter conflicts and violence. A possible limitation to resolve these disputes is the lack of appropriate mechanisms in place to intercede before the contentions erupt into grave disharmony.
In 1991 the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner conducted a National Aboriginal and Torres Strait Islander Community Education Project (NCEP) called Indigenous Dispute Resolution Project (Mediation) and incorporated the NCEP-Tracking Your Rights Resource (Gawler, 1992), Training Manual, Video, the Mediation Program and Audio tape. Although, by the funding of this Project, there was a recognition that such a program was required within N.S.W., the program folded before plans or guidelines were completed.

At present justice reformation is focussed upon Native Title by academics, the media and activists, to the detriment of other urgent needs. This imbalance reflects the worldview of the dominant culture who controls the Australian legal system and who are most concerned about land as property.

Strategies must be developed to address these problems because few mechanisms have been developed to date that have had any significant impact. This failure maybe the result of a lack of mechanisms that reflect the special cultural, legal and socioeconomic characteristics of Aboriginal communities.

1.1.4 The impetus of this Research:

The research question for this study developed from a long standing personal notion that the known (Aboriginal) traditional methods of Dispute Resolution were better suited for contemporary Aboriginal communities than the introduced western models. The researcher examined this notion in the practice of Dispute Resolution, as a factor in the violence, crime rates and associated problems in Aboriginal communities. Over the years, the researcher observed that in cases where the ability to adapt dispute resolution processes to the
community’s needs was allowed, rather than having to adhere to strict procedural processes, there was a much higher success rate for long lasting resolutions.

During a professional meeting the researcher was discussing these difficulties and several colleagues expressed similar concerns. As the talk proceeded, these colleagues acknowledged how difficult it would be to have the ‘powers-that-be’ listen or understand these concerns. Although the researcher often has been able to explain these problems to trainee Dispute Resolution Practitioners in lectures and received excellent feedback from students, it is a very slow itinerary to impart a broad understanding and the organisations employing these Mediators continue to dictate rigid protocols in their processes.

A short time after this meeting an offer to complete the researcher’s Bachelor of Health Science with an Honours component came from the University of Sydney. This Honours program necessitated the writing of a thesis. The thesis needed a topic—something that the researcher was “passionate” about—was the advice. The results are in the writing.

In this process of problem identification, self questioning and the reaction of a community of peers, a research question had been formulated: “Why is there a necessity for a distinct and separate Dispute Resolution Program for N.S.W. Aboriginal Communities?”. The inquiry being, not that there is a necessity, that is accepted in many studies, the question is why. As such, it would fit the scientific paradigm of qualitative methodology underpinned by critical social theory research.
1.2 The aims of this research:

The research in this thesis seeks to:

- Inform others of the impact of history, on culture and spirituality of Aboriginal people in addressing a range of contemporary issues which, among other things, effects relations between Aboriginal people and the wider Australian community and the efficiency of programs that are perceived by Aboriginals as imposed, culturally inappropriate and are ‘owned’ by the government;

- Explain the reasons for violence and hostilities within Aboriginal communities, particularly the contribution that colonisation has made to the current situation;

- Demonstrate that before there can be any effective contiguity between Aboriginal people and the wider Australian community, there must be an understanding, a recognition and respect, based on the truths of history for justice for Aboriginal people.

- To support the Aboriginal people in the struggle for recognition and justice;

- To develop a set of culturally sensitive and appropriate issues and criteria that can be used in program planning a Dispute Resolution system for Aboriginal people in NSW;

And thus explore the research question *"Why is there a necessity for a distinct and separate Dispute Resolution Program for N.S.W. Aboriginal Communities?"*

1.2.1 Objectives of this research:

The sharing of information, by:

1. Searching for and the embodying of as much relevant past work as is possible and necessary to show the importance of history, relations, conditions and differences in values and beliefs impacting on contemporary issues for Aboriginal people.
2. Discovering ADR and community options for the future, relevant to the crime rates, violence and hostilities currently occurring in NSW Aboriginal communities.

3. Ascertained the reasons why the Governments and Aboriginal peoples of the Queensland and Western Australia established and maintained the Aboriginal Dispute Resolution Programs.

4. Describe the strengths and weaknesses these two programs.

5. Identify, from the experiences of these two programs how this information could be incorporated, to create a better program for NSW.

6. Show the relevance/irrelevance of 'western' models of dispute resolution in designing an appropriate Aboriginal Dispute Resolution Program for NSW.

1.2.2 Strategies employed for this research:

a) Examination of relevant literature through libraries, journals, policy documents, program evaluations, annual reports, the purchase of books and the Internet.

b) Appraise the Queensland Aboriginal & Torres Strait Islander Mediation Project and the Western Australian, Aboriginal Alternative Dispute Resolution Service.

c) Travel to Queensland and Western Australia to obtain feedback from clients and staff of both programs to measure perception of customer and service provider value and satisfaction.

d) Analyse gathered data through a literature review and the fieldwork by searching for patterns and themes thus showing the relationship between intentions, focus and actual practice of both AADR programs.

e) Report the findings of the literature search and field research.
1.2.3 The importance of delivering this research from an Aboriginal perspective:


"Smith 1997 p. 25 asserted: "The colonial era is dead, if not buried, when research was conducted, interpreted, recorded, and credentialed from a non-Indigenous perspective. Indigenous people now want their voice in research, and they want it to be heard and understood". It is now accepted that in cultural research people not only have the right, but it is also ethical and in the interest of research integrity, that people control the terms and conditions of research relative to their culture. It is established that fundamental requirements for cultural authorisation of research are for Indigenous people to be consulted, involved, and to agree on what is to be researched, importance of that research, how the research will be undertaken, what data will be collected, and how that data will be interpreted and used.

Important to the ‘cultural authority’ of this project is the presence of the Aboriginal researcher. This ensures research instruments and processes are culturally sensitive and respectful of cultural perspectives. This research is further strengthened with the consultation of:

- Aboriginal community members within NSW; and
- the researcher’s network of community-based intermediaries within the planning stages; and
- the Elders of each chosen community before any interviews took place.

These groups act as an accountability forum in which the researcher reports progress, findings, and seeks advice on further planning and cultural authenticity. They also provide further opportunities for cultural scrutiny and on-going dialogue regarding the nature and practice of the research.

Presenting the Aboriginal perspective appropriately is a gesture of symbolic and real importance. It shows respect for the first peoples and first laws of this land, which were taken unjustly. Everyone now lives on and benefits from the land, whilst a large majority of the
original population are still the most disadvantaged in Australia. The acknowledgment of the Aboriginal perspective is an acceptance of the principle of affirmative action, in an attempt to lessen this general disadvantage. It is also a recognition of the cross cultural principle that diversity is beneficial of itself and that there is much to learn from all cultural perspectives. (Lachowicz, 1997)

1.2.4 Aboriginal Spirituality and Knowledge and the relevance to this research:

Aboriginal cultures, lifestyle or indeed Aboriginality cannot be examined without discussing Aboriginal Spirituality, so intrinsic is the link or 'connectiveness'. Quite simply, they are inseparable. It is especially difficult for non-Aboriginal people to understand given that the 'western' notions of 'the sacred' and 'the spiritual' are so tied to places that have been constructed on the land, whereas Aboriginal land is sacred over all. The landscape is alive with the sacredness of the spirit world. (Larnabrewillaring 1956)

Aboriginal Knowledge is knowledge directly read from the landscape and living environment of Australia. Through this way of knowing, the Dreaming, the country and relations between people, species and both the earthly and spiritual landscapes are explained. Life in the dreaming commences with narratives of birth of the planet, struggle, conflict and other human frailties. These stories also introduce ways to attain harmony through the process and value placed on nurturing, balance and collaboration. (ibid)

There now exists a growing appreciation of the central importance of Aboriginal spirituality, land and sacred lore. An awareness of the diversity of cultures within the Aboriginal population of Australia and of the ways colonial life has intersected with, and been interpreted by, spiritual understandings. This central importance to Aboriginal people, the
diversity of cultures within Aboriginal society and the impact of colonisation need to be recognised as part of the 'connectiveness' with criteria that is established for an AADR program.

1.3 Working with Additional (or Alternative) Dispute Resolution (ADR):

Through the comparison of the Queensland and Western Australian programs, the research verifies that dispute resolution for Aboriginal people should incorporate a balance between traditional practices, customs and beliefs. These may be cast with contemporary materialisation and should include those aspects of mainstream society which must be dealt with in living and surviving within the surrounding mainstream culture, but should not rely on western processes within models of ADR as its basis.

This research corroborates the effects of colonisation, violence, dispossession, racism, barriers of English versus Aboriginal-English and legal language on Aboriginal people and affirms the tragic consequences of these. It confirms the decline of traditional law in social justice and conditions for Aboriginal people. It also contends that this failure may be the result of a lack of mechanisms that reflect the special cultural, legal and socioeconomic characteristics of Aboriginal communities.

1.3.1 Conciliation, Mediation and Facilitation:

The essential similarity between the ADR processes selected for this study: Conciliation; Mediation; and Facilitation ('western' definitions on pages *** ) is the opportunity for a negotiated resolution (with the assistance of a reputable third party,) which addresses the parties' interests and can lead to a mutually acceptable solution.
The three dispute resolution practices chosen for this study are indicated and applauded as mechanisms, which empower the parties to resolve their own disputes. It provides the means for those that are closely involved to work through the problems and outcomes together. If the process is culturally appropriate, it also allows a healing of the relationship and spirit. These processes, therefore, conforms with the principles of empowerment and self-determination of Aboriginal people and are much closer to traditional Aboriginal methods of handling conflicts than any other avenue available. (Lachowicz, 1997)

Negotiation is the means by which two or more individuals attempt to reach an agreement. Its use lies at the very core of the current ADR movement. For the Dispute Resolution practitioner, the ability to master and effectively employ alternative means of dispute resolution requires the development of negotiation skills and an understanding of the proper role of negotiation in their implementation. Understandings of the negotiation process and effective negotiation skills are essential for successful participation in ADR mechanisms.

Whilst maintaining the ideology of these methods, but allowing communities to adapt the processes to suit their own culture and circumstances, may be the answer to what is being sought for Aboriginal communities.

1.4 Thesis Overview:

The principal challenge of generating this thesis, whilst endeavouring to address the aims and objectives and striving to report the findings from an Aboriginal perspective, has been to conform to the rigid academic protocols regulated by supervisors and the School of the University.
Chapter 2: The literature review reflects on ADR processes and ideologies; conveys an overview of some western ADR methods and demonstrates that there is a mixture of compatible and non-compatible principles between the Aboriginal and western perspectives. It discusses the distinct characteristics of Aboriginal communities in NSW and presents the difficulties of language and the proven detrimental consequence this has on communication for these communities. It also demonstrates that the reasons for violence and hostilities within Aboriginal communities.

Chapter 3: The methodology chosen was qualitative, underpinned by critical social theory with narrative style interviews. An advantage of this was that it provided Aboriginal participants with an opportunity to discuss their perception of the issues and outcomes of their ADR experiences in an appropriate setting and manner and allow a reporting back to the participating communities the findings relevant to their people in relation to the final general results.

Chapter 4: An overview of the two AADR programs explaining their history, services, processes utilised and comments on their effectiveness.

Chapter 5: Gives the detailed findings from the literature review and compares to the data obtained from the fieldwork.

Chapter 6: Discusses the findings detailed in Chapter 5, shows the dilemmas encountered by the researcher and examines how the information from these findings could be utilised in creating a suitable AADR program for NSW.

Chapter 7: Conclusions.
Chapter 2: Past Work—Literature Review

2.0 Introduction:

This literature review analyses, discusses and evaluates as many references publicly available as time and resources allowed. It aims to:

1. Establish the differences within ‘western’ models of dispute resolution, namely, Conciliation, Mediation and Facilitation.
2. Ascertain what criteria are being utilised to declare ‘successful’ mediations within western models.
3. Show Aboriginal perspectives to dispute resolution.
4. Establish the extent and significance of the following specific characteristics in different Aboriginal communities within NSW:
   ⇒ Spirituality as the continuing essence of culture;
   ⇒ The effects of colonisation, violence and dispossession;
   ⇒ The significance of the community over the individual;
   ⇒ Effect of Aboriginal concept of historical and contemporary non-Aboriginal control;
   ⇒ The unevenness of socioeconomic circumstances;
   ⇒ Aboriginal frustration with the Criminal Justice System;
5. Demonstrate the difficulties in Standard English versus Aboriginal-English, legal and other professional use of language and the consequences of these on Aboriginal people.
6. Discuss the issues of violence, crime rates and problems that are associated with conflict.
7. Explain that strategies should be developed to address these problems.
8. Shows that few mechanisms which reflect the special cultural, legal and socioeconomic characteristics of Aboriginal communities have been developed to date that have had any significant impact.

These eight points will be discussed under the five headings:

- Dispute Resolution;
- 'Western' Models of Dispute Resolution;
- Characteristics in NSW Aboriginal Communities;
- Effects of Language and the Consequences on Communications.
- Aboriginal Perspectives of Dispute Resolution and the effects of Colonisation;

2.1 Dispute Resolution:

Annotating Additional (or Alternative) Dispute Resolution (ADR) is not a simple undertaking. There are broad ranges of processes that come under the banner of ADR and there is also a great deal of diversity within these processes, which are given the same label. Astor & Chinkin (1992) in their book, “Dispute Resolution in Australia” (p68) state:

"It is comparatively easy to construct a functional definition of ADR for a particular purpose. It is impossible to construct a concise definition which will cover all ADR processes and be accurate for them in all the many different contexts in which they are applied."

Dispute resolution options have been tagged as "alternative", but in actuality, they are co-existing with the overall justice system and are "additional" strategies available to resolve disputes. What is pertinent now about Dispute Resolution practices is the increasing acceptance of these informal justice mechanisms to challenge or at the very least complement the customary adversarial justice system. (Astor & Chinkin, 1992) For these
reasons 'Dispute Resolution' achieves the position of 'convention' rather than 'out of the ordinary', an option rather than 'unorthodox, different or marginal', therefore throughout this text, it will be addressed as Additional Dispute Resolution (ADR).

Perhaps the most attractive feature of ADR is that the process is consensual and any resulting resolution is one to which the parties agree, rather than one in which a solution is imposed upon them. This makes the possible range of solutions to a dispute as broad or as narrow as the varied interests and the imagination of the disputants. Clearly the skills of the practitioner are vital to this process and are relied upon by the parties for the process to be of maximum benefit. (Tillet, 1991)

ADR practices are not radically new means of resolving conflict; many ancient societies used ADR as the first option to settling disputes. Astor & Chinkin 1992 (p5) reminds the reader:

"It should not be forgotten that Aboriginal people have resolved disputes without recourse to litigation, or anything resembling it, since time immemorial. At the time of the British invasion of Australia Aboriginal people had a well developed system of law based on a kinship system which prescribed rights and obligations over the whole spectrum of activities."

The basis of modern ADR processes has a number of common fundamental principles with Australian Aboriginal cultures. Generally, traditional Aboriginal justice focused on healing elements—relationships, harmony, leadership by reputation and respect, and a essence on making victims whole. Due to the differing cultures and beliefs within various Aboriginal Nations, the dispute resolution methods consisted of different processes. However all were primarily based on similar principles and achieved similar results because of the demands
imposed by an environment that required the combined efforts of the community to succeed. (Lachowicz, 1997)

Gregory Tillett, in his book, ‘Resolving Conflict’, (1991) reflects that responses by authorities to past and current levels of violence have been and continue to be, the same at all social levels: punishment, incarceration, invasion or destruction. In all events there are people who maintain they are ‘right’ and people said to be in the ‘wrong’. It is usually the more powerful party that determines both fault and remedy. Tillett recognises the universality and generic nature of conflict and its sources, focusing on situations that affect most people directly. Tillett is also one of the very few authors who has written from an Australian perspective and aims case studies at the end of each chapter at situations as they occur in Australia.

The materials of this review verified that where there is no provision for the interests of both parties to be addressed; the outcome ignores the ongoing relationship issues (if any) and the resultant emotional backwash for all affected parties. The point that is emphasised by Tillett (1991), Astor & Chinkin (1992), Grose (1995), Lachowicz (1997) and others is that the quality of a relationship will suffer when the needs and interests of both parties are not explored. Appropriate ADR provides avenues to address the true needs of disputants thereby offering the possibility of repairing and improving the relationship of the parties concerned.

2.2 ‘Western’ Models of Dispute Resolution;

The National Alternative Dispute Resolution Advisory Council (NADRAC) has published a booklet of definitions of Alternative (Additional) Dispute Resolutions (ADR). NADRAC is an independent advisory council set up by the Attorney General in October 1995, to provide
consistent policy advice “on the development of high quality economic and efficient ways of resolving disputes before they come before the courts for adjudication.” (NADRAC, 1997)

The differences within the three specified ‘western’ models of dispute resolution: mediation, conciliation and facilitation are clearly defined by NADRAC. These definitions demonstrate the ‘western’ philosophy of ADR, which do not always agree with Aboriginal cultural or spiritual philosophies (as used by NSW Community Justice Centres as its definition). Definition of 1) Mediation:

1. “Mediation is a process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.” (p6)

NADRAC then goes on to define different types of mediation, including therapeutic mediation, community mediation, co-mediation, shuttle mediation, victim-offender mediation and expert mediation.

NADRAC defines 2) Conciliation thus:

2. “Conciliation is a process in which the parties to a dispute, with the assistance of a neutral third party (the conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.” (p7)

3) Facilitation is defined by NADRAC as:

3. “Facilitation is a process in which the parties (usually a group), with the assistance of a neutral third party (the Facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement.
The Facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.” (p8)

A ‘Definitions Committee’ developed the definitions included in this booklet that included Wendy Faulkes, Professor Hilary Astor, Jennifer David and Dr. Gregory Tillett.

Tillett’s chapter on Mediation, in his book, ‘Resolving Conflict’, (1991) is of particular interest to this study, for several reasons:

1) Tillett does not give a ‘fixed’ process for mediation, as do so many other authors and ADR organisations. Instead, he asks the reader to refer to his Collaborative Problem Solving chapter, to gain the ‘big picture’ of the process (the fundamental principles). This gives the reader flexibility in choosing his or her own model or style, which does not occur with many authors or ADR organisations, including the NSW Community Justice Centre’s (CJC) model. Astor and Chinkin (1992) confirms this:

“there is flexibility in the various models of the primary dispute resolution processes that allows them to be modified to suit the needs of the parties in the context of the particular dispute. They may also be combined to allow parties the benefits of particular features of the different processes as the dispute moves through a number of stages.” (p140)

2) Tillett also advocates that ‘not just anyone’ can mediate, but that there are process-related skills, specialist skills and ‘helping profession’ skills, which determine whether the mediation is effective. This is relevant to this study when considering the Aboriginal perspective of dispute resolution, which includes insistence of the Dispute Resolution Practitioner being expert in the culture, language and lifestyle realities for Aboriginal communities of the particular region or area. This is reinforced by numerous other authors’ convictions and includes: Faulkes, (1991); Astor & Chinkin, (1992); Ackfun, (1993); Thorne (1993) & (1996); Behrendt, (1995); Eades, (1995a); Noble, (1995); Sauve, (1996); and Lachowicz, (1997).
3) Tillett strongly promotes analysing the process particularly when it seems not to be working, or when parties are stuck. He devotes a chapter to 'when things go wrong'. He breaks this down into two main areas—problems with process and problems with people. Tillett explains that the skills of 'self-reflection', 'process-reflection' and 'people-problem' analysis are, for Dispute Resolution Practitioners, crucial tools of the trade. The pain of conflict and all the problems associated with disputes can be pain of growth and exploration, which leads to creative conflict, characterised by innovation, collaborative problem solving and enhanced relationships.

**Criteria being utilised which constitute ‘successful’ mediations**

Astor and Chinkin, in their book, 'Dispute Resolution in Australia' (1992) in chapter two, 'Litigation and Alternative Methods Compared', thoroughly analyse the rhetoric and realities of the claimed advantages of ADR, which includes the success rates claimed by organisations using ADR. The authors show the American Arbitration Association indicate an 85% success rate in mediation of commercial disputes, whilst the NSW CJC consistently, for all their years of operation (since 1981), claims a success rate of 82-85%. The decider for these agencies to claim success is "a written agreement at the conclusion of the mediation session or sessions". There are no follow-up or checks on how parties are progressing unless the parties themselves initiate another session with the service. The authors raise the question of the meaning of 'success':

"A notion of success based on the number of people who complete ADR with an agreement does not include any assessment of the long-term effectiveness of that agreement. It is possible, that, in some cases, an agreement may not last any longer than the journey to a lawyer’s office" [or the journey home]. (p51).

Where long-term relationships and significant 'other parties' are involved, as is the case in the majority of Aboriginal disputes, the quality of the ADR service and long term
efficiency of the ADR process is far more important and ethically and morally necessary in calculating ‘successes’ in dispute resolutions.

2.3 Characteristics in NSW Aboriginal Communities:

Aboriginal society did not collapse completely. It was seriously affected by the invasion of Europeans. However this did not mean that Aboriginal people turned into Europeans when Captain Cook’s ship was seen on the horizon or that an Aboriginal man in the Australian bush today hunting kangaroo with a rifle, has lost his culture. Aboriginal culture, like all others, has evolved. In general, Aboriginal people have seized many of the cultural opportunities presented and have shaped and moulded them for survival.

In NSW, Aboriginal city and town dwellers often live a lifestyle that, on the surface, seems little different from other Australians. Nevertheless, there is a distinctive heritage and culture, which manifests itself in social and family life, in language, cultural traditions, beliefs and in other ways for Aboriginal people. (Reynolds 1999)

Some people ask the question whether Aboriginal people are ‘traditional’ or not. This is a complex and sensitive issue. Aboriginal people, regardless of the diverse life settings in which they now live, operate in a culturally distinctive fashion; from the smallest outstation camp in the remote Australian outback to an urban community in Sydney. Aboriginal people all over Australia share a common heritage and ways of seeing the world and of doing things. Local variation, history and a strong individualism ensure differences. As with any human group, some Aboriginal ways stem from the past and some from Aboriginal interactions and adaptations to introduced elements and traditions. In
many parts of Australia, Aboriginal lives are informed more by local traditional values than those stemming from elsewhere. (ibid)

**Importance of ‘Culture’ in Contemporary Aboriginal Communities**

In 1994 the Australian Bureau of Statistics (ABS) released a survey entitled: *National Aboriginal and Torres Strait Islander Survey*. The report covering the survey included statistical information under the heading of Family and Culture (p1-10) and included the following statistics to give an indication of the level of cultural identity and maintenance.

In the twelve month period preceding the survey:

- 72% of people attended at least one Aboriginal cultural activity;
- 54% had attended at least one Aboriginal ceremonial funeral;
- 43% had attended Aboriginal festivals and carnivals;
- 21% had attended Aboriginal ceremonies; and
- 22% were involved with Aboriginal and Torres Strait Islander organisations.

The survey also showed that:

- 84% of people aged 13 years and over saw elders as important;
- 21% of persons aged 5 years and over spoke an Aboriginal or Torres Strait Islander language;
- 14% of people aged 13 years and over, an Aboriginal or Torres Strait Islander language was their main language;
- 60% identified with a “tribal” or language group;
- 75% recognised an area as their homelands.(p2-3)

Resolution Practitioner on her “follow-up research”. This research was based on the Queensland CJP’s Mediation Training Project (Aboriginal Mediation Project), in Hope Vale in 1993. Sauve does not write about a stagnant culture somewhere in the past. Many Aboriginals have a foot in both worlds, which is not to say that the original ‘belonging’ and culture is any less important, it simply means that has to be to be ‘two-way’ lives and at times contradictory forces pulling each way. Like peoples everywhere, Aboriginals have factions and infighting. Aboriginals have survived since time immemorial in a land many non-Aboriginals still find inhospitable after 200 years by adapting the cultures around change as it occurs, which has continued even after the invasion and colonisation by Europeans.

The importance of culture for Aboriginals, the effects of attempts to sever people from it and have it mocked and made inferior; by the dominant culture are borne out in the researcher’s (Marshall, 1990) paper presented on ‘Aboriginal Loss and Grief’ at the “Mental Health in the 90s” Conference:

“Since colonisation, Aboriginal people have had to abide by two laws, we have lost land and languages. Families have been broken up, peoples torn from the land and children forcibly removed over the generations. All these things break our lore(laws). Under the other law, we have high rates of unemployment and poverty; low education levels; and suffer discrimination in every day life. We are born with these factors generating stress, poor physical health and grief manifestations at an early age. Our own cultures have been denigrated and ridiculed. We grow up with racism, bigotry and being treated as inferior beings. As other losses compound on our lives, we continue to build layers of pain and grief increasing the stress, poor physical, spiritual and mental health. This complication of trying to live in the two cultures have led to attempts of some of us:

- to deaden the pain of grief, loss and loneliness through the use of alcohol and other drugs;
- by dishonouring each other through violence and abuse;
- by rebelling against both laws through committing crimes; and even more sadly,
- by committing suicide.” (p32)
An example of propaganda to belittle and undermine traditional values

Traditional Aboriginal society did not have chiefs, kings, queens or other formal ruling roles. Authority is based on age, life-experience, religious knowledge, wisdom, verbal skills and other informal means of influence. Formal status gained through initiation stages is also relevant. Power is almost always situational. For example, a person is more powerful on their own territory and less so in other peoples. Decisions are reached via persuasion and consensus. An understanding of this concept is required to comprehend that no 'one' Aboriginal person can speak for all, that the concept of 'single leaders' is alien to Aboriginal cultures and that to gain the title of 'Elder' takes a lot more than reaching a certain age. (Larnabrewillaring 1951-65)

Governor Macquarie, from 1815 to 1820, introduced the practise of awarding breastplates with words similar to “King Billy” or “Queen Annie” written on them, to “natives who had showed some desire to become civilised British citizens”. (Rowley, 1970, page 33) The recipients included Aboriginal guides who accompanied explorers on their journeys throughout the continent and those who were friendly towards the authorities, or helpful in some way to local magistrates, constables and settlers who held positions of power or influence in the colony. The awarding of breastplates directly undermined traditional lore and was instituted for this purpose. This practice initiated the myth of ‘Kings and Queens’ in traditional Aboriginal cultures and, sadly, even some Aboriginal people have begun to believe this myth, proudly stating that a relative of theirs was 'King or Queen So and So' from 'Such and Such'.
Racism, Law and Conflict

In the 1994 survey, the Australian Bureau of Statistics (ABS) it was shown that over 45% of Aboriginal and Torres Strait Islander people felt that family violence was a common problem in their area. (Family violence is recognised as not only fighting in domestic situations, but also between extended family and 'faction' [between two family groups] fighting.) This survey also showed the dissatisfaction with the services of police dealing with crime, violence and family violence. The main reasons given was the slowness of response, the lack of understanding of Aboriginal and Torres Strait Islander people or culture and because police did not fully investigate or trivialised complaints. Racism was another reason.

The Royal Commission into Aboriginal Deaths in Custody's 1991 study and Grose (1995), explain the reasons that Australia's Aboriginal & Torres Strait Islander peoples are over-represented at all stages of the criminal justice process. These reasons include unemployment, poverty, poor health, homelessness, and dis-empowerment. These reports also show that whilst incarcerated, the death rate for Aborigines is very high and that these, in turn, stemmed from indirect discrimination.

Grose (1995) states that the government's remedy is to increase commitment to social justice, economic development, and participation of indigenous peoples in society. He rationalises that at this time, however, changes in judicial procedures and in the structural causes of poverty and marginalisation have not been sufficient to decrease Aboriginal incarceration rate. Grose also confirms that many Australian Aboriginal communities are today in crisis. The imposed mainstream legal system has resulted in Aboriginal people being the most jailed of any people in the world. Mainstream society, historically both procrustean and ethnocentric in attitude, has until now failed to acknowledge that the
definition of human rights is historically and culturally specific. Numerous Aboriginal communities are working to establish dispute resolution structures that are culturally appropriate to our needs. Political support for such moves is increasing noticeably in some states.

The Law Foundation Report, on the Pilot Project of the Community Justice Centre, run in 1980 by the N.S.W. Attorney General’s Department, found that although there was a strong emphasis placed on other ethnic minorities, the Project makes no mention of Aboriginals as participants of mediation. The Director of the Project stated that it had little impact on Aboriginal disputes, but had dealt with the ‘occasional’ dispute between Aboriginal and non-Aboriginal persons. There was, the Director said, an obvious need for Aboriginal mediators and some review of the Project’s administrative arrangements would have to be made in dealing with inter-Aboriginal disputes---eg. that they be held somewhere other than the Centre. (Australian Reconciliation and Social Justice Library, http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary)

‘Culture, Law and Conflict Resolution In Australia: Teaching Guide’ by Robert Lachowicz in 1997 is a teaching material. It was produced in response to several major national reports pointing to the need for cultural awareness education throughout the legal system, and a recognition of the rich cultural diversity in Australia and continuing need for justice for all within the law.

Lachowicz’s material examines cultural awareness, communication and conflict resolution in Australian society and law within the context of major worldviews, against a backdrop
of ideas of human rights. Through dialogue and interactive teaching, the materials are designed to develop professional skills and explore attitudinal change. The materials aim to foster deeper understanding and experience about cultural diversity, Aboriginals, immigration and multiculturalism, and their relationship to law, and personal and professional development within our community.

This material’s importance to this study is that the author advocates that an effective, flexible and humane legal system, which responds maturely to the opportunities of cultural diversity, and vigorously promotes greater respect between people, is vital to community harmony, reconciliation and reconstruction. The materials present the view that within all cultures lie wisdom, as well as bigotry and misunderstanding, and that an openness to diversity, change and unity, and the sharing of cultural wisdom are fundamental keys in promoting deeper understanding and greater justice.

ADR has the potential to help resolve the unacceptable level of conflict in Aboriginal communities and engender a process of re-empowerment by allowing Aboriginal people to take control over their own disputes. It avoids the destructive consequences of uncontrolled conflict and the dis-empowerment resulting from solutions being imposed from outside. Some progress is being made towards incorporating ADR as a tool in Aboriginal communities, but much remains to be done. Aboriginal communities should be encouraged to explore the many applications for ADR within the communities and be given the opportunity to take the ADR process that best fits the particular traditional beliefs and culture. (Grose, 1995)
Most Aboriginal communities still have some methods of social control and the resolution of disputes. However living in or around cities or country towns or having other contact with the ‘western’ economy and society has undermined these restraints. Introduced problems not experienced pre-colonisation is another enigma for Aboriginal customary laws and the accepted authority of Elders. (Sauve, 1996)

Aboriginal Spirituality and its relevance in contemporary communities

Swain, (1991); Atkinson, (1991); Lambert, (1993); Walsh & Yallop, (1993); Lachowicz, (1997); Bell, (1998); Charlesworth, (1998) all validate that Aboriginal spirituality (religious) beliefs are as diverse as the number of different Aboriginal Nations. They are as separate as the distinct types of country to which the particular Aboriginal Nation belongs and as specific as the variance of languages spoken. These authors show, however that there are common threads between the spiritual beliefs and practices of most Aboriginal communities in relation to land and country. Aboriginal spirituality, like many other forms of Aboriginal knowledge, is surrounded with protocols and rules. Each Aboriginal Nation has differing protocols and rules—simply because you have some knowledge of one Aboriginal culture, does not mean that you have a knowledge of “the” Aboriginal culture.

Aboriginal spirituality and land management recognises and values all living things on the land, not just the land itself—the total ecology of each area of Australia is of practical and spiritual importance to Aboriginal people. It is verified that there has been extensive dispossession of land previously owned by NSW Aboriginal communities. Many Aboriginal people were forcibly moved from their country so that ‘settlers’ could take and use the land without hindrance and sometimes, simply for the government’s convenience—
with notions of 'put 'em all in one place, easier to keep an eye on.' More recently Aborignals themselves have moved to either cities or regional centres to take up housing or to get employment, or both. (Monticone, 1999)

At the heart of Aboriginal spiritual relationships with land is the Aboriginal ‘wholistic’ worldview. In this view all things, whether physical or spiritual, are related and connected. Land degradation is not only offensive to Aboriginal people’s common sense, it also has dramatic impacts upon the spiritual landscape of Aboriginal people. A ‘wholistic’ worldview does not place barriers between species, the seen and the unseen, nor does it seek to place everything in compartments. The relationships between things, whether living or non-living, is very important in Aboriginal worldviews and spirituality. Since land is the basis of all life, land itself is connected not only to living people but also to deceased humans. Aboriginal people state that the health of land has a direct impact on the health (physical and spiritual) of all people who live on that land. (Larnabrewillaring, 1951-1965)

In the Reconciliation and Social Justice Library (Internet) one of the Council for Reconciliation publications is “Information Sheet 3: Understanding Country”, in which the Council explains that understanding the significance of land and sea to Aboriginal and Torres Strait Islander societies is an important step towards reconciliation:

“Spiritual association with land and sea is at the core of indigenous cultural values and is of fundamental importance to the identity and well-being of indigenous people. From the time of European settlement, the indigenous peoples’ special relationship with the land and sea was broken when they were forced off their land - dispossessed - to live on country they had no association with or connection to. Dispossession from their land and sea has had a devastating effect on indigenous peoples. Despite this, Aboriginal and Torres Strait Islander peoples remain deeply attached to what they call ‘country’, their place of origin, with strong spiritual beliefs and a deep sense of responsibility to look after their land and traditions.”
In the present day, some Aboriginal people and communities have knowledge of the whole culture, sacred places, history, an understanding of the spirituality and language traditional to that area, while others have lost most of this insight. What does seem to remain, even in the most colonised of areas, is the sense of belonging to 'home' lands, the 'caring-sharing' circle, the importance of 'wholistic' healing, a grasp of 'who we are', and at least a sense of Aboriginal Spirituality.

**Significance of the community over the individual**

Several authors in this literature search have shown that in Aboriginal society, the corporate or collective experience is more highly valued than the private one. This clarifies that in mundane affairs, decision-making operates on a consensual basis and should function without the airing of personal viewpoints, to produce compatible accord. (Chappell, 1991; Burbank, 1994; Pattel-Gray, 1996;) Aboriginal disputes are often better settled in a public fashion with the same partnership arrangement found in typical congenial interaction. This public processing of disputes is in direct conflict with the western 'norm' of quarrelling and expressing violence in private. For Aboriginal communities, disputes are mostly about harmony, not domination. (Liberman, 1990; Sauve, 1996)

In most 'western' models of ADR, the dispute is interpreted as inherent to the singular parties and as such is privatised, (no one else's business) which fits smoothly into the ethic of confidentiality. The closeness and relativeness of Aboriginal communities, relinquishes that confidentiality as nearly impossible. More important to the concerned communities is the learning from the dispute resolution for:
future disputes and the ‘wholeness’ of the community;
• a knowledge of where the ADR is leading the community;
• an awareness of decisions made by the parties, to understand the impact of the outcomes of the ADR for the community; and
• so that the influence of the community can be set in action to sustain agreements, regardless of how unofficially this is done.

2.4 Effects of Language and the Consequences on Communications.

The evidence of numerous reports and evaluations (Scarfe, 1974; Broome, 1982; Creamer, 1988; Sam, 1992; Brock, 1993; ABS, 1994; Cormick, 1998; Tatz, 1999) is that very few Aboriginal people have gained from forced ‘western’ education. Most educationists believed that this failure reflected on Aboriginal intelligence rather than on the system.

It is not generally appreciated, therefore, that there has always been and will continue to be Aboriginal men and women who spend their lives mastering a complex set of teachings. This wisdom has to be received, held in trust and passed on, at the proper time, to those who in turn are to become responsible for this knowledge. (Larnabrewillaring, 1956-65)

In many Aboriginal cultures, each person has his or her own set of learnings to acquire and to merit. Knowledge is only given to those who are worthy to receive it—those who respect it, who use it to promote the good of the community and who will see that it is passed on at the proper time to those who will need to receive it. (ibid)

Through acquiring such knowledge men and women gain a dignity in their communities, with the right to be heard in the settling of matters of law and ritual. Learning in
Aboriginal society has never been a simple, informal process. On the contrary, various members within each group have always had differing, but real responsibility for different aspects of the total curriculum, including citizenship, economics, spirituality, history, geography, drama, the arts, oral skills, law and lore and all other learnings which are expected to be acquired. (ibid)

Where 'western' education systems have failed Aboriginals has been in not recognising that through thousands of years Aboriginals have developed our own educational systems with its own teaching methods and its own system of evaluation. ‘Western’ education places the major emphasis on economics, on developing literacy and numeracy as the basic skills on which cognitive and affective developments in other knowledge areas may be based. Aboriginals now recognise the importance of these skills for living in this contemporary world, but in acquiring them, should not have to surrender traditional education or learning styles. Nor should Aboriginals have to surrender traditional values, wisdom or styles of communicating, by having forced or imposed ‘western’ models of Dispute Resolution thrust at communities.

Diane Eades, (1995) places a strong emphasis on the obstacles faced by people of Aboriginal and non-English speaking backgrounds. She takes a case study approach, using court and police transcripts to illustrate the ways in which language can affect the outcome of a legal case or the understanding of a communication.

Eades explains that linguistics is the study of human language in all its aspects. The author provides a methodology for exploring the structure of particular languages; she investigates what is universal to all human languages: how languages are different, how
language varies over time and between different societies, how language is learnt, and how
language is used for human communication. Other areas of interest include professional
communication, for example, between doctors and their patients, between lawyers and
their clients and in courtrooms, as well as other areas of institutional and cross-cultural
communication ranging from the boardroom to the routines on an answer-phone and of
course, in ADR, if the Dispute Practitioner is non-Aboriginal.

Aboriginal practice is, in most circumstances, to use as few words as possible, so one
Aboriginal word often translates into several English words or in extreme cases, a lengthy
phrase. One example is the Aboriginal word for a particular animal, which could describe
if the animal was drinking or running simply by changing the pronunciation. (Walsh &
Yallop, 1993) Words pertaining to sacred issues are not spoken in front of uninitiated,
which means that sections of some information cannot be spoken about or told to non-
Aboriginals and therefore, to them, is lost, (or as propaganda mongers would have, never
existed). (Larnabrewillaring 1956-65)

Aboriginal English is the name given to a range of dialects of English spoken by
Aboriginal people. These dialects constitute a range because the speakers have come (past
and present) from many different language backgrounds. Some Aboriginal people speak
one or more Aboriginal languages, several Aboriginal English dialects and/or Standard
English. Others may only speak the local Aboriginal English dialect and/or the particular
Aboriginal language and yet others might speak only Standard English. (Fesl, 1993; Walsh
Linguists regard ‘Aboriginal English’ as a valid rule-governed language capable of expressing the wide range of human experience. The failure to recognise it as a separate dialect leads to several problems. Many non-Aboriginals still treat ‘Aboriginal English’ as an uneducated or corrupted form of Standard English. Whilst Aboriginal English and Standard English are usually mutually intelligible, there are major differences in vocabulary, grammar, meaning, sounding system, gesturing and socio-cultural context. (ibid)

The failure by non-Aboriginals to identify, accept and take into account the separate features of Aboriginal English is a major factor in mis-communications, incorrect information and statements obtained. In any situation, such as courts, government departments, doctors or hospitals, the failure to identify and comprehend Aboriginal English significantly limits the effectiveness of those institutions, including ADR. (ibid)

Patterns of discourse differ in Aboriginal society. Verbal interaction in Aboriginal society is ‘communal’ and ‘group-oriented’. Many people can speak at once and speech is not necessarily contained within turn-taking sequences as it is in non-Aboriginal society. Non-Aboriginal discourse patterns are based on one-to-one focus—even in a group situation, speakers will behave as if they are talking to just one person. In non-Aboriginal society eye contact and acknowledgment of information by saying ‘yes’ and ‘mm’ is maintained. This sort of listening behaviour is not part of Aboriginal society. Non-Aboriginal discourse is contained - particularly that of teaching institutions where there is so much that has to be said in the space of a speech, presentation or lecture. No such constraints apply to speech
in Aboriginal society. Aboriginal discourse is frequently motivated by confli ct avoidance. (Fesl, 1993)

Successful participation in any communication discourse greatly depends on the manipulation of language. Although Eades' (1995) entire book concentrates on evidence given in court, it plainly illustrates the problems non-Aboriginal Dispute Resolution Practitioners could face with Aboriginal clients or parties, the cultural and language difficulties with cross-cultural parties and expected differences from community to community.

Eve Fesl, in her book ‘Conned’ (1993), illustrates that her principal interest is to present a strong case for the need for more resources to be directed at preserving and enhancing as much Aboriginal linguistic traditions as possible. The author explains the problems of educating Aboriginal children in English instead of their own languages and of white resistance to Aboriginal attempts to control curricula. The author’s reasoning is well argued with the specialist insight of a person who, as a member of the Gubbi-Gubbi Aboriginal Nation and a professionally trained linguist is ‘two-ways strong’.

Fesl’s history of the invasion and settlement of Australia is from the Aboriginal point of view. The promotion of a counter-view of this history as one of oppression and persecution is an important tool for many Aboriginal peoples in our struggles. The telling of the Aboriginal version of Australian history is essential to the modern movement of making known the true account of the Australian invasion and colonisation. Fesl has presented a very readable overview of the invasion and settlement of Aboriginal lands around the
country which show the impact on 'language' for Aboriginal people and in turn, the communication styles incorporated into adapting to colonisation.

The concerns raised by Eve Fesl are, in particular:
- the burden of history;
- the importance of Aboriginal self-determination; and
- 'white' inability to comprehend the hurt and pain of everyday discrimination with which Aboriginals live.

Fesl challenges established perceptions of Aboriginals and states that language is power. The author brings unique insight to the suppressive role and divisive politics of language. Fesl describes how historians have manufactured a flattering Australian race relations history and that even today colonial attitudes prevail.


"Aboriginal English can be regarded as a dialect of English in much the same way as Scottish English or American English. There are different ways of speaking Aboriginal English in different parts of the country, just as there are different ways of speaking American English."
Walsh and Yallop (1993) corroborate the other authors points of view and draw out the compounding psychological effect, in the attitudes of inferiority from non-Aboriginals upon Aboriginal people by admonishing them for 'bad' English. The effect is a lessening of speech or even a silencing of Aboriginal people in front of non-Aboriginal people, especially if the practice has taken place through childhood (e.g. in school). It creates an inability for Aboriginal people to express themselves in an open manner, which is imperative in Dispute Resolution processes.

2.5 Aboriginal Perspectives of Dispute Resolution and the effects of Colonisation:

Dispute Resolution

The process of dispute resolution, executed in the appropriate manner, allows communities to maintain ownership of conflict and the ability to find solutions in a flexible style. This takes Aboriginal justice requirements away from the ethnocentric criminal justice system. Modifications of western mediation process for Aboriginal communities have taken place in at least two states (Queensland and Western Australia) with varying levels of success (or failure) depending on the point of view. (Chadbourne, 1992; Nolan, 1993; Thorne, 1993; Noble, 1995; O'Donnell, 1995; Sauve, 1996; Booth & De Mel, 1997)

Even within Aboriginal society it is impossible in a country with the cultural diversity of Australia, to have intimate knowledge of so many cultural processes. With that in mind, material specifically aimed at the different Aboriginal cultures has the additional importance of examining basic ideas of culture, cultural prejudices, historical dynamics, the pitfalls of stereotyping and giving significance and context to the development of general principles. (Lachowicz, 1997)
Larissa Behrendt's book, 'Aboriginal Dispute Resolution' (1995) defines the hurt and harm that the continued myth of 'terra nullius' has imposed on Aboriginal people. This author also covers the power imbalance between Aboriginal communities and non-Aboriginal individuals, organisations or companies and how this effects the ADR process. Like so many others of late, Behrendt concentrates, for the most part of this book, on Native Title Dispute Resolution and sadly all but misses the everyday, 'grassroots' Aboriginal community disputes and conflicts. Nevertheless, she does explain why the ADR programs imposed on Aboriginal communities do not work because of different cultural values and that the process used must be aligned with traditional dispute resolution structures within the particular community. Part of negating these imposed programs to ever succeed, is the importance of sovereignty, the greater autonomy, the ability of empowerment and self-determination gained by each community having control over their own affairs.

Behrendt believes that the 'western' form of dispute resolution offers no meaningful or durable solutions for Aboriginal people. This author also states that not only law reform, but self-determination and autonomy is required, as has been demonstrated in the USA, between the Federal administration and First Nations peoples. She describes this as not controversial or radical, nor would it alter the lives of mainstream non-Aboriginal Australian society. It would simply be the vehicle for Aboriginal control over communities, which is essential and would give true empowerment, real self-determination and the stimulus for AADR programs to succeed.

Sauve (1996) advocates that the willingness and ability to craft creative, collaborative solutions to disputes for Aboriginal communities are paramount for long lasting success. This includes the ability of the Dispute Resolution Practitioner to understand the dynamics
(including rules, protocols and language) of the particular community and in a 'healing' of the whole community, not just a 'settlement' for the parties. This author concurs that the collective experience is more highly valued than the private one. Sauve also recognises that solutions must be tailored to meet the different needs of local communities and that impetus for change must come from within these communities. Sauve explains in this article the differences in the cognisance of ADR to the Guugu Yimithirr people of Hope Vale, to that of those who put forward the particular 'western' model of mediation used. To the Guugu Yimithirr people ADR is:

"Managed by respected, knowledgeable elders who assist those harbouring hate towards one another to express their anger in a controlled environment. The role of the 'mediator' is to draw out the deep-rooted causes for the spiritual ills, which are presenting in anger and violence. The 'mediator' contributes to the healing process by teaching, offering advice and guidance, in effect 'answers' for the individuals to think about and potentially to be changed by. Ultimately the goal is the transformation and healing of the diseased individuals through learning. Mediators must of necessity be fair-minded and carry the moral authority in the community ---neutrality and confidentiality are non-issues."

Wendy Faulkes, the Director of NSW Community Justice Service (CJC) from 1979 to 1998 wrote two unpublished Discussion Papers in 1991. In the first Discussion Paper, Faulkes covers program design, how to determine which system to use and different definitions of mediation used by Folberg & Taylor (1988) and Moore (1989).

Faulkes also presents the 'western' philosophy of Mediation and summarises the elements of a 'western' 'Generic Mediation Process' (which is the model of mediation practised by NSW Community Justice Centres (CJC)—see Appendix D.

Faulkes follows this model of mediation process with the questions, "But are these elements relevant to a traditional [Aboriginal] system?" and "How do we identify which
elements are important for all communities, or for specific communities?” Faulkes suggests that one of the first tasks of setting up an Aboriginal Dispute Resolution Program would be to analyse the importance of numerous issues involved in dispute resolution to the communities where the program would be introduced. The author goes on to discuss what should be happening in the meantime to raise awareness of possibilities within communities and the training of Dispute Resolution Practitioners. On Program Design, Faulkes states:

“In designing suitable programs for Aboriginal communities, the following must be observed:

(1) It is inappropriate for “us” to impose our system of mediation (including process and model of service delivery) on “them”.
(2) Establishing a mediation system that is of a lesser standard than that provided for the white community is unacceptable.”

The author follows on to say:

“The mediation system we (NSW CJC) have developed borrows from systems established first in China, then adapted to U.S. needs. We then adapted it further, and added to it, to make it appropriate for metropolitan New South Wales.---It follows, therefore, that further adaptation is appropriate, which will take into account the special needs and talents of the Aboriginal communities. It also follows that specific programs and systems will need to be designed for different communities. We have often been told that Aboriginal people had systems of mediation (pre-colonisation). However, in my (limited) experience, the perceptions of what constituted (and in some cases, still constitute) mediation indicates that: (a) there are many and varied practices—not one identifiable process, and (b) some practices are contrary to the (‘western’) philosophy of mediation, in part at least, and (c) most would benefit by eliminating some elements and adding others.”

The second Discussion Paper deals specifically with some thoughts on the selection of Mediators (Dispute Resolution Practitioners) and what different selection processes would
be needed, who should be consulted and what skills would be required in the different communities.

Appropriate Dispute Resolution processes can provide the means of recognising and dealing with the spiritual, social and legal aspects of conflict and violence in communities, very particularly with regard to establishing and ensuring the 'healing' of relationships. Faulkes advocates that the process has to be appropriate to the particular community and stresses the need for the program to be flexible enough to enable facilitating different processes into different communities or situations.

Resolution of disputes is often hindered by a failure to recognise opposing values as the underlying source of the dispute. There is also the difficulty of recognising and admitting one's own values. It is extremely difficult to resolve a value conflict if the focus is upon facts and scientific data rather than values. It is helpful to shift the focus from the content or issues said to be in conflict, to the opposing values actually driving the dispute. This process involves a lot more thought, effort, patience and time.

Lachowicz (1997), Grose (1995) and Behrendt (1995) demonstrate that strategies have to be developed to address the issues of violence, crime rates and conflict within Aboriginal communities and that these mechanisms must reflect the cultural, and socioeconomic characteristics of the individual Aboriginal communities. These authors also confirm the need for self-determination and empowerment of these communities to be the decision-makers and party to these mechanisms.
For Aboriginal people, dispute resolution should be thought of as a ceremonial process (Sauve, 1996; Grose, 1995; Lachowicz, 1997; Faulkes, 1990 and Fesl, 1997). Some may argue that each dispute resolution situation presents completely different circumstances, however, with the ability to appropriate adaptation, the various processes followed in dispute resolution procedures for Aboriginal communities should always be aimed at producing the same result: healing. The completion of this healing process relies on repeated cycles of conciliation and reconciliation (not as in the western interpretation: see next pages). Without such mutual efforts, the best that can be achieved is the settlement of a dispute (the ‘western’ mandate of progress) rather than a resolution that relieves the parties of their hurt and enables them to renew their relationship and modify their behaviours more accepting to the community. The ceremony of an Aboriginal Dispute Resolution process needs to include an analysis of:

1. The endorsed and spiritual figure of the practitioner;

2. The people involved;

3. The environment,

4. A telling of the stories;

5. The stories recapitulated and reviewed,

6. Awareness of the others’ ideas and accounts;

7. Conciliation; and

8. Reconciliation.

In this context, Conciliation and Reconciliation should not be interpreted as the ‘western’ definition. After seeking to provide parties to a dispute with a mechanism for resolution
which is chosen to reflect the particular nature of the dispute and the needs and interests of the parties and of the community. The parties and community are then able to utilise improved communication and negotiation processes as a means through which learning—and then improvement of the situation—can occur. Conciliation would be a collaboration of all participants, including community, in preventing re-enactments of "disputing" ways of communicating, relating with each other and fostering a 'cooperative' way of communicating.

Reconciliation would mean rectifying wrongs, creating a healing of relationships based on equity and fairness. Pursuing true justice involves supporting those harmed and an open acknowledgment of the past wrongs; instilling restoration, balance and harmony now; and finding a beneficial, ‘connected’ and equitable direction to go forward.

**Let the Truth Be Told**

Aboriginals have, both in writings and orally, been attempting to convey the atrocities committed upon Aboriginal peoples in the colonisation of Australia and the continued effects of these crimes ever since. However, it has taken the courageous and superhuman research efforts of non-Aboriginal writers and historians, such as Charles Rowley, Henry Reynolds, Raymond Evans, Bruce Elder, Judith Monticone, David Hollinsworth, Noel Loos, Deborah Bird-Rose, Jan Critchett, Roger Millis and Andrew Markus for the true history of Australia to begin to emerge. Even now, racist attitudes and the fear of ‘admitting too much’ has prevented this truth from penetrating school textbooks and Australian history curriculums in education.

"Excessive and unrestrained violence was a key feature of European colonisation—‘people were routinely shot, poisoned or beaten to death’—but the violence ‘at one moment understood to be essential, was at a later moment denied or simply lost to [European] memory’. This silence was ‘a prescribed and accepted strategy’ and is ‘close to impenetrable’.”

Another clever ‘prescribed and accepted strategy’ of the era’s government was to ‘criminalise’ any warfare tactics employed by AboriginaIs defending their lands, by utilising Police to quell ‘the native problem’ rather than an army. Thus preventing the necessity of treaties, obligations or admitting ownership of the land to the ‘enemy’. Fiske et al. (1987) correctly argue that in Australia, the guerilla fighting and resistance along the European frontier never entered the history books under the name of ‘war’ and that on the white invasion of Australia, the story of conquest is generally told as settlement, and focuses on named white heroes.

Henry Reynolds, in his book ‘The Other Side of the Frontier’ (1982), declared that the conventional accounts of Australian history not only distorted the past but continued to perpetrate grave injustices on Aboriginal Australians:

“Frontier violence was political violence. We cannot ignore it because it took place on the fringes of European settlement. [Conservatively] twenty thousand blacks were killed before federation. If the bodies had been white our histories would be heavy with their story, a forest of monuments would celebrate their sacrifice. The much-noted actions of rebel colonists are trifling in comparison. The Kellys and their kind, even Eureka diggers and Vinegar Hill convicts are diminished when measured against the hundreds of clans who fought frontier settlers for well over a century.”
The total ignorance, misinformation and eradication of Aboriginals in Australian history component of mainstream education are also illustrated by Henry Reynolds (1999) writings in “Why Weren’t We Told?”:

“I felt ignorant and ill-informed... when I returned to Australia.... at the end of 1965. I was suddenly confronted with aspects of Australian life that I knew nothing about, things I had not even suspected. I began to understand the complex web of social relations, habits, customs and beliefs, which both bound white and black together and yet held them far apart. There was a history at work, a powerful all-important history that pressed heavily on the present. I knew nothing about it even though I had both honours and a masters degree in history. I had no idea there had been massacres and punitive expeditions. I was ignorant about protective and repressive legislation and of the ideology and practice of white racism beyond a highly generalised view that ‘we’ had treated ‘them’ rather badly in the past. (p3-4)

The ‘Great Australian Dream’ superimposed itself on both Aboriginal Dreaming and the incubus of the white colonial invasion.

“The racist past still weighs heavily on the present and might destroy any hope of reconciliation in this generation. Black-armband history is often distressing, but it does enable us to know and understand the incubus which burdens us all.” (p 258)

How can reconciliation ever be achieved while one party feels continually oppressed and the other remains locked into a constant state of historical denial? Without acknowledgment, recognition and acceptance how can these parties ever hope to negotiate with trust, acquiescence and rebuild successfully against this denied and unrecognised bitterness?

Lillian Holt’s story “What Racism Feels Like” in the Australian Reconciliation and Social Justice Library, (Internet: http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary), is very poignant. For the researcher, the feelings and words are so familiar. Unfortunately, a larger portion of the full story can not be reproduced here, however its importance is
twofold. The first is that, although most faced bigotry at an earlier age than Holt, every Aboriginal person that grew up with racism will feel himself or herself in this story. Secondly, for non-Aboriginal readers, the story explains so eloquently how racist attitudes create inferiority complexes that prevent a lot of Aboriginal people from speaking up and speaking out in front of non-Aboriginal people. This could certainly effect the dynamics, any outcomes and effectiveness of an ADR process, (if the Dispute Resolution Practitioner were non-Aboriginal). Many Aboriginal people are scarred by such experiences and encounter similar feelings to Holt:

"I felt ugly and unworthy and afflicted. It wasn't just a 'poor fella me' feeling either. It went deeper, into my very being. Racism has a depth and intensity which afflicts the mental and spiritual. Even today, it is very hard to explain on an intellectual basis, because you have to experience it and live it, emotionally, mentally and spiritually, before you can understand it. It's about 'walking the walk' as opposed to 'talking the talk'."

The effects of Colonisation for Aboriginal Australians

Numerous materials reviewed (Hazlehurst, 1988; Lippmann, 1994; Hollinsworth, 1996; Fesl, 1997; Kidd, 1997; Elder, 1998; Evans, 1999; Reynolds, 1999.) recognise the structural violence of colonisation and the continued oppression against all Aboriginal people and the inadequacies of the Criminal Justice System to prevent conflict and violence.

Astor & Chinkin (1992), confirm the importance of detailing the atrocities British colonists inflicted on Aboriginal people whilst stealing the land. Included in the history of ADR in Australia, these authors cite a quote from Castles (1982) which illustrates the hypocrisy of the introduced Criminal Justice System for Aboriginal people:

"It should also be noted that the British colonists, who endeavoured to exterminate Aboriginals, destroy their culture and plundered their land, also brought with them a legal system in which 'The gallows, the stocks, the
pillory and the lash were recognised instruments of correction and deterrence' and '...the criminal law applied in New South Wales between 1788 and 1832, the trial procedures and the punishments meted out might seem to be the products of a dark age in which Australia was especially selected to be the venue for Dante's Inferno.'” (page 6)

From 1788 until well into the twentieth century Aboriginal lives were often less well regarded than those of livestock. Even in surrendering their services to white employers, there could be no real sanctuary of life assurance for them. The cycle of dispossession, massacres, poisonings, starvation, restriction and reprisal in an attempt to wipe out Aboriginals altogether with men, women and children slaughtered indiscriminately continued for over one hundred and fifty years. It seems hard to imagine more terror-laden circumstances of existence than these. (Evens, 1999)

At the first trial of one of a series of massacres that was committed in 1938, dubbed the ‘Myall Creek Massacre’, one jury member who acquitted those responsible, was quoted in an interview with a journalist of the Sydney Morning Herald (Christie, 1979):

“I look on the blacks as a set of monkeys and the earlier they are exterminated from the face of the earth the better. I would never consent to hang a white man for a black one. I knew well they were guilty of murder, but I for one would never see a white man suffer for shooting a black.” (p45)

The lessons of violence and terror were taught well. The impacts of the atrocities have endured and have been passed on to children and grandchildren. The ‘white’ man had superior force and had the will to use it. Aboriginal stories taught that it was dangerous to argue with Europeans. The stories warned both caution and the need to exhibit subordination. As deeply as these lessons were driven and instilled, they also created grievous anger, utter frustration and insurmountable sadness. Eve Fesl (1993), in her book, ‘Conned’, explains:
"Much Koori anger ends in sadness; then there is recourse to the current panacea, alcohol, which drowns the depression, but eventually kills the host, an aid to formal genocide commenced but not completed—suicidal deaths in police custody are a manifestation of extreme depression. Most other Australians don’t understand this—they don’t know why this should be. The reason is that they’ve been conned—we’ve all been conned! Australians have been fed a rose-tinted history of British heroes of the ‘frontier’, who ventured forth into what was presented as an inhospitable land, an empty wasteland. This history validated the British illegal annexation of Australia under the enlarged theory of ‘terra nullius’. Many early settlers were conned into believing that any action in regard to the Koori people, was taken for our benefit—to ‘Christianise and civilise’ us."


"The land rights struggle, begun in 1788, continues more than 200 years later. And the restive spirits of those 800 million or so ancestors who have lived and died here since this harsh, yet vulnerable land was first sung, possible more than sixty millennia ago, continue to watch and wait."

Today, there is a large number of Aboriginal people who struggle daily, simply to survive. Some do not know their ancestral roots and their culture including the traditional lore about behaviour, ancestral territories and inheritance because it was torn away from them. At the same time there is a large ignorance in ‘white’ society about the true European-Aboriginal historical facts and about Aboriginal traditions or the Dreaming. There is also ignorance in ‘white’ society of how Aboriginals have been affected by invasion, colonisation and various government policies including pacification, annihilation, assimilation, integration, empowerment and self-management.

There will never be a return to ‘the way things were’ before Captain Cook and his band of English men. There will never be, in this lifetime, the tranquillity of strict lore or the complete depth of spirituality without distraction, known to our ancestors. We live in this ‘New World’ now, with all its complications, perplexities and confusions, with all its
comforts, conveniences and scientific marvels and we have to make sense of it. We have
to relearn old skills and unlearn bad habits.

From Governments and relevant agencies there has to be recognition of the true history of
the invasion and colonisation of Australia. It has to be taught in textbooks and
acknowledged worldwide, in the general history of this country.

To neutralise some of the impact of the invasion and colonisation on Aboriginal people,
there is a necessity to make use of every support mechanism that is in place and we have to
create new ones. The support of an appropriate Aboriginal Dispute Resolution Program in
NSW is only a very small element of the big picture—but like every other component it is
a vital part of the whole. ADR is not a ‘cure-all’, but it is an important ingredient for the
solution of the healing ‘wholistically’. That is why the wholistic approach is more
effective because a balanced process is necessary for the healing and the total health of
Aboriginal people and the land.

2.6 Conclusions:

Aboriginal communities have struggled since colonisation to be able to exercise what is
viewed as a fundamental right, which is to be self-representative. This spans both the
notions of representation as a political concept and representation as a form of voice and
expression. In the political sense colonialism specifically excluded Aboriginal peoples in
any form of decision making. States and governments have long made decisions, hostile to
the interests of Aboriginal communities, but justified by a paternalistic view that
Aboriginal peoples were like children who needed others to protect and decide what was in
the best interest. (Sam, 1992; Dodson, 1994; Cuneen, 1995; Eckermann et al, 1995; Sabbioni et al, 1998; Evans, 1999)

Paternalism is still present in many forms in the way governments, local bodies, and non-government agencies decide on issues that have an impact on Aboriginal communities. The struggle for the right to voice the views and opinions of Aboriginal communities in various decision-making bodies is a continuing one. Even at the minimal level of representation, Aboriginal communities are often ‘thrown in’ with all other minorities as one voice amongst many. The recognition of sovereignty and self-determination is about resisting being thrown in with every other minority group, by making claims on the basis of prior rights. (ibid)

Representation of Aboriginal peoples by Aboriginal people is about countering the dominant society’s image of Aboriginal peoples, lifestyles, and belief systems. It is about posing solutions to the real-life dilemmas that Aboriginal communities confront. It is also about trying to capture the complexities of being Aboriginal. Many of the dilemmas are internalised stress factors in community life, which are never named or voiced because they are either taken for granted or hidden by a community. (Parbury, 1986; Fiske et al, 1987; Pilger, 1989; Folds, 1993; Rintoul, 1993; Dodson, 1994; Goodall, 1996)

Sharing is a responsibility of research. For Aboriginal researchers sharing is about demystifying knowledge and information, speaking in plain terms and creating ‘ownership’, by giving it back to the community. (Harslett, 1998)
Examining these issues from an Aboriginal point of view is also extremely important because it honours traditional values, oral histories and cultures. For too long Aboriginal cultures and traditions has been treated with contempt in a lot of non-Aboriginal writings, where the authors insist on calling the oral histories and stories (Dreaming) ‘myths’ and ‘legends’. Declaring that there is ‘witchcraft’, ‘spells’ and ‘sorcery’, as though it was something from a ‘Grimms’ Fairy Tales’ book for children, instead of placing these concepts in true perspective.

Accepting the Aboriginal point of view not only undertakes to reduce damage to Aboriginal history but also encourages a more positive self-image among Aboriginal people. As well, it is a reminder of the diversity within Aboriginal society and that there is a wealth of knowledge and wisdom in all Aboriginal cultures. All these factors are necessary for genuine empowerment and self-determination of Aboriginal people.

An examination of over 300 articles, books, program reports and reviews has:

- Shown that there must be a recognition of the distinctive values of Aboriginal cultures by non-Aboriginal people and organisations, in creating AADR.
- Verified that the effects of invasion, colonisation, racism, violence, dispossession, Aboriginal perceptions of historical and contemporary non-Aboriginal control, frustration and opposing value systems with the Criminal Justice System must be explained to demonstrate the dubious consequences of forced or imposed programs upon Aboriginal communities.
- Demonstrated the difficulties in Standard English versus Aboriginal-English especially in legal and other professional use of English.
This review discussed the above issues in relation to the psychological phenomena of ‘internalising’ (inferior complexes, frustration, depression etc) and ‘externalising’ (‘acting out’, fighting, committing crimes etc) in looking at the violence, crime rates and problems that are associated with conflict. It has also shown that few mechanisms which reflect the special cultural, legal and socioeconomic characteristics of Aboriginal communities have been developed to date that have had any significant impact.

The diversity of areas researched confirms that it has been said many times, and over a considerable length of time that there are still substantial encumbrance for Aboriginal peoples gaining full access and equity in most available services. These deterrents include racism, language, culture, inappropriately designed and delivered services and often a lack of services. It also evidenced that decisions on any program for Aboriginal communities should seek to consult and include those affected in the planning if the decisions are to be effective and fair. The detailed findings of this literature review are in the Chapter 5 ‘Findings.'
Chapter 3: Methodology

3.0 Introduction

This research project required an extensive search of relevant literature and the comprehensive analysis of the large amount of materials that this search produced. Subsequently, the problem domain has been well defined and its elements identified, as described in the conclusions of Chapter 2.

A component in the relevance of Aboriginal Dreaming, is epitomised in a maxim from the Aboriginal Nation of Mingin people. Translated to English, it means: "You have to know where you’ve been, to see where you are now—you have to know where you are now, to see where you are going". (Larnabrewillaring 1951-65, translated by Immibowkaramilbun) The philosophy of this dictum infers the great importance on history and the understanding of that history to acquire a totally balanced perspective and worldview. Applying this philosophy to the research question, the literature review creates the vehicle to explore and investigate:

- the ‘where, how and why’ conflict, violence and disruptive disputes all originated and continued;
- what has been done in the past;
- why is it continuing to be so prevalent in Aboriginal communities; and
- where it is all leading;

...to identify what can be done now and how it can be accomplished.

The project also requires the analysis of written material available on the two Aboriginal Additional Dispute Resolution (AADR) Programs chosen for this research, particularly aspects such as the models of dispute resolution being utilised for each program and the delivery methods of those models.

Through interviews with participants and staff of both programs, the research project will compare and contrast the techniques employed by the two programs and analyse these
techniques. The project also requires an evaluation of each program with the specific purpose of learning from the experiences of staff and participants involved. In the researcher’s opinion, the most obvious and effective methodology available is that of a qualitative study, incorporating narrative style interviews, upheld by the principles of critical social theory. The arguments for this reasoning are set out in this chapter.

This thesis is not intended to provide any final or conclusive evaluations of these programs. Rather, it provides an overview of both programs through the eyes of individual participants, the staff and what can be found in documentation. Nevertheless, themes and issues will be identified that can be used to form general conclusions about the effectiveness of the programs in terms of recommending strategies to better the establishment of an AADR program in NSW.

3.1 The development of a framework of the research:

Formation from the study of the researcher’s own experience was the impetus this research. Thus the research method grew and was decided in stages:

1) Heuristic reflection and considerations—the researcher engaged in self-reflection, since personal understandings and interpretations from the researcher’s experiences contributed to the incubation of a research question.

2) From prior knowledge, personal inquiry and searching the literature the researcher choose Queensland’s Aboriginal & Torres Strait Islander Mediation Project and Western Australia’s Aboriginal Alternative Dispute Resolution Service to study. Although there are similar services in other States, these two had been operating for a considerable length of time, the researcher’s community-based network was stronger in these two States and there was more literature available on these two programs.
3) In order to learn the most about the experience, an extensive examination of the literature relevant to Dispute Resolution and Aboriginal issues was the next step. The discipline, methodology and style for the fieldwork phase was then based on the findings of the literature that identified a number of key issues, as shown in Chapter 2.

4) In the next stage it was important to emphasise the integrity of the researcher's heuristic experience. Discussions with colleagues in the two States established that there were people enthusiastic to speak about their experiences with the researcher. It was, therefore, important to connect the researcher wanting to know with the participants wanting to tell. This in itself can create a simple standard for scientific knowing. Fields of formulated interest were then framed into concentrated focussed domains of information sought at interviews.

5) The core of the field research was recognised as 'the participants' and to ensure cultural appropriateness the researcher intended a collaborative relationship between the researcher (as the interviewer) and these participants. It was decided that data should be collected from field notes. Audio tapes often inhibit free speech. The researcher knew from experience, this is especially true in Aboriginal communities particularly with the time limits set to establish the researcher's repute with each participant. Policy documents, annual reports and any accessible evaluations would also be collected and examined.

6) To keep track of the research on the five weeks in the field, it is intended to transfer all interview notes, researcher reactions and any other relevant information gathered into a 'running log' on computer files, each night. Resource needed: 'lap top' computer.
7) Revisions of interview questions, data reduction, development of categories, connections to existing literature and the integration of concepts were all contemplated and anticipated to grow and change throughout the research process.

8) Gaining human subject research approval from the University Ethics Committee required the researcher to detail the most intricate contents of the research plan and answer very involved questions, which really consolidated plans and intended methodology for the researcher. (See approval at Appendix C.) From the offer of Honours candidature until this approval was conveyed there was a passage of eleven months.

9) The immediate problems of access to participants and finding suitable communities were however only the initial issues. Compounding this feature was the fact that these communities are scattered over two large States. Among other commitments the researcher had continuing full-time employment and monetary constraints to consider.

10) Applying for and being conferred a Grant from the Law Foundation (on the condition of the issue of a separate executive summary after completing the thesis) and the approval of two months leave from work, gave license to formulate in-depth and definite travel plans.

3.1.1 Critical Social Theory

Social inquiry is seen as the main task of critical research, whereby the restraining and disjointed conditions of the ‘status quo’ are revealed. Critical research focuses on the oppositions, conflicts and contradictions in contemporary society and seeks to be emancipatory. (Habermas, 1979)
The emancipatory knowledge interest is specifically targeted to the liberation of individuals. It is achieved through discursive action. Rather than exploring a situation so as to control it (technical interest) but more to understand it (practical interest) and to assist in freeing people from physical, mental and social distortions and injustice (emancipatory interest). These latter interests best serve the critical social theorist (CST). (Ibid)

There is no set of specific methods of CST. Rather, CST necessitates a pluralistic and multi-methodic approach. In fact, whatever the method, the important thing in CST is to always address the researcher’s underlying hypothesis, as well as those of the participants and possible beneficiaries of the research. Moreover, resulting knowledge should be evaluated with the same critical lens. (Ibid)

Critical theorists believe that culture and history play a major role in the construction of personality and identity. Personal identities are produced under different social conditions and so, no such thing as a universal, historic human identity is possible. (Bronner, 1993)

The adoption of critical social theory in this study, has methodological consequences for the researcher. It is essential to study the historical development of ‘this necessity of a specific AADR program’ and to reveal changes in the way it has been conceptualised over time. The purpose of studying ‘this necessity’ is not simply to record changes in its requirement or form, but to reveal the nature of the relationship between this necessity and its underlying essence. The production of this knowledge involves opinions from the material environment (the participants) to the theoretical environment (past work and this thesis), in order to better inform any future practical activity. The point is not simply to reveal the oppressive aspects of the existing necessity for such a program, or the historical
reasons for it, as an end in itself. It is more to embed this knowledge in the consciousness of the oppressed in order that they might productively engage in these practical activities to emancipate themselves. (Kanpol, 1997)

Ensuring that the analysis is informed by both strands of inquiry, for example, that issues emerging from participants and staff can be placed in an historical and structural context, and that problems identified in the academic literature can influence the direction of the study. As such, critical social theory entails a constant inter-weaving of inductive and deductive logic. This researcher does not set out to test a pre-conceived hypothesis, nor is an entirely open-ended approach to be adopted, instead the researcher begins by observing the field of study, both as an investigator of practical information and as a reviewer of academic literature. From the integration of these sources, a research agenda emerges that can be pursued, again, by a mixture of practical and theoretical work. (Ibid)

3.1.2 Narrative Style

S. Chase (1995) in ‘The Narrative Study of Lives’ states that discourse and narrative analytic principles must be brought to bear upon social interview and survey methodologies. Chase holds that:

1) Interviews are speech events;
2) Discourse of interviews is constructed jointly by interviewers and respondents;
3) Analysis and interpretation are based on a theory of discourse and meaning; and
4) The meanings of questions and answers are contextually grounded.”

The consolidating objective of the field research is to explore the ways in which people conceptualise and recall their experiences of the Dispute Resolution Program relevant to their State, especially in relation to ‘the betterment of the situation’ that brought them to
the Program. The unfolding of which will result in a qualitative analysis of the unstructured Client Assessment Feedback interviews for participants and the Key Informant interviews for staff of two Aboriginal Dispute Resolution Programs within Australia.

Advantages of this narrative style include:

- The increased flexibility associated with using this approach. Participants are given the opportunity to express their views on more complex issues.
- The in-depth content of these interviews often leads the approach to higher levels of validity.
- There is more emphasis on meaning and interpretation in this approach, which can be excluded, in more rigid qualitative and structured forms of interviewing.

3.1.3 Qualitative methodology

Qualitative research, according to Hakim (1992) in ‘Research, Design’, is a specific research design that is (page 26):

“...concerned with an individual's own accounts of their attitudes, motivation and behaviour. It offers richly descriptive reports of individual's perceptions, attitudes, beliefs, views and feelings, the meanings and interpretations given to events and things, as well as their behaviour.”

Therefore, qualitative methodologies provide insights into how people construct their experiences, especially in the context of their life experiences.

Methods of data collection, according to Kumar (1996) are basically of two types—primary and secondary sources. Primary sources, in this study are the participants. Qualitative research whilst depending fundamentally on primary sources, makes use of
secondary sources, but also utilises secondary sources as primary sources. Eg. a policy
document is a secondary source, but if it is the subject of a discourse analysis, it becomes a
primary source.

Two of the more common methods of collecting qualitative data are observation and
interviewing. Interviewing can be unstructured, non-directive, in-depth, informal or formal
and requires a good deal of skill if it is to elicit rich data. A good interviewer is aware of
their personal impact on the data—how their appearance, sex, attitude, speech, race and so
on, will impact on the willingness or ease with responses are given. Good interviewers are
also sensitive to the location and time of the interviews, as well as privacy and
confidentiality issues. (Ibid)

The researcher’s Aboriginality is an advantage in that it abridges the need for development
of specialised knowledge and skills required to interact empathically with the participants,
all of whom are Aboriginal. This also reduces the possibility of misunderstandings in
communication.

The adoption of the dominant role (consciously or unconsciously) is counterproductive to
obtaining quality data and the benefit of perspective is lost. (Fontana and Frey, 1994) The
presence of a mature-aged female researcher who can empathise and identify with the
participants’ backgrounds and experiences will enable greater involvement of the
participants in the interview. Diversity and respect for difference is of utmost importance
in understanding gender relations and cultural variance.
Many of the factors that contribute to a quality interview are attributable to the personal qualities and behaviours of the interviewer, such as:

- thoughtful attention to rapport;
- familiar and supportive territory for the participants;
- empathy, (as shown above);
- careful listening;
- appropriate responses to the participant; and
- a non-judgemental attitude toward participant or situation.

These qualities and behaviours will be accommodated through the researcher’s Aboriginality and skills acquired through twenty-six years experience as a professional counsellor.

A minimum of 50 interviews will be transcribed and qualitatively analysed for common themes and significant elements to identify particular patterns and evaluate the key factors and thus identify the strengths and weaknesses of the programs already adapted for Aboriginal people.

The findings not only assist in explaining the necessity for a specific AADR program for NSW, but can also be used to advance strategies for developing an even more appropriate AADR program in the future.

3.2 Research Dilemmas and Limitations

The researcher acknowledges limitations to the study. Interviews were restricted to a small number of participants in each chosen community and only those that were available within the time frame of the study. The sample size of participants interviewed from each
program was relatively small. Further, the findings do not represent all the AADR programs operating in Australia and it has to be understood that the participants are not representative of all participants in the programs.

**Ethical Issues:**

Clearly there are ethical issues involved in research but there also exists many questions of personal values (as shown later) with which researchers may need to deal. (Partington, 1996)

1. **Community consultation and collaboration.** Elders in each community will be fully consulted and informed of the study before interviews take place. A minimum of 40 participant and 10 staff interviews will be gathered. Approximately 5-10 people will be interviewed in each community.

2. **Confidentiality.** Each participant will be allocated a client number, which will be the only identification attached to notes and kept secure by the Chief Investigator. The consent forms, notes and computer files will be kept in the Chief Investigator’s office and will not be seen or accessed by anyone except the researchers. At the end of the research study, all the consent forms, notes and files will be packed in boxes and stored in the designated area in the Centre for Indigenous Health Studies for five years before being destroyed.

3. **Consent.** Each participant will be given the ‘Plain English Statement’ (see Appendix A), have the research explained to them verbally and be asked to sign a consent form.

4. **Feedback to participants.** Aboriginal people are renowned as one of the world’s most researched peoples. It is also a fact that until recently, none of this research ever returned to the community involved for verification, consultation or ownership. Due to this
historical experience of research by Aboriginal people, feedback results of this study will be given to each community, prior to final publication of the research.

5. The 'expert' syndrome. Possibly the most common dilemma that face researchers is the problem of being regarded by the participants as an 'expert'. Many researchers report situations where the participants actually ask the researcher for information or advice or alternative approaches to the topic being researched. It is anticipated that in most cases this can be overcome by the researcher ascertaining (pre-interviews) locally available resources the participant can access, or referring them to the community-based worker introducing the researcher to the community, whichever is more appropriate.

The limitations posed by this methodology include:

- The high level of skill in interviewing is required to ensure that all areas of interest are addressed, and that the participant does not 'wander' from the primary issue.
- Results of this form of research can be difficult to categorise and analyse.
- It is more time consuming than more structured approaches.

Qualitative research is by definition interpretive in nature, exploring and explaining hypotheses and ideas concerning perceptions, attitudes and behaviour. It does not purport to possess the same measured standards of validity, exactness and singularity, which characterise quantitative research. (Denzin, 1994)

Possible problems and pitfalls of the methods used in relation to this research:

- Encountering informants willing to participate from the initial introduction in each community;
- The researcher rather than an independent person will do the coding of data. This is unavoidable as the researcher will not be using a tape recorder and the interviews are
narrative style. As explained earlier, Aboriginal people are not at ease with direct questioning, so the narrative style allows the participants to be comfortable in the interview and is culturally appropriate. Due to the short time the researcher is spending with each participant, again it would be inappropriate and not fruitful to use a tape recorder. Therefore, the researcher will only be recording in note taking shorthand form the information supplied for the specific areas mentioned in the prompt questions—see Appendix H. The researcher will endeavour to record as much information as possible without distracting the participant, however there is a distinct possibility that some rich data will be lost, therefore coding, due to this limitation. The only deterrent against this limitation is the consistency of one researcher and constant reflections for recurring themes and patterns.

- The argument for focus group vs individual interviews—for this research, it is believed that one-to-one interviews would enable a more in-depth exploration of individuals’ experiences, beliefs and encourage reflection more so than focus groups would allow.

- Unknown participant perceived barriers between interviewer and participants;

- Generalisability of findings—this depends not just upon detailed description of why there is a necessity for such a program, but on revealing the social relations that underpin that necessity. David Wainwright (1997) in his article, “Can Sociological Research be Qualitative, Critical and Valid?” in the journal ‘The Qualitative Report’, states:

  "Conceptualising a phenomenon in terms of its conditions of existence and the social relations that characterise it, is a sounder basis for generalisation than the simple description of immediate appearances."
The means in which subjectivity is experienced is through the impact of cultural acceptance of a particular strand of thought on individual subjectivity, relationality and cultural identity. In this sense subjectivity represents a field of meaning involving socio-cultural activity as well as private histories and personal sensations. (Ibid)

The limitations posed by practicalities within this research:

- Timeframe of field research—ten communities scattered throughout two States within 35 days;
- Timeframe of reporting—transcribing, analysing and completion of findings of field research within 35 days of return;
- Resources—monetary constraints;
- Continuing full-time employment of researcher up to the field research and throughout the five weeks of writing up the study;
- Other continuing commitments of researcher.

The limitations posed by the subjectivity of the researcher:

Discussion about the topic of subjectivity is complex. It has been a major theme in philosophy and the social sciences for fifty years. There are many ways the subject has been described and imagined: sometimes psychologically and at other times socially or politically. Notions of subjectivity are implicit in legal discourse, and in the many social roles of contemporary experience (citizen, customer, employee, researcher etc). (Denzin, 1994)

The means in which subjectivity is experienced is through the impact of cultural acceptance of a particular strand of thought on individual subjectivity, relationality and cultural identity. In this sense subjectivity represents a field of meaning involving socio-cultural activity as well as private histories and personal sensations. (Ibid)
The consciousness and understanding of subjectivity is the researcher's first defence in guarding against the pitfalls and the rigorous self-monitoring, continuous self-questioning and re-evaluation of all phases of the research process is another.

**Researcher’s moral obligations to different groups within the research—eg:**

- **Participants**—ensuring confidentiality, achieving informed consent, acquiring ‘human subjects approval’ from the University Ethics Committee and adhering to the requirements, complete debriefing for participants and guaranteeing feedback;
- **Elders of communities**—consultation prior to conducting interviews, respecting their wishes and any advice forthcoming;
- **Colleagues in the field**—respecting their position within their communities, achieving protocols set by them and guaranteeing feedback;
- **Research supervisor**—respecting advice, acknowledgment of skills, knowledge and time;
- **The University**—seeking to promote the goodwill of the university and executing research as an appropriate representative; and
- **The funding source**—acknowledge at appropriate opportunities the Grant given by the Law Foundation enabling the field research. Create a separate comprehensive report immediately after completion of thesis and produce sufficiently rich data to contribute to their existing body of knowledge on Dispute Resolution, specifically for Aboriginal communities.
3.3 Best Practice—validity and reliability

The researcher, determined to follow ‘best practice’ research methodology to ensure valid and reliable results, formatted the methodology as follows:

- Began with a clear statement of the purpose of the field research as shown on pages 6 and 7 of the Introduction;
- Uses a consistent set of terms and concepts as defined;
- Utilises proven methodology including:
  - Sources of data,
  - time-frames,
  - relevant data gathering methods,
- adopting suitable recording, analysis and interpretation procedures for data gathering methods,
- stating conclusions and making recommendations. (Partington, 1996)

3.4 Field Research—The Target Group:

- Communities for subject recruitment: The Aboriginal communities in Queensland and in Western Australia have been chosen because of the diverse locations and situations, eg. city, regional and remote communities. The communities also had to have been reported by the particular ADR program as having had involvement with that program.

- Participant selection criteria for Client Feedback Assessments: Aboriginal adults who have participated in mediation, involving the Aboriginal Dispute Resolution Program in their state.
Staff selection criteria for Key Informant Interviews: Employees (past and present) of the Aboriginal Dispute Resolution Program in their state who have conducted a minimum of ten Dispute Resolution facilitations.

A 'snowballing' technique will be used in this research. Recruitment of the first participant will be through the already established networks of the field researcher with community workers within nominated communities. Participants will be asked to recommend others to contact the researcher. The field researcher also has access to the community members, due to her Aboriginality, knowledge and understanding of the communities and the dispute resolution programs.

3.4.1 The Interviews:

In a critical social theory discipline, qualitative methodology will be used for narrative style interviews. One-to-one unstructured interviews will be used to provide insights into individual’s experiences, personal perceptions and the effectiveness of the program for them.

Interviewing in qualitative research usually involves a semi-standardised and open technique. Open-ended questioning is a feature of this style, with less rigidity in question order and an increased emphasis on the content of the interview discussion. This can often involve questioning only where necessary, in the narrative style interviews. The interviews conducted in this project are unstructured, whereby set questions have been prepared, however the researcher can be flexible about when and how questions will be introduced. See appendix H. (Denzin, 1994)
Interviews typically involve subjectivity and bias, however, as shown above with awareness of this limitation and for this type of project, this is not necessarily a disadvantage, as it is the perceptions and interpretations of the participants that are being sought. There is, however, the added risk that these participants will give the information that they think the interviewer wants to hear or their recall of events may be poor or inaccurate. This problem can be addressed in part by using triangulation. (Chenail, 1997)

Triangulation is the circular process of comparing and contrasting what is known of the phenomenon that is being examined from field, literature, and the expertise and personal experience of the researcher. In this study it will also be utilised to compare the separate sets of data collected from different communities in each State. An example is that both the consumers and the providers of services are included in examining the programs. (It is the 'why of the how' and becomes the triangulatory engine of qualitative inquiry.) (ibid)

Triangulation also allows the researcher to answer the charge that this methodology lacks reliability. By using collaborative evidence, the findings may be seen to be more trustworthy. Ultimately however, it is up to the researcher to ensure that data collection and analysis is done scrupulously and, as far as possible, without personal bias. By interviewing a range of subjects, it is hoped that the effects of bias will be limited. (ibid)

Program personnel will be interviewed (Key Informant Interviews) as part of this study to gain their perceptions of the efficiency of the particular program. This comparison is not
expected to be exhaustive, but will provide a useful reflection of what is already occurring and how effective the two programs are.

In Client Feedback Assessments, the participants will firstly be given the opportunity to tell their stories at their own pace with as much or little information as they feel comfortable in giving. Questions will be asked as prompts, only if the information being sought is not forthcoming in their stories and will be asked with the proviso that the question does not have to be answered if the person is not comfortable in doing so.

It is not intended that the Client Feedback Assessments be designed to cover a representative sample of the Aboriginal population within these two states, but rather to investigate how individuals of different ages and genders in urban and rural settings perceive their experience of the dispute resolution programs. The participants’ perceptions of how effective the intervention of the program was, including how the program became involved, the cultural appropriateness and the acceptance of the program by the parties will also be sought.

While there are only two categories of people to be interviewed, these are spread over ten communities in two different States.

The Researcher’s commitment to participants

Critical theory has always expressed an unequivocal concern in the nullifying of social injustice. (Bronner, 1993) This principle should not only be applied to the research itself, but begin within the research for the participants. As such, it augments the researcher’s
commitment and integrity to the participants of this research and is the motivating factor behind the inclusion of this section.

In this study the researcher expects a lot from the participants. The researcher expects that they will:

- give of their time, often at short notice;
- tell the truth about their thoughts and opinions;
- amicably have a lengthy conversation with a total stranger about personal experiences, at times giving intimate details of their lives; and
- in some cases reveal their innermost feelings.

In exchange they receive a ‘thank you’, a debriefing, an assurance of continuing support and a promise of feedback from the research. They may also perceive a feeling of having had someone listen to their thoughts, experiences and ideas.

It is a ‘big ask’ for so little. Certainly the participants may benefit from the research, either directly or indirectly, but that benefit is more than likely to be years away. There are also certain rights within research guidelines that have already been discussed—eg. confidentiality, consent, ethical standards, not being coerced into saying anything they don’t want to, etc. But in addition, they should be given every consideration available to the researcher. The considerations the researcher will give particular significance in this study include:

- Participants’ foremost right is to be treated with the utmost respect.
- The rights of participants taking priority over the research;
- The right to be told as much as possible about the interview or discussion before agreeing to participate, particularly where the subject of the discussion is sensitive;
• The right to be given every opportunity to withdraw from the discussion or not to answer certain questions, if they so wish;
• The right to have information that is supplied by the researcher being correct and honoured, such as the length of the session, debriefing and feedback commitments;

These considerations are especially pertinent to research of Aboriginal peoples, given the historical relationship of researchers and Aboriginal communities (as discussed at section 1.6 in the Introduction chapter of this thesis).

3.4.2 Evaluation Strategies:

Qualitative data analysis is applied to a very wide range of methods for handling data that is relatively unstructured and considered inappropriate for reduction to numbers. The researcher, in using this data will be seeking to gain an understanding of the experiences of the participants and the processes of the two programs by:

• learning from the detailed accounts that people give in their own words, which will be recorded in field notes; and
• the use of techniques to adapt western processes for cultural appropriateness for different communities from staff and discovered in documents.

All information gathered at interviews will be transcribed from notes to computer, for information to be qualitatively analysed for prevailing themes, identify particular patterns and evaluate the key factors as set out below.

Analysis Methods:

1. General open-ended responses—Codify along thematic lines and analyse for recurring and unique themes, as well as any indication for strength of sentiment.
2. Follow-up interviews (within the debriefing)—the day after initial interview, seeking clarification when required (and ensuring knowledge, whereabouts and appropriateness of support availability, if needed from any ill-effects felt through participation).

3. Explanatory responses -- Compare, contrast, codify and discuss.


5. Utilisation of triangulation techniques to ensure reliability, honesty and validity of responses. The triangulation is possible at a number of levels across the sets of data:
   - Different communities;
   - Comparing the two States program staff;
   - Between past works, the interviews and experiences of the researcher; and
   - within each set of data containing five or more participants and via follow-up interviews seeking clarification if required;

which gives a sufficiently broad array of data for triangulation to ensure accuracy in interpretation and understanding in the findings. (Denzin, 1994) These findings will be used to form the results, discussion and recommendations. Some basic frequency distributions and descriptive statistics of themes will be generated.

3.4.3 Capacity of Researcher:

The researcher is a Dispute Resolution Practitioner with expertise in Aboriginal communities, Health, Police, Community Justice, Youth Conferencing and other conflict management programs. Having achieved a high success rate in healing relationships for continuing associations and bonding kinships within Aboriginal communities in twelve
years as a professional Dispute Resolution Practitioner, the researcher’s expertise and experiences will form a component of one of the two types of triangulation used in this methodology.

The researcher has also practiced as a Counsellor (psychology trained) specialising in Loss, Grief and Recovery since 1976 and believes that this aptitude will ensure skilled interview techniques, a sensitivity to, and an understanding of causal effects.

The researcher’s Aboriginality, knowledge and understanding of the communities and of the dispute resolution programs optimises the uppermost opportunity of attaining of the aims of research and interpreting data. It also ensures a ready access to a network of relevant community members, which is a crucial asset in the collection and interpretation of the required data. A network of community workers within the chosen communities have been consulted and are willing to promote the study on the researcher’s behalf.

3.5 **Outcomes:**

This current research will contribute to the existing body of knowledge. It will explain why there is a necessity for a specific Aboriginal Dispute Resolution program for NSW. It will also provide process and outcome evaluations that could assist in the development of an appropriate Aboriginal Dispute Resolution program for NSW.
Chapter 4: Overview of the two programs—Rhetoric and Realities:

4.0 Introduction:

Within the literature search a range of material on the two programs being overviewed by this study was found, including organisational, evaluative and administrative reports. As a result, this chapter provides the reader with an important foundation on which to understand how and why the projects were initiated and how the WA model has modified the ADR processes to suit the Nyoongar Nation of Aboriginal people. It also shows that in Queensland, no such modification has taken place and that the Aboriginal and Torres Strait Islander Mediation Project would possibly be better called a ‘Training’ Project, rather than ‘Mediation’.

In Australia there is policy that formulates services for Aboriginal people in areas such as education, health, welfare and social justice. One way of assisting with this approach to service delivery is to examine existing projects with a view to clarifying their design and assumptions. With this in mind, the researcher overviews two such projects as a basis for decision-making about the transferability or designing of such programs for other States. This chapter will discuss the history of the programs, the services provided, the processes utilised and the extent to which both services have fulfilled their initial aims.
4.1 The Aboriginal Alternative Dispute Resolution Services, Western Australia:

History of the Program

The Western Australia (WA) Aboriginal Alternative Dispute Resolution Services (AADRS) was established in October 1991. To put the service in context, it must be acknowledged that the program actually began in 1988 by a community group. This group included: Janet Hayden, Kath Davis, Marion Kickett (of the Health Department), Rose Whitehurst, May O'Brien, Venis Collard and (Uncle) Andy Nebro. (Collard, interview 1999) This first project was called the ‘Aboriginal Initiatives and Support Forum’. It was initiated in response to the level of feuding (known as faction fighting or family violence in NSW communities) occurring in the Noongar communities in the South West of WA and was funded by the Aboriginal Affairs Planning Authority. (Chadbourne, 1992; Thorne, 1993;)

Mr Venis Collard, a very respected Noongar (also spelt Nyoongar) man and employee of the Western Australia Police Service for 15 years, says that it was actually, mostly women who were involved in setting up the ‘Forum’ for the Nyoongar people. Mr Collard states, originally he was the only male that (Uncle) Andy Nebro joined the group a short time later to assist the group by liaising with communities. This first project was created through cooperation between this Aboriginal community group and the Special Government Committee on Aboriginal/Police and Community Relations (SGC). Venis was with the Police/Aboriginal Relations area of the Police Department and had already been mediating disputes. It was a natural progression to be involved with setting up the program. The community group instigated a culturally appropriate ADR model loosely utilising ADR theoretical methodology. (Collard, 1999)
When Aboriginal Affairs decided it would not re-fund the program, the members of the group sought funding elsewhere. This was not found and the Forum closed its doors in 1990. The Aboriginal people of WA lobbied at every opportunity and in 1991, the Office of Multicultural and Ethnic Affairs supplied twelve months monetary support and the program was renamed the “Aboriginal Alternative Dispute Resolution Project”. At this stage, it could no longer be considered a community-based group and sadly the original group had no more to do with it. (ibid)

Much of the success of the project over those two years traded on the strength of the reputations of the individual people within the group as being very strong and objective leaders of Noongar communities. Assistance in the development of this project was sadly lacking and no formal training was provided to build on the experience and skills of the people involved. Notwithstanding this lack of support, this group was responsible for resolving a significant number of high profile, very intense feuds. (Thorne, 1993)

When the Office of Multicultural and Ethnic Affair’s support ended after 12 months, the WA Police Service continued the program and funded it as an interim measure. When the current WA government came into power it was felt that this type of program fitted their justice portfolio and the program was moved from the Police Service to the Ministry of Justice.

Chadbourne’s (1993) evaluation stated that in September 1991 a project management advisory committee was formed and a Coordinator, Mr Robin Thorne, was appointed in October 1991. During the next twelve months an administrative structure was set up, the Coordinator completed a training program, a mediation model and training materials were
developed, nine people received training in mediation, files on 27 disputes were opened and 17 of the 27 disputes were resolved.

The initial task of the Coordinator, Robin Thorne, was to adapt the NSW Community Justice Centre model of mediation into a culturally sensitive and suitable process for WA communities. This was achieved with the assistance of Ms Wendy Faulkes, who gave a great deal of support to the AADRP, acting as an informal consultant to the project team and supplying a flow chart for model development. (See Appendix F)

From October, 1991 to mid 1995, Robin Thorne worked as the only ADR practitioner, Intake Officer as well as being the Coordinator of the Service. He worked with approximately 30 disputing communities each year and over that time, adapted the CJC (NSW) model further and introduced other ADR adapted processes to assist in resolving these conflicts.

In 1995, Leon Harpe and Gerard Putman joined the AADRS as ADR practitioners. Over this period, different types of disputes were included. Initially, it was only family feuding disputes accepted by the service. However, over this period, disputes have included government agencies vs Aboriginal communities, workplace disputes, disputes involving non-Aboriginals vs Aboriginals and neighbour disputes. In the six years, from October 1991 to October 1997, the service has been subject to several performance evaluations, all of which have judged the service to be highly successful in the assistance it has provided to Aboriginal people and all recommended further support and development. The service was also held in high regard amongst Aboriginal people and officials from referring government bodies. (Booth & De Mel, 1997)
The Process Utilised

The mediation process as described by the AADRS model (See Appendix E) contains several visible and some unstated modifications of the CJC (NSW) model. Both models share the same concept, definition, rationale and objectives. This doesn’t mean that the modifications are unimportant. It simply emphasises that by implementing them, it does not compromise the principles on which mediation is based. The modifications take into account Aboriginal culture, circumstances and practical requirements.

The first modification is at intake. In the CJC (NSW) service, the intake of the parties is performed by an Intake Officer, normally over the telephone. The mediators do not meet or know anything about the dispute or parties until the actual mediation session. In the AADRS model, the ADR practitioners go to the community and meet with the parties of the dispute. This modification is far more culturally appropriate and practical. The majority of community people do not have a telephone, suffer transport difficulties, there is usually a large number of people involved and government offices are not inductive to the comfort of Aboriginal people. Intake in the AADRS places more responsibility onto referrers and the initial parties. This includes assisting the ADR practitioner to identify all the key people to the dispute and convincing them that their endorsement of the AADR is essential and must play a part in negotiating the ground rules and the venue for the process with the other key players.

The second important modification is the venue. In NSW, the parties come to the service, whereas in WA, the AADR practitioners go to the parties. In WA the venue is negotiated at intake and must be acceptable to all parties. It is more than likely to be held outdoors and
in or close to the community. In NSW the location is usually more convenient to the ADR practitioners than the parties they are trying to assist.

The third modification and possibly the most important is the private sessions or caucus (Step 8 of the 12 Step model—See Appendix D). In NSW this occurs within the mediation session. In the AADRS model this occurs either at the time of intake or between intake and the actual ADR session. These meetings can take days and maybe numerous (almost shuttle mediation) until the parties are ready to meet. The philosophy of 'being prepared' usually ensures a successful resolution to the dispute.

If mediation is the process chosen for the actual ADR session, the process adapted from the CJC (NSW) model of mediation includes the grouping of the actual '12 Steps' process, into a four broad stage process:

1. Story Telling/Summarising Issues;
2. Agenda/Issues to Negotiate;
3. Explore/Discuss Items on Agenda;
4. Write Up Agreements and Debrief.

Basically the model within the actual session is similar to CJC (NSW), but in a much more informal and adaptable style. Introductions are performed in a culturally appropriate manner, acceptance of the ADR practitioner's authority to mediate and the ground rules are emphasised and agreed to, well before the session commences. Issues are written straight onto butchers paper or board, so everyone can see them.

The final and another extremely important modification is the 'follow-up' to the AADR. Whether or not the dispute is resolved at the session, ADR practitioners will return to the
community over the following few months at least once. If all is progressing as planned this contact may then become a telephone call to the referrer or parties every few months. Unlike CJC (NSW) and other ADR organisations, a signed agreement at the ADR session, does not equate to success. The AADRS require a long-lasting resolution to the dispute, for it to be deemed successful.

The Service

The AADRS is unique to Australia because it provides not only a separate ADR service for Aboriginal people but also includes a range of services and benefits to them, which include:

- Dependent autonomy, in that it is not attached to a mainstream ADR service, however is dependent on funding from a government body;
- Awareness that Aboriginal people of WA will not use other ADR services due to the historical, structural, cultural and interpersonal reasons (Chadbourne, 1992);
- A recognition of special needs, cultural issues and cultural differences between different Aboriginal groups;
- Utilisation of conciliation and other ADR processes, when mediation is not appropriate;
- Provision of information in appropriate ways on a variety of matters;
- Provision of an advocacy service for Aboriginal clients who encounter difficulties with government agencies;
- Provision of training workshops on conflict management and cultural awareness to other government agencies; and
- Provision of training to community based groups and individuals.
Conclusions

The mandate of the AADRDP (known as a Project, not Service then) was aimed at identifying and training a network of local Aboriginal people to be used as mediators to help resolve some of the inter-family feuding in the Aboriginal communities of WA. From the outset, the over-extended scope of the project and the inability to attain the mandate was clear:

- Possibly because the program had been intrinsic with the reputations of the community group (as individuals) and then later of Mr Thorne, rather than the reputation of the process;
- Even if the program remained within the South West area of WA, (which it didn’t) with only one person to manage, coordinate and mediate over the entire area, it was ‘mission impossible’. This situation remained from 1991 until in 1995 when two more ADR Practitioner positions were established. Even with these filled and after the two new team members were trained and experienced sufficiently to ‘go solo’, there would be little chance that they could successfully cover all disputes requiring attention within the whole of WA.
- Due to the fact that often, local mediators would be related to one side of the feud, the objective of training local mediators was, for the mandate, not successful.

That is not to say that the service AADRS provides is not successful—far from it. The training of local community members is always beneficial to that community, even if they do not ‘mediate’ the major disputes. These locally trained people have also become referrers, advocates and local assistants to the members of the service team. The evaluations proved that there was more conciliation then mediation processes completed. The 1997 ‘Functional Review’, completed in February of that year was clear in its claim that the service team were not receiving sufficient support from Aboriginal Policy and Service and Ministry of Justice.
management or that there was the due value placed on the service. A 'Review of the Organisation and Structure of the Program' was completed in October of the same year by the same authors, Sue Booth and Leela De Mel, who stated in this latter report:

"This is a large agenda which needs to be considered against the escalating level of demand for the Service's involvement. Some additional resources are required to secure the program and to advance the needed actions." (p15) and "Recognise staff as the most important resource of the Service and ensure their needs including professional development are met." (p5)
4.2 The Aboriginal and Torres Strait Islander Mediation Project, Queensland:

The Community Justice Program (CJP) commenced on July 5th, 1990, which was the mainstream Alternative Dispute Resolution Division of the Queensland Department of Justice and Attorney General’s Department. In 1995 this was changed to the ‘Alternative Dispute Resolution Branch’. The Program was under the provisions of the Dispute Resolution Centres Act 1990. (O'Donnell, 1995)

**History of the Program**

Before this program opened representatives of the Aboriginal Coordinating Council in Cairns approached officials seeking assistance in developing a mediation service for Aboriginal communities. Special funding of $180,000 was made available by the Attorney General in 1991 for a two year pilot ‘Aboriginal Mediation Project’ to develop an Aboriginal mediation initiative. A Community Justice Project Officer with the Aboriginal Coordinating Council, Daisy Caltabiano, worked closely with CJP on the mediation initiative for Aboriginal communities. (Nolan, 1993)

The first Project Officer, Joan Welsh, was appointed temporarily to undertake consultations with communities and relevant agencies to research the issue and prepare a proposal. In March 1992, Alex Ackfun was appointed to the position and focussed on Deed of Grant in Trust (DOGIT) communities. (ibid)

Alex consulted with several DOGIT communities in 1992, with the view of piloting a mediation service in one of them. One of the principles of this task was the commitment to skilling local people to mediate in disputes within their own community. The community selected was Hopevale, located approximately 350kms north of Cairns and Alex and CJP
Training Officer, Patricia Hovey undertook the training of a group of community members in late 1992. The evaluation of this activity by Sauve (1996) was referred to and quoted from, in Chapter 2 of this thesis. (ibid)

Early in 1991 CJP received a request from the people of DOGIT community, Doomadgee who were experiencing conflict about alcohol violence in the community. Three mediators flew to Doomadgee and spent over a week there. One of the strategies of the 'Aboriginal Mediation Project' was to produce a video on the CJP mediation process to raise awareness within Aboriginal communities. In July 1992 this was achieved in part at Doomadgee, by utilising the people of that community in re-enacting components of the process, as they had been involved originally. The video, 'Talk About It' with Kevin Carmody writing and singing the title song was launched as a promotion tool. (O'Donnell, 1995)

In 1993 Alex left the Department and Kurt Noble was appointed as the new Project Officer. Kurt worked tirelessly to achieve separate training classes for Aboriginal Mediators, he also instigated cultural awareness sessions for non-Aboriginal Mediators and even took the classes to other Departments. His role appears to have been more one of a trainer and Coordinator of training then one of a Coordinator of a separate Aboriginal and Torres Strait Mediation Project. In 1994-95 a series of promotional material was launched, incorporating both Aboriginal and Torres Strait Islander designs. As part of tasks of the position, he presented at several mediation conferences, lectured at colleges and Universities and visited Aboriginal communities to assist with local Community Justice initiatives. He also initiated the training for other Departments involved in Native Title. (Annual Report, 1994-95 & 1995-6) Kurt resigned at the beginning of 1999 to take up a position of Coordinator for Youth Conferencing in Cairns. (Noble, 1999)
The Process Utilised

The process utilised is the generic ‘12 Step Mediation Process’. CJP adapted and modelled the Queensland service from NSW CJC’s model. See Appendix D.

The Service

The aims of the project are:

- To make mediation and other ADR services more accessible to Aboriginal and Torres Strait Islander people;
- To work with Aboriginal and Torres Strait Islander communities to develop culturally appropriate ADR processes;
- To assist in training Aboriginal mediators, both as community-based and generalist mediators for the CJP;
- To provide cultural awareness workshops internally and externally of the Department;
- To provide training to agencies involved in Native Title matters.

Conclusions

Reduced funding and budget cutting is a yearly nightmare for most government departments and the Department of Justice and Attorney General of Queensland are no exception. Cost cutting is evident in Annual Reports from this service. In the years up until 1997-8, the Alternative Dispute Resolution Branch had its own Annual Report booklet of approximately 35 pages, with the Aboriginal and Torres Strait Islander Mediation Project being allocated 1 to 1 ½ pages of that booklet to report the years progress. In the 1997-8 year, the Branch’s Annual Report was a part of the Department of Justice’s Annual Report and were allocated a summary three pages, in which the project was mentioned thus:
"A proposal is currently being implemented to improve access by Aboriginal and Torres Strait Islander people and communities to mediation and training services. This will involve improving the Branch's ability to respond to requests from remote regions of the State to provide training to Aboriginal and Torres Strait Islander people and to assist them to establish their own ADR mechanisms. A 'special initiative' grant was obtained to help with funding. Further 'Local Justice Groups' have been established in Aboriginal communities through the Office of Aboriginal and Torres Strait Islander Affairs, enabling people there to address their greatest concerns regarding local justice management issues."

From very enthusiastic beginnings with some truly innovative strategies, eager and extremely skilled people to establish this service, it has slipped to a criterion well below the vision held by those who initiated and established the project. The proposal in the above quote, for further training in remote regions and isolated communities is valuable and with the increasing of 'Local Justice Groups' in these communities is excellent. It accomplishes the aims of the project for these communities. However, where does that leave all the Aboriginal communities situated in towns, regional and coastal cities where Local Justice Groups cannot be established? Although Aboriginal mediators are being trained and utilised as ADR practitioners, because they are attached to generalist regionalised panels of mediators, it is at the propensity of the generalist Coordinator whether they are actually utilised in Aboriginal disputes, if indeed any are referred to the service. Although there were 20 such disputes recorded by the service for the year of 1995-96 and 8 in 1994-5. The 1995-96 Annual report, in a table, illustrates the potential cost to government and non-government agencies in disputes with no ADR intervention. This table gives an average of mediation frequency for Aboriginal communities of 5 per year. (See Appendix G)
Chapter Five: The Findings

5.0 Introduction:

The preceding chapter gave an overview of the AADRS of WA and the Aboriginal and Torres Strait Islander Mediation Project of Queensland. In this chapter, the researcher gives the detailed findings of the literature review and fieldwork which includes perceptions of the two above programs from the participants' who have experienced AADR within these services.

There have been very few attempts to gain a detailed knowledge from client feedback of ADR services in Australia. The costs of disputes to Aboriginal communities financially, physically and emotionally could not be gauged, however it could be assumed that they are unmeasurable. The costs to governments of State was ‘guesstimated’ by the Qld ADR Branch in the 1995-96 Annual Report puts the figure in the vicinity of $100,000 per dispute. The AADRS Review in 1997 averages the cost of ADR per dispute at approximately $5,000—air travel costs was the largest component of this, due to the distances travelled in WA. Nevertheless, the savings to the State are large, if these figures are even ‘around’ the exact figures.

5.1 The importance of history, relations, conditions and differences in values and beliefs impacting on contemporary issues for Aboriginal people, including crime rates, violence and hostilities currently occurring in NSW Aboriginal communities:

From the Literature:

1. The effects of invasion, colonisation, racism, violence, dispossession, Aboriginal perceptions of historical and contemporary non-Aboriginal control, frustration and opposing value systems with the Criminal Justice System must be explained in order to

2. The issues above were reviewed in relation to the psychological phenomena of ‘internalising’ (inferior complexes, frustration, depression etc) and ‘externalising’ (‘acting out’, fighting, committing crimes etc) in looking at the violence, crime rates and problems that are associated with conflict. (Dollard, 1939; Hunter, 1996a & 1998a; Syme, 1997)

3. The issues of violence, crime rates and problems that are associated with conflict which have long been a concern of Aboriginal communities and the Police Services and other relevant agencies that serve them. (Creamer, 1988; Cunneen, 1990, 1992; Chappell et al, 1991; Vernon & McKillop, 1991; Brock, 1993; Bessant et al, 1995; Chappell & Egger, 1995; Cunneen & Libesman, 1995; Lofgren, 1995; Marshall, 1996; Evans, 1999; Reynolds; Tatz, 1999)

4. Few mechanisms, which reflect the special cultural, legal and socioeconomic characteristics of Aboriginal communities have been developed to date that, have had any significant impact. (ibid)

5. There must be a recognition of the distinctive values of Aboriginal cultures by non-Aboriginal people and organisations, in creating AADR. (Nolan, 1993; Rintoul, 1993; Thorne, 1993; Dodson, 1994; Noble, 1995; O'Donnell, 1995; Lachowicz, 1997)
From the participants—WA:

When participants spoke of their experiences, there was usually very serious conflict with the dispute and high praise for the AADRS team:

“This whole community was hurtin’ in a big way. Payback happen’ all the time. That one young lad dead, others injured—people getten’ sick—Nyoongar way, you know. Cars and houses being burnt. It was bad, real bad for everyone. Then them young fellas come [from AADRS], stayed for over a week the first time, went away, come back again—talken’, talken’ to everyone. Settled us down. Got us back to thinking—hadn’t bin much of that round here for a while, people just reacting, not thinking things through. They were cultural—knew the right way, nice lads too, real calm. Took a long time, but by an’ by, had a big meeten’ just over there [pointing to the place]. Good place, you know sacred—them lads knew—they sure know the right ways. Bloody police wasn’t helpen’, neither was them bloody aides [Aboriginal Police Liaison Officers] walken’ round in them bloody police uniforms with guns—should be coppers, themselves and be done with it.” [Wl1]

“Wadjelas couldn’t help, tried every which-way. We was totally fumped, even the real ole ones couldn’t help—don’t know what would have happened if those fellas from Perth [AADRS team] didn’t come—can’t speak highly enough of ‘em. They’re experts, they’re cultural—excellent, real skilled.” [WA4]

From the participants—Qld:

All participants expressed how important cultural appropriateness is in intervention programs and specified that the disputes had resulted in violent crimes:

“....Then that Murri lad [Kurt Noble, Aboriginal Project Officer] came—he knew the right ways—pulled us all together. Made everybody think real hard about what’d bin happin’. All the violence and pain agin ourselves. He did it old way—you know, cultural an all. By the time he left we was getting back on the right track.” [QK2]

“The Housos called ‘em—you know, all them houses was getten’ burnt and smashed up—no good for anyone. The young ones was runnin’ round mad-like, breaking up everything—just so frustrated, didn’t know which way was up. We had to get culture back—get ‘em all to stop runnin’ and sit down quiet before we could fix it.” [QU3]
5.2 Effects of Language and the Consequences on Communications:

From the literature:

1. The power of language and the consequences this has on communication has proved detrimental to Aboriginal people. This is clearly demonstrated when examining Standard English versus Aboriginal-English and the difficulties of specialised languages and jargon, e.g.—legal and medical languages. (Fesl, 1993; Walsh & Yallop, 1993; Yunupingu, 1993; Eades, 1995a, 1995b; Goldflam, 1995; Arthur, 1996; Cunneen, 1996;)

From the participants—WA:

The comments by participants in relation to language are revealing:

"They [AADRS team] knew straight way where we was comin' from—what we was sayin' and what we wes getten' at. We didn't have to explain, you know. Not like when you're talkin' with Wadjelas."[WC5]

"Thatfella [AADRS team member] was straight up, we knew what he was sayin' he knew what we was sayin'. No need for a lot of words."[WT1]

From the participants—Qld:

In this study, there is evidence that when ADR practitioners and/or parties are not bilingual—Standard English and Aboriginal English, the language barriers prevented any effective relationship to be formed:

"No good, no good—they didn’t hear what we was sayen’. We couldn’t follow them." [QS4]

"We was talken’ two different ways—different lingo, you know. What they was saying made no sense and they were looking at us like we was from Mars or somethin."[QK2]
5.3 Characteristics of NSW Aboriginal Communities:

From the Literature:

The extent and significance of specific characteristics in different Aboriginal communities within NSW, eg—Spirituality as the essence of culture; the significance of traditional method of authority over behaviour; the significance of the community over the individual; the effect of Aboriginal impressions of historical non-Aboriginal control; and Aboriginal frustration with the Criminal Justice System, varies from community to community. However generally, there is still a significant body of cultural practice and understanding in existence even where colonisation has been in existence for over 200 years. (Langton, 1981; Miller, 1985; Creamer, 1988; Keen, 1988; Liberman, 1990; Swain, 1991; Rintoul, 1993; ABS, 1994; Horton, 1994; Blows, 1995; Lofgren, 1995; King, 1996; Ritter, 1996; Lachowicz 1997; Charlesworth, 1998)

From the participants—WA:

This study indicates that Aboriginal culture is very evident and extremely important. It also attests to Aboriginal people being very frustrated with the Criminal Justice System and the controls legislated over them. From the participants remarks in all communities visited by the researcher this was apparent:

"We was all gitten wayarn with them coppers, always here, always chargin’ someone—goin’ t court, no one listin’ to our side. Make y’ karrang—y’ know. Lads in jail f’nuthin. Couldn’t git no one to see. Same as always long way back. Always bossin’ us. Still comin’ to take the kids, y’know. Reckon wes no good—they don’ know. Reckon we can’t speak proper, but they can’t ours, either. Our language and culture real important, but they don’t care." [WC3]

"Wadjelas want us to learn their way, but don’t bother with ours—everything has to be their way—but they don’t even want to get to know us. We grew up thinkin’ our way must be wrong—from them. Takes until we getter older to realise our tradition is very important, the kids have gotta’ learn from us too." [WT4]
From the participants—Qld:

Participants’ own experiences were incorporated from a cultural perspective:

“A lot of learnen’ went on. From then on—any problems—we have meetings—talken’ instead of fighten’. All listenin’ to the Elders now—proper way. It wouldn’t have happened white fellas way—no way. They got different ways, different things important to them.” [QU2]

“Don’t think we ever really lost the culture here, some just misplace it—get on the wrong track. Everyone still speaks in language. It’s just the Elders still do us. I’m a real bad drunk, so is some of the others—no good putting bad drunks together, there is always a blue. Some of them got real bad—hurtin’ each other, smashing things up. Anyways, that grog takes y’ off on another track—didn’t know what we ws doin’ half the time. Y’ forget about the culture, y’ obligations and the sharing, forget to care, forget the ole laws. Some of them still out there, hangin’ out and hangin’ on—just. Some have died. It’s thanks to the ole’ fellas up there that I’m back—off the grog too—don’t drink at all now. Without them I’d be sunk by now, for sure. I can tell you about it, what happened—I can see that—but y’ can’t write it down, OK.” [QR2]

5.4 Show the relevance/irrelevance of ‘western’ models of dispute resolution in designing an appropriate Aboriginal Dispute Resolution Program for NSW:

From the literature:

1. There are significant differences between ‘western’ models of dispute resolution, eg.---

Conciliation, Mediation and Facilitation, as well as differences within each of the categories. (Tillett, 1991; Astor & Chinkin, 1992; Fisher, Ury & Patton, 1994; Charlton & Dewdney, 1995; Moore, 1996) The importance of these differences are the possible opportunities available to adapt and hybridise these different models to more suitable processes for Aboriginal communities; (Tillett, 1991; Astor & Chinkin, 1992; Nolan, 1993; O’Donnell, 1995) Whilst ADR processes are being initiated, Aboriginal traditional conflict management processes should not be discredited or dismantled. It is important that these initiatives do not cause the loss of ‘face’ or influence by Elders. (O’Donnell, 1995)
2. The differences between ‘western’ and Aboriginal dispute resolution are primarily culturally based. eg—Western processes are primarily concerned with privacy, only involve those in dispute and a ‘neutral’ Facilitator or Mediator, while traditional Aboriginal dispute resolution is more concerned about a learning opportunity and involve the wider community, and Elders who participate as reputable Conciliators. (Williams, 1987; Ackfun, 1993; Nolan, 1993; Behrendt, 1995; Grose 1995; O’Donnell, 1995; Sauve, 1996; Lachowicz, 1997;)

3. The Aboriginal perspectives to dispute resolution demonstrate that ‘healing’ for the whole community, lessons learnt from the event, the ability for cultural appropriateness, a familiar environment and a fair reputable practitioner is far more appropriate then ‘a settlement’, ‘confidentiality’, following ‘procedures’, a ‘government office’ and ‘neutrality’. (Marshall, 1989; Nolan, 1993; Thorne,1993; O’Donnell, 1995)

4. The ‘western’ models usually arrive at a mutual (sometimes contractual) agreement on future preventive action and possible restitution of damages as the successful outcome while traditional Aboriginal dispute resolution emphasises repairing relationships and spirit as the outcome. (Williams, 1987; Cruickshank, 1991; Astor & Chinkin, 1992; Kritek, 1994; Sauve, 1996; Community Justice Centres(NSW), 1997)

5. ‘Western’ Alternative Dispute Resolution uses the law and damages as guiding principles in defining the problems and settlement, while traditional Aboriginal dispute resolution uses Lore and Spirituality in interpreting the conflict, imbalance and workable solutions. (Williams, 1987; Cunneen, 1992; Hazlehurst, 1988 & 1994; Thorne, 1993; Sauve, 1996; Lachowicz, 1997)
6. 'Western' models emphasise formal written agreements while traditional Aboriginal practice accepts a greater degree of informal or cultural controls. (Tillett, 1991; Astor & Chinkin, 1992; Nolan, 1993; Thorne, 1993; Fisher, Ury & Patton, 1994; Behrendt, 1995; Charlton & Dewdney, 1995; Moore, 1996; Lachowicz, 1997)

From the participants—WA:

Participants in this study have a confused picture of why some of the principles of western ADR are so important—eg neutrality:

“The mediators can’t be ‘neutral’—that’s not natural. You get to be known real quick in Aboriginal circles and even if you are not related to someone in the dispute—you’ll certainly know someone, or they’ll know you. Because of family responsibilities and relationships—that is just the way it is. Aboriginal people don’t want the mediator to be neutral—they need to know you see their side of things, at least understand their pain. Aboriginal people want mediators with the s the ability to be fair minded, have the reputation of being honest and just. But not detached because Aboriginals see feuding as being a shared experience. Neutrality in relation to feuding is something you won’t get Aboriginal people to understand or accept.” [WX1]

“This bloke [AADRS member] was excellent. None of this stuffy shirt business. He can pull up a stump at my campfire any time—and that’s what he jist about did—come out and sat round here in the dirt with us—explained the whole show. None of this bullshit—beg y pardon—garbage that y’ have to go thro’ with those other gov’ment fellas. We was in a terrible state—the whole community was rowing, one way or another an’ we sure didn’t need another wadjela yabberin’ at us—don’t know what they are sayin’ ‘alf the time. We sure didn’t need someone standin’ on the sideline—we needed someone to git in with us and work it out.” [WA1]

From the participants—Qld:

Typical comments from participants show the irrelevance to them of the generalists’ priorities:

“The Police called this mob in—first two that come—they were white fellas. They couldn’t see the important things. The community needed
healing, everyone was hurting an’ here was the kakkals--just wanted to keep yabbering at us about not swearing and bein’ polite. We was way past that.” [QR1]

“We all had to go down to the court house—the bloody court house, what a joke—that wasn’t the worst, tho’—these two kids turn up—honest, only old as our L..., honest—so here we was, two big families, Elders among them too an’ supposed to be sittin’ up to two banya—jist like that—no respect—no shame either. Poor little things—knew no betta’ o’course—but it didn’t help us one bit—the D....[other family] got real upset—wes was too—but ended up they walked out.” [QK1]

*The ‘Western’ Criteria for Successful ADR and the Significance to AADR:*

From the literature:

The criteria that is being utilised currently to authenticate ‘successful’ mediations in ‘Western’ programs vary from the conflicting parties ‘keeping the appointment’ for the mediation session to a written agreement. (Astor & Chinkin, 1992;) This criterion does not allow the verification of a lasting healing of the community.

The need for an Aboriginal DR system in NSW was reported in 1991 however recommendations have not been implemented. The need for these services has not diminished over time. (National Aboriginal and Torres Strait Islander Community Education Project, 1991; Atkinson, 1997; Lachowicz, 1997)

From the Participants—WA:

In this study, a the majority of participants commented similarly to:

“He [AADRS member] came back 3 times ‘fore it was all fixed up—took months, but look now—worth it, una?” [WIS]

“Wasn’t ready for that when they first come—some wouldn’t talk at all. But they come round an’ back they were. Spent a few days here, that’s when we had the first big meetin. Went away an’ back agin—waited for us, like. And real calm about it. When it was all straightened cut an’ we
was goin’ along, but real shaky—back they come agin—knew jist when to turn up too.” [WC1]

From the Participants—Qld:

However, participants in Qld, perceived that they had been ‘dumped’:

“No one came back to check or help—they said to call if we wanted another go, like. What was the use. They only wanted a few people there—no good. Everyone was been effected—everyone should have been involved—they [the mediators] didn’t understand—wadjeens, poor things, buggered before they started” [QS3]

“Never heard from them again—sink or swim, we was on our own—here for a couple of hours is al, then gone—nothing else.” [QS5]

5.5 Why the Governments and Aboriginal peoples of Queensland and Western Australia have established and maintained the Aboriginal Dispute Resolution Programs:

From the Literature:

Both programs were initiated after Aboriginal groups had lobbied government agencies concerning the need for such a project. In WA the group actually set about organising themselves as the establishers of the program and lobbied for funding, whilst, in Queensland the group turned their attention on the generalist ADR program that was itself in the throws of establishment.

“For the Aboriginal community this means promoting the type of cultural development that makes ADR a realistic option for settling internal conflicts. For non-Aboriginals it means addressing the systemic roots of Aboriginal frustration and anger that underpin inter-family feuds, and supporting programs which enable Aboriginal people to live not only in harmony with the wider community but also with themselves” (Chadbourne, 1992 page 86)
From the Participants—WA:

"Arrests are a frequent outcome and lots of property damage. With payback, it gets worse each time—there's been a fair few deaths involved and permanent or bad injuries are common. That first group were real battlers. Had to be. But they got someone to listen and got the whole thing started—when everyone saw how good it was, it was pretty hard to justify closing it. It is still too small, can't keep up with all the need for it but its an excellent start. The blackfella wheel turns pretty slowly where the government is concerned—still think of us as second class." [WX1]

"Don't know how those ole ones got 'em to fund it first up, but its bloody good they did—they've certainly stopped a lot of blood bein' spilled." [WT5]

From the Participants—Qld:

"It would be a real cost saver, if it were run properly. Aboriginal communities in towns and cities all over Queensland are screaming for help and aren't getting heard. The remote or separate communities have their Justice Groups that seem to be working real well, but the others have got nothing—this is just lip service from the Government—we are just generalist mediators and hardly ever get called to Aboriginal mediations—they tell the people they couldn't get any. Sometimes they even convince them the gubbahs are better—you know community blackfellas—they just go along, don't want to make a fuss with the whitefellas. We hear about it, but what can we do. You can never get anyone in that bloody office in Brisbane." [QX5]

5.6 Describe the strengths and weaknesses of these two programs and identify, from the experiences of these two programs, how this information could be incorporated, to create a better program for NSW.

From the Literature—WA:

Aboriginal service providers delivering a service to Aboriginal people need the autonomy and mobility to take the service to the people. One of the weaknesses of the WA program is the centralised position of the one office. As it expands it requires regionalising into approximately five centres. For practical and monetary purposes an inclusive centralised structure in such a large State is capricious. The other weakness is the small number of staff to cover such a large area. It is a matter of limited resources being spread too thinly. The
team members have had to spend most of their time away from their homes and family. There is a very limited ability to debrief properly and they virtually ran from one dispute to the next. Despite these shortcomings Booth & De Mel, 1997 state:

"This is a small program which has had significant success in addressing a serious and complex problem and in providing a cost efficient prevention and diversion strategy for reducing Aboriginal contact with the criminal justice system. The program's reputation amongst government and community agencies and Aboriginal people enhances the Ministry's standing in relation to efforts to address the over-representation of Aboriginal people in the criminal justice system." (page 15)

"The AADRS is unique. It is the only program of its kind in Australia by virtue of the fact that it provides a separate ADR service for Aboriginal people...(page 83) and The lessons learned by the AADRS could also be beneficial at the national level." (Chadbourne, 1992 page 84)

Statistics from 1995 and 1996 AADRS, WA. from the ‘Functional Review’ in 1997, shows the following:

*Please note—in both years various techniques are used by this Service to assist Aboriginal people to resolve conflict, including mediation, shuttle mediation, conciliation, facilitation and negotiation.

In 1995 (In this period there was only one ADR practitioner working):

- There is no statistical data on how many files were opened.
- 27 cases dispute interventions with AADRS (several sessions take place per intervention)
- 13 disputes were resolved within this period. There were ongoing negotiations in 12 disputes and 2 were not resolved. (48% resolved)
- Contact is kept with parties and referrer for at least 12 months and can be ongoing.
In 1996 (There were three ADR practitioners working, however, as one was non-Aboriginal, he could only co-work with one of the other two team members):

- There is no statistical data on how many files were opened.
- 63 dispute interventions with AADRS (several sessions take place per intervention).
- 31 disputes were resolved within this period. There were ongoing negotiations in 24 disputes. 8 were not resolved. (49% resolved)
- Contact is kept with parties and referrer for at least 12 months and can be ongoing.

![AADRS Interventions and Resolutions 1995 & 1996](image)

Table One.
From the Literature—Qld:

"To what extent ADR as practiced by the CJP will be adapted to indigenous needs and process is yet to be seen. Also yet to be determined is the valuation to be placed on such adaptation by our Program and its political masters. Will adaptations which deviate in significant respects from the ideal of mediation we hold up, be regarded as a measure of success or of failure of the Aboriginal mediation initiative?" (Nolan, 1993 page 12)

Statistics from the 1994-95 and the 1995-6 Alternative Dispute Resolution (Division)Branch Annual Reports show the following:

In 1994-5:

- 774 mediation and/or facilitation sessions took place in CJP from the 2025 files opened. (38.2%)
- 689 agreements were reached from these sessions. (89%)
- 8 mediations and/or facilitations were with Aboriginal clients from the 774 mediations and/or facilitation sessions conducted within CJP. (1%)
- 8 mediation and/or facilitation sessions were Aboriginal clients from the 172 files opened. (4.65%)
- 7 agreements were reached from these sessions. (89%)
- A questionnaire was sent to parties of mediation and/or facilitation sessions 3 months later. 436 responses were received. (56.33%)

In 1995-6:

- 834 mediation and/or facilitation sessions took place in CJP from the 2,165 files opened. (38.25%)
- 718 agreements were reached from these sessions. (86%)
- 20 mediations and/or facilitation were with Aboriginal clients from the 834 mediations and/or facilitation sessions conducted within CJP. (2.4%)
• 20 mediations and/or facilitation sessions were Aboriginal clients from the
267 files opened. (7.5%) 
• 17 agreements were reached from these sessions. (86%) 
• A questionnaire was sent to parties of mediation and/or facilitation sessions
3 months later. 524 responses were received. (62.8%)

Proportion of files opened that led to a mediation/facilitation session. 
CJP

<table>
<thead>
<tr>
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<th>1994-5</th>
<th>1995-6</th>
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<tbody>
<tr>
<td>Aboriginal</td>
<td>4.7%</td>
<td>7.50%</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
<td>41.3%</td>
<td>42.90%</td>
</tr>
</tbody>
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Table Two

From the Participants—WA:

Key Informants in this study believed that the Aboriginality of the ADR practitioners, the
 cultural appropriateness and the adaptations of the process were the service’s strength. An
example of this:

"Even when we go into other country—you know, Wongi or Yammagee or
right up north, we are still black fellas, we respect their ways and they know
that. Besides, they’ve put up with the same racism and discrimination from
white fellas as we have. That pulls us together, gives us an understanding of
where the other is coming from. The most important component of the whole process is all the pre-session work. Blackfellas won't come into a session, nor would it work, unless they know what's on the table, what's going to happen and what's to be expected. The bulk of the work is done at this time. It's about talking to the Elders, talking to the leaders in each family and talking to all of the parties. Deciding what process is appropriate. Most Noongar disputes involves a big mob of people. They are usually complex and have a large number of issues. This pre-session work is not only about sorting out what belongs to who and who is involved, it's about talking to all those people, convincing them that this is the way to go. The ground rules are set then, too—everyone has a say and they have time to think about it and talk it over with the family. Sometimes it takes weeks. It is still very important for the two groups to come together and resolve the problems but if the pre-session work is done thoroughly, we usually get good long-lasting resolution. It is about healing the whole community—it might take a while but in the big picture it is well worth the trouble. We've got communities working together that had been fighting amongst themselves for years. They are productive now and healthier.” [WX1]

From the Participants—Old:

Key informants perceptions of service includes:

“The main thrust of formal response has been to extend the mainstream ADR service to Aboriginal communities. This is an admirable sentiment but far from ensuring equity of access to such a service, or more importantly, cultural appropriateness in its delivery. In trying to lessen the burden of historical and continuing deprivations that have contributed to undermining Aboriginal social and emotional wellbeing, such approaches are insufficient but clearly important.” [QX2]

“There is nothing else. They [Aboriginal communities] are better off with something rather than nothing. It works sometimes, especially when they get Murri mediators who will adapt it to suit the community involved.” [QX3]

5.7 Field Research

Fieldwork data from Aboriginal participants identified a number of common key values and attitudes to ADR. All participants:

- believe that the effects of colonisation, dispossession, racism and racial discrimination, the forced social change undermining traditional culture, loss of
family and social disciplines are linked to the violence, crime rates and social deprivation of contemporary life—e.g. unemployment, poverty, poor education, poor housing, poor health, decreased life expectancy, alcohol/drug abuse and the high suicide rates;

- are aware that there is a high violence and crime rate, generally, among Aboriginal peoples;
- believe that the social deprivation, effects of historical and prevailing racism and the devaluing of culture cause frustration and hostility from which the aggression, violence and criminal activities emanate;
- feel that language barriers prevents meaningful dialogue with a high percentage of non-Aboriginal people;
- are adamant that Aboriginal cultures are very much part of participants’ and their families’ lives;
- believe there is a need for appropriate AADR services;
- have strong positive views on the importance of Elder and community involvement in ADR processes;
- felt that the negotiated venue set in appropriate familiar environment was very important;
- liken the principles of ADR to ‘traditional way’, ‘old ways’ and ‘right way’;

Significant findings include:

- ADR being able to be effectively adapted to comply with local Aboriginal needs;
- the nature of ADR participants experiences with ADR and strategies for improvement;
- that participants are more positive towards Aboriginal ADR practitioners;
- that participants want to participate in ADR, but are alienated by organisations;
that Aboriginal ADR practitioners have a strong sense of mission, and that their attitude to ADR has been strongly influenced by Aboriginal culture and traditions, as well as 'western' models of ADR and hence view AADR from a very adaptive perspective.

Other findings are that Aboriginal participants want, and AADR practitioners advocate, a relationship based on reputable fairness, edification and justice; and the identification of internal and external factors that act as barriers to non-Aboriginal ADR practitioners being effective with Aboriginal clients in ADR.

Analysis of field data also revealed that Aboriginal participants and communities who were involved in the study are strongly pro-AADR and pro-AADR learning. However, Qld participants also hold strong views in support of the need for urgent improvement in the AADR service within their State. In particular, their views centred on the need for a 'real' AADR service and on the need for flexibility, sensitivity and consultative processes in AADR policy making and planning. The study shows that Aboriginal participants want AADR as a service, but Qld participants have not had positive experiences with ADR and its practitioners. Qld participants ranked cultural inappropriateness, language barriers and negative relationships with ADR practitioners as their main reasons for unresolved disputes after ADR.

Typical of their comments in respect to what more AADR services could do were:

"get Aboriginal ADR practitioners";
"need ADR practitioners who can understand us and we can understand them more";
"have to have ADR practitioners who are fair",
"should have ADR practitioners who can explain what they want before we have to do it";

which interestingly, were in the majority of cases about the ADR practitioners.
WA participants highly praised the AADRS service and the AADR practitioners. They hold strong views that the AADRS is an important and necessary service to Aboriginal communities and believe that it should only grow and possibly regionalise. The participants stated that in particular they believed the Aboriginality of the AADR practitioners, the ability for the process to be culturally appropriate and the fact that the service actually came to the community, rather than them having to go to it, were the main reasons it was so successful. They were also adamant that they had learnt a great deal from the experience. This comment included two participants where the dispute had not been resolved, to date.

5.8 Conclusions:

The project produced a range of knowledge on the history of colonisation and its effects, the causes of violence, crime rates and associated problems within Aboriginal communities and ADR process findings in the field of AADR.

All participants in WA (even in the two unresolved disputes) believe that they had:

(a) formed a quality relationship with the ADR practitioner;
(b) encountered cultural appropriateness;
(c) learned a great deal from the experience;
(d) believed that the experience benefited their communities;
(e) achieved an ability to continue principles learnt from the experience;
(f) believed that there were genuine opportunities for consultation;
(g) considered it essential that ADR practitioners understand where Aboriginal participants ‘are coming from’.
However, similar data revealed that the majority of participants from Qld concluded:

(a) that gaps between rhetoric in the organisational documentation and the reality of the Aboriginal and Torres Strait Mediation Service is large;

(b) that participant attitude to ADR practitioners is not as positive;

(c) the whole experience was culturally inappropriate, ineffective and in some cases, worsened the level of the dispute.

It is concluded, there is an urgent need for quality leadership to ensure AADR services are effective for Aboriginal participants, and that AADR services are in powerful positions to progress the lessening of the over-representation of Aboriginal people in the criminal justice system.
Chapter 6: Discussions

5.0 The Researcher’s Progression, Reflections and Dilemmas Encountered:

Completing the diverse and varied areas of research within the review to answer the research question was a culmination of eighteen months searching, mammoth readings and reviewing. It was a re-acquaintance with some of the materials found. There was the serendipity of finding other AADR practitioners writing very similar concerns as were already in my lecture notes and handouts for students of ADR: “Aboriginal Perspective of ADR: Justice, Fairness and Learning Vs Voluntariness, Neutrality and Confidentiality”. To find the major and underlying reasons to the research question meant searching enormously varied fields of study. Observing the research question from an Aboriginal perspective this was not only not surprising, it was essential to enable answering the question in a ‘wholistic’ manner.

The grounding gained from two of the research subjects undertaken in this degree, ‘Introduction to Research and Ethics’ and ‘Social Research’, both taught by lecturers from the School of Behavioural Sciences, made it uncomplicated in choosing the methodology, which was completed well before the field work planning was finalised. The ease in which the participants were recruited, the acceptance within communities, the desired data collected and further introductions made, indicated that all the planning and choices of methods were meritorious and expedient.

There were a few events that slightly changed the dynamics of the field research. The first was the realisation that although under the auspices of the University, I was also under the patronage of the Law Foundation. As such, I was very careful to explain to every participant that the data collected would not only be lodged with the University as part of a thesis, but
also be subject to a smaller, more in-depth research study to the Law Foundation and possibly other government agencies and publications.

Bearing this in mind, when I was faced with the predicament of spending several days in a community (all travel arrangements were pre-booked) where there had been no ADR take place and therefore no available participants to interview, I chose to do mini-interviews with community members, similar to the in-depth interviews, except of course, there was no ADR experience. This gave another source of material from a different perspective and formed another source of validity for much of the data from the in-depth interviews. This occurred once in both States, so there were four communities in which I found participants and one without, in both States.

The other quandary I encountered was the lack of Aboriginal ADR practitioners that could be found. In Queensland I located four and in Western Australia only one, so again feeling that I should not waste the opportunity, I found five other Aboriginal people (One in Qld and four in WA) for the fore mentioned reasons, all being AADR experts who generously agreed to be interviewed. This resulted in there being 40 Client Feedback Interviews, 5 Key Informant Interviews, 20 Community Member Abstract Interviews and 5 Expert Consultant Interviews.

I had completed the majority of the Introduction chapter and finalised the Literature Review and Methodology chapters prior to going on the research trip. For the other half of the thesis, although I was sure I would get lost in all the data at times and feel the pain of attempting to write about a long-term passion, I thought it should be fairly straight forward to write about the two programs, report the findings, discuss what was found and conclude with some logic
as to why ‘it was all so’. The main dissatisfaction of attempting to write the first three chapters, was endeavouring to relate the proposed study and describe what had been found in the literature from an Aboriginal perspective, whilst having to conform to the rigid academic protocols required by supervisors and the School of the University. This was compounded in the last four chapters because of the rush to complete the thesis. My instructions included harshly academic formalities that threatened an Aboriginal perspective on every page. This was further complicated by having to write in the third person. It is fairly tricky to write about my own culture, people, history, etc., without writing ‘my’ or ‘our’ and at the same time not disassociating myself completely from it, by saying ‘their’. Over the first twelve months of entering the Honours candidature I read numerous other theses to accustom myself with styles, layouts and structuring. I would have been far more comfortable with a less formal style in the manner of the majority of those I read.

An unavoidable and deviating error made was leaving such a short time (35 days) between returning from the fieldwork and the due date for the thesis, thus accounting for the rush in writing the last four chapters, especially in light of the fact that I had to continue employment through this period. This was compounded by the fact that there were no laptop computers available at the School to take on the field work and as the expense of buying or hiring one was beyond my means, I had to wait until my return home to transcribe the data to a computer. Without the timely advise from Dr Ian Hughes of the School of Behavioural Sciences, on how to organise field notes into lines of information as I proceeded this task would have been all but insurmountable.

The most difficult role in analysing the data and drawing out the findings was the incessant doubt that I may be missing important inferences within the data. As I suppose, with many
other writers of research findings, there was no resolution to this limitation and I simply had to diligently review the data more times then I remember and depend on my own determinations.

I am pleased with the results of the study, as the findings show the research question has been answered honestly and as detailed as is possible. The lessons learned from the AADRS and Aboriginal and Torres Strait Islander Mediation Project could be very beneficial in developing an AADR program for NSW.

This research is unique in that although other researchers within Australia have assessed AADR and ADR services and ADR processes, there has never been two programs compared via feedback from participants’ experiences with those services. Overall there has been very little research into participant satisfaction of AADR processes.

5.1 The Findings:

Most of the findings are self-explanatory, with the fieldwork findings verifying what was found in the literature with one notable exception. That the Aboriginal and Torres Strait Mediation Project actually purports to being a separate and distinct AADR is not borne out by the participant or key informant interviews.

It is significant that a number of Queensland participants, when speaking of the inappropriateness of the non-Aboriginal ADR practitioners, felt sorry for those practitioners. This indicates not only a generosity natural with Aboriginal people, but also that participants felt that they had to ‘go along’ just as they have always ‘gone along’ with what they are told to do by non-Aboriginals, especially if they are perceived to be in authority. It also indicates
that ADR practitioners acting contemptuously as though they are the ‘great white hope’ for the ‘poor’ blacks.

Another interesting detail that arose was the importance that participants’ perceptions of cultural appropriateness placed on the age of the ADR practitioner. Participants did not think it appropriate to have very young ADR practitioners due to the lack of respect to Elders this implied to them.

It is also significant that Aboriginal culture and Aboriginal Spirituality are very much part of all participants’ lives. The majority of participants could express and explain the connections of historical contrivances of lethal and brutal intrusion into Aboriginal family life and the continuing consequences for Aboriginal peoples, with all it’s pain, anger and aggression.

The challenges to the puritanical version of Australian history have now begun to confirm that Aboriginal historians are correct in their assertions. The white historians who have written Australian history from the stance of the ‘other side of the frontier’ have done much to prove the fabrication of the ‘orthodox’ or accepted stories. These challenges are the beginnings of alleviating some of the frustration, racism and ‘underling’ status Aboriginal people have had to endure for 200 years.

Aboriginal and non-Aboriginal Australians need to continue to be diligent about the extent and form of ethnocentric and discriminatory assumptions and actions in everyday and work practices. There is a need to learn to listen, and to negotiate across ‘difference’ in its entire vernacular. Fundamental to these efforts will be the challenge of changing attitudes to non-
discriminatory thinking. The regulation and changing of behaviours of racial discrimination by legislation does not guarantee the automatic shift in personal attitudes or unconscious thoughts.

Although cultural awareness programs are an excellent primary source to gain empathy and understanding of other cultures, numerous studies have shown that attitudes do not necessarily change with the completion of a ‘one or two day’ program. (Lachowicz, 1997; Kickett, 1999) Overt racially discriminatory behaviours should not be tolerated. However to change peoples’ personal attitudes and raise in their consciousness consideration and empathy for all peoples, punitive measures and condemnation is not the answer.

There is a particular emphasis needed on improving relations by recognising that past injustices continue to give rise to present injustices for Aboriginal people. Sharing history takes time and requires considerable effort from all involved. Most Australian adults will have been through a school system that taught little of Aboriginal people in history, or the roles in Aboriginal—non-Aboriginal shared history after invasion and colonisation. Gaining an understanding of how the ‘real’ Australian history has shaped relationships with, and attitudes between, Aboriginals and non-Aboriginals is the foundation to changing personal attitudes and forging a favourable, shared and equitable objective to progress.

An evaluation of the Access and Equity Strategy by the Office of Multicultural Affairs in the Department of Prime Minister and Cabinet in 1992, found that Aboriginals experienced negative or discriminatory treatment from government agencies far more often than migrants. According to the parliamentary inquiry report “Access and Equity: Rhetoric or
Reality?", the four principles underpinning the strategy for Aboriginal people, are equity, access, participation and equality.

The reality of these principles occurring in the foreseeable future may be fanciful, however an AADR service, where Aboriginal staff delivers a service to Aboriginal people, is one solution. Astor (1996) cites the capacity of not being obliged to involve the formal justice system, as one of the most important benefits of ADR for Aboriginal people. The violations Aboriginal people have experienced through the justice system and the understandable distrust they feel in using it are reason enough to advocate another appropriate option. However, Astor cautions against seeing it as a universal answer to all problems. (Astor, 1996)

I concur with Professor Astor. The experience afforded me through practicing ADR within Aboriginal communities, leaves me totally confident that ADR is the means for resolving many disputes within Aboriginal communities, Australia wide.

**Factors Favouring ADR**

1. Where the matter is complex or likely to be lengthy;
2. Where the matter involves multi-parties;
3. Where there are any cross claims;
4. Where the parties have a continuing relationship;
5. Where there is evidence that the subject matter is related to a large number of other matters.
6. Where the possible outcome of the matter may be flexible;

All of these factors are very common components of disputes within Aboriginal communities.
**Factors Where ADR Would Not be Advantageous:**

1. When parties are not ready to be mediated;
2. When one of the parties is harbouring distrust of the ADR practitioner and/or process;
3. When one or more parties does not attend ADR in good faith.

**5.2 Where to from here:**

Not here, nor anywhere else, do I purport to speak for all Aboriginal people. However, I do believe that with the correct modifications of an existing ADR process, or the creation of a model of AADR that can be adapted for the particular groups, AADR can accommodate a trustworthy, justifiable and sensitive climate, in which all Aboriginal peoples’ principal necessity for community and family is respected.

There are several important spheres within the ‘western’ models that require modification to suit successful ADR within Aboriginal communities. In the majority of ‘western’ ADR sessions, parties will be in the singular but in the majority of disputes involving Aboriginal people, it will be multi-party. Disputes in Aboriginal communities are usually complex with numerous issues, often can be very lengthy, always have a continuing relationship and can frequently be very flexible in the resolutions to the dispute. There are several important areas where western ADR and AADR would oppose each other, listed below are some of those areas.
Empowerment

As with most important, magnificent and all-encompassing words, ‘empowerment’ has become a ‘buzz’ word and is overused. However, in ADR empowerment is one of the prime concepts that makes it so favourable, acceptable, supportive and legitimate for Aboriginal people. The essential difference between the ‘western’ notions of empowerment and Aboriginal notions are that, for ‘western’ models, empowerment is for the individual, for Aboriginal people, empowerment must be for the community. To achieve cultural appropriateness in ADR for Aboriginal people is to recognise and respect this fact.

In ‘western’ models of mediation, neutrality of the mediator, voluntariness of the parties and confidentiality of the process is of paramount importance. For Aboriginal people, far more important is the concept of fairness, justice and learning.

Neutrality

Neutrality, in ‘western’ models of mediation is cardinal, more than being impartial to being in countenance of, or opposing one of the parties, it asks the mediator to be unbiased about the outcome. The mediator does not have to be held in high regard by the parties or their society. It is, however, an essential requirement that s/he be qualified and proficient in the process of mediation. For Aboriginal people, high regard for the mediator and their repute for fairness greatly surpass any consideration of neutrality.

It is immaterial that the AADR practitioner may know some of the people, or relatives of, or friends of those immediately concerned in the dispute. It is essential for the AADR to be successful that the communities involved respect the practitioner and abide that person for his/her ability to bring forward fairness into the process. It is the reputable objectiveness that
is sought by Aboriginal people, not neutrality.

Voluntariness

Often Elders within communities will decree that certain parties will attend mediation, whether the individual wants to or not. Individuals can not be separated from the whole and what benefits and brings justice to the community will in turn benefit and bring justice to the individual. For two hundred years Aboriginal people have known little of voluntariness or justice, for now justice is seen to be exceedingly more urgent. Courts direct civil litigants to attend ADR and pre-court in Family Law parties must attend ADR—this does not undermine the philosophy of ADR nor would it in an Aboriginal setting.

Confidentiality

In ‘western’ models of mediation, the dispute is interpreted as inherent to the singular parties and as such is privatised—no one else’s business, which fits smoothly into the ethic of confidentiality. The closeness and relativeness of Aboriginal communities relinquishes that confidentiality as near-impossible. More important to the concerned communities is the learning from the mediation for future disputes, a knowledge of where the mediation is leading the community—an awareness of decisions made by the parties, to understand the impact of the outcomes of the mediation for the community and also that the influence of the community can be set in action to sustain agreements, regardless of how unofficially this is done.

Settlement V Healing

Settlement, for the ‘western’ models of mediation, is an ‘agreement’ or ‘outcome’ between the parties on the individualistic issues raised and discussed within the mediation. Disputants
can be strangers, or have no long-term or continuing relationship, their extended families are
not necessarily affected and the dispute may have absolutely no effect on their community—
that which is independent from the totality and relates solely to the individual disputants.

‘Settlement’ for Aboriginal disputants, is about connectedness, within a composition of
‘community’—they can not be strangers, they will have long-term relationships, their
families and community will be affected. In the Aboriginal sense, ‘settlement’ is more about
‘relationships’ and ‘healing’ than ‘issues’. Aboriginal people do not see themselves and
others as disconnected--- individuality and family/group/community are so directly linked
that each takes on similar meaning. Following from this then, that for Aboriginal people,
solution of ‘issues’ and the ‘terms of an agreement’ would be a branch or by-product of the
primary goal, which is, I believe, a healing of relationships and spirit.

It is because of this connectedness that the overwhelming majority of disputes are multi-party
and not single-party disputes. Therefore conflict, whatever its substance, can not belong
exclusively to individuals. In a very practical sense, it belongs to the community and as such,
‘Settlement’ means to harmonise and to heal—harmonise and heal inner conflicts, harmonise
and heal ‘other/s’, harmonise and heal family and harmonise and heal community.

An AADR service needs to be adaptable enough to modify the processes of ADR to the
culture of the clients. This in no way means changing the underlying philosophy, the
objectives, concepts, meanings or the basis of ADR—it simply means that executing some
modifications will take into consideration the culture and circumstances of other cultures and
does not jeopardise the hypotheses on which mediation is founded.
AADR, for Aboriginal people, has to incorporate a balance between traditional practices, customs and beliefs and those aspects of mainstream society which must be dealt with in living and surviving within the surrounding mainstream culture.

1. The characteristics of effective ADR practitioners of AADR include:
   - at least some understanding of the particular Aboriginal culture;
   - some understanding of Australian history, including the effects of this on Aboriginal people;
   - understanding of participants language—ie, Aboriginal-English;
   - an ability to develop good relationships with Aboriginal people;
   - a sense of humour; and
   - preparedness to invest time to interact with Aboriginal participants ADR pre-session in order to strengthen acceptance and repute.

The research also indicates that effective ADR practitioners understand that Aboriginal people are often very sensitive to being singled out or embarrassed in front of others.

The challenge includes cultural relevance to the situation and recognition of this in the process and ADR environment.

2. The characteristics of effective AADR services include:
   - culturally appropriate access to the service;
   - reputable (to the parties) AADR practitioners;
   - suitable and adaptable ADR process;
   - ability to allow ADR participant independence;
   - implicit trust in participants to undertake learning;
• procedures for pre-negotiated session rules;
• demonstrated subtlety in the management of participant behaviour;
• a negotiated appropriate venue for all parties;
• regular cross-cultural awareness training for ADR practitioners and administrators;
• better communication practices between staff and Aboriginal clients;
• Aboriginal communities being active and empowered partners by increasing their participation in decision making;
• strategies to ensure maximum use by Aboriginal people.

3. Good non-Aboriginal ADR practitioners of AADR may not be able to transfer intentions and abilities into satisfactory outcomes because of influences beyond their control. This could include such barriers as:

• Participant cultural, home, and family backgrounds;
• parties past ADR experiences;
• perceptions of racism;
• Practitioner’s value systems when they differ markedly from those of participants;
• power relationships within the dispute which prevent the implementation of effective outcomes;
• inadequate communications and public relations between the ADR organisation’s administration and participants.

Current non-Aboriginal ADR professionals and agencies must accept that the uptake of AADR by Aboriginal People requires a high degree of freedom, self-determination and self-
accountability. The involvement of Aboriginal people in AADR requires a less formal process than is adopted in mainstream society. It is unlikely that the State will relinquish all responsibility for the overseeing of such a program, however AADR in Aboriginal communities should be facilitated by a more cooperative relationship between the criminal justice system, current ADR agencies and Aboriginal people. Every support mechanism that is in place must be utilised and new ones must be created. ADR is only a very small part of the big picture—but like every other part it is a vital part of the whole.

This thesis can be viewed as the first step toward achieving this vision. It is hoped that the suggestions developed in this thesis will spur more efforts to harness the enormous potential of AADR for Aboriginal communities.
Chapter Seven: Conclusions

7.0 Introduction:

This thesis has addressed the research question posed at the beginning of the study. It has also achieved the predetermined aims and objectives. The results are from the combined phases of the project. The literature search gathered information from over 300 separate materials. Some of these materials were on research itself—methodology, research ethics and evaluations of completed research.

Fieldwork was conducted with specific groups and in ten localities and does not purport to be a representative sample of the population. The participants had ADR experience with the AADRS of WA or the Aboriginal and Torres Strait Mediation Project in Qld. This study involved the researcher travelling over a large area of Queensland and Western Australia. The Law Foundation allocated a research grant, which provided travel and living costs. A total of 50 in-depth interviews were completed within the fieldwork. (See Appendix H for list of prompt questions) There were also 25 abbreviated interviews from the two locations where no participants that had experienced ADR could be found. Information was gathered on perceptions of participants’ experiences of ADR, perceptions of the AADR service, the necessity for such services and any ideas of bettering such services.

The data collected was coded and analysed along thematic lines for recurring and particular patterns, as well as indications of strength of sentiment. The findings, as shown in Chapter 5, are unique in that no other study has evaluated, from participants’ perspective, two such services and compared those evaluations.
Significant implications for directing and improving an AADR program for NSW have arisen out of this research. They have largely been developed from participants’ responses, the researcher’s experiences and past works, but can undoubtedly be built upon by others. The challenge of making this information useable has been addressed in the preceding chapter.

Given the close links between AADR and traditional Aboriginal justice and the profound problem of the over-representation of Aboriginal people in the criminal justice system, maximum use should be made of ADR for Aboriginal people.

Through the last two decades there has been a growing awareness of the social and emotional problems experienced by Aboriginal people. There has also been increasing recognition and acknowledgment of the historical precursors. There has been considerable discussion of social justice in Aboriginal communities. However, agencies wishing to shift the focus of activity towards preventative approaches in these communities must resolve for themselves the tensions that exist between social justice demands requiring major social change on the one hand, and the need for health, educational and welfare initiatives on the other. (Syme, 1997) Ultimately, while significant improvements will require both, the lack or slowness of gains in the latter should not preclude the pursuit of the former. Social justice and community development initiatives are essential to lessening the burden of circumstances and events predisposing to ill health among Aboriginal people. It is about the grand sweep of social justice, health and welfare and the narrow focus of targeted projects. Each has its place but none should be neglected.

An important philosophy of Aboriginal culture is the connectedness of everything— if a single connection is lost, there is immediate imbalance and disturbances. This not only includes people, the land, nature, environment and spiritual existence, it also includes the support of the caring and sharing system that Aboriginal people have depended upon for existence since time immemorial.
That is why the wholistic approach is more effective because a balanced process is necessary for the healing and the total health of Aboriginal people and the land.

7.1 Answers to the Research Question:

The literature review discusses the existing literature, reports and reviews on Aboriginal Dispute Resolution issues including Aboriginal perspectives and the effects of colonisation. It shows that Australian history has been based on racism and ethnocentrism and the impact of this on contemporary issues for Aboriginal people. It defines 'western' Dispute Resolution philosophy, the impracticality and inappropriateness of utilising 'western' Dispute Resolution programs for Aboriginal people without specific adaptation and modifications. The effects of language, specifically Standard English versus Aboriginal English, legalistic language and the consequences on communications for Aboriginal people. This research is a qualitative study underpinned by a critical social theory, utilising a narrative style in examining the outcomes and satisfaction levels of Aboriginal people who have experienced the Dispute Resolution process designed for Aboriginal people in WA and Qld. An overview of these programs is given at Chapter 4.

The fieldwork was undertaken with a focus on efficiency, effectiveness and appropriateness of the two programs from participant and Aboriginal ADR practitioner perspectives. The research found that the activities of one of the services, whilst relevant to its charter of training, is not actually a separate and distinct AADR service. In addition, given the development of Local Justice Groups in remote and isolated communities, the efforts of the service have become narrow.

The summary of the findings include:

• that the historical truth of colonisation and forced social, economic and health changes and racism undermined Aboriginal culture and social disciplines;
that these forced social, economic and health changes and prevailing racism have created a
diabolical measure of frustration and anger in Aboriginal communities, especially in the
young;
that the anger, frustration and racism endured is linked to the current high levels of violence,
crime rates and social deprivation;
that although changed, Aboriginal Culture and Aboriginal Spirituality is prevalent and
important in everyday community life;
that language barriers of Aboriginal-English versus Standard English prevent meaningful
dialogue with a high proportion of non-Aboriginal people;
that there is strong positive respect and importance of Elders within communities;
that ADR can be matched to similar rituals in numerous traditional Aboriginal cultures;
that Aboriginal communities agree that there is a need for AADR services;
that western ADR can be adapted successfully to Aboriginal needs and requirements;
that these adaptations, although many and varied does not minimise the philosophy of
western ADR;

One of the primary goals of this project has been to answer the research question: "Why is there a
necessity for a distinct and separate Dispute Resolution Program for N.S.W. Aboriginal
Communities?" The findings have not only showing the need for AADR but also illustrated why
such as service is so necessary and the importance that separation in programs.
GLOSSARY

Aboriginal words of different languages can have different meanings from language to language as well as have different meanings within the same language, depending on the context in which it is said and the enunciation of the word.

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal/s</td>
<td>Where this word appears within this thesis, it includes all Aboriginal people and Torres Strait Islander people.</td>
</tr>
<tr>
<td>Banya</td>
<td>Child or baby.</td>
</tr>
<tr>
<td>Fumped</td>
<td>A made-up word meaning 'stuffed', 'had it' or 'buggered'.</td>
</tr>
<tr>
<td>Gubbah/s</td>
<td>'White fellas'—in some areas the inflection is at the end of the word and in other areas, the 'a' is soft.</td>
</tr>
<tr>
<td>Kakkal/s</td>
<td>'White fella'</td>
</tr>
<tr>
<td>Karrang</td>
<td>Angry or wild</td>
</tr>
<tr>
<td>Housos</td>
<td>People that work for Housing Commission Departments or Housing Co-ops.</td>
</tr>
<tr>
<td>Murri/s</td>
<td>'Blackfella' in most parts of Queensland and the top end of NSW.</td>
</tr>
<tr>
<td>Noongar/s</td>
<td>Also pronounced and spelt Nyoongar—depending on the region. Noongars are a Nation of Aboriginal people from the south west of WA. There is approximately 30-40 different dialects within this Nation.</td>
</tr>
<tr>
<td>Una</td>
<td>In the context of the quote in this thesis, it means ‘that’s right, ‘isn’t it?’</td>
</tr>
<tr>
<td>Uundia numbullen</td>
<td>The peace, the quiet and the fish.</td>
</tr>
<tr>
<td>Wadjeen/s</td>
<td>White woman or women.</td>
</tr>
<tr>
<td>Wadjela/s</td>
<td>White man or men, though in some areas it can refer to both genders.</td>
</tr>
<tr>
<td>Wayarn</td>
<td>Frustrated or frightened—depending on the context.</td>
</tr>
<tr>
<td>Wongi/s</td>
<td>Nation of Aboriginal people in the south eastern desert area.</td>
</tr>
<tr>
<td>Yammagee</td>
<td>Nation of Aboriginal people in the north eastern desert area.</td>
</tr>
<tr>
<td>Yengarrahween Narloo</td>
<td>See inside front cover.</td>
</tr>
</tbody>
</table>
WHO?

Who has the love to turn all this around? -
Who has the heart to stir the dying ground?
Who has the time when there is no time at hand?
Who has the power of woman and of man?

It's up to us who can hear the sound,
It's up to us to turn it all around...

by

Gordon Biok
Appendices

Appendix A: Plain English Statement for Participants
Appendix B: Consent Form
Appendix C: Approval from The University of Sydney Human Ethics Committee
Appendix D: Western '12 Step Mediation Model'
Appendix E: AADRS Adapted Mediation Model with stated and unstated modifications.
Appendix F: Flow chart by Wendy Faulkes for AADRS
Appendix G: Table One of the 1995-96 Queensland Alternative Dispute Resolution Branch Annual Report, illustrating costs of disputes to the State.
Appendix H: Prompt Questions for Key Informant Interviews and Client Feedback Assessments.
Appendix A

Plain English

Statement

for

Participants
27 July 1999

Dear Participant

Please find attached information about a study being conducted by Mrs Chrissie-Joy Marshall as part of her Honours project for the Bachelor of Health Science (Aboriginal Health and Community Development) at the University of Sydney.

The project entitled ‘Yengarrahween Narrloo, Developing An Aboriginal Dispute Resolution Program for NSW’ is being supervised by Mr Tim Earnshaw (Lecturer).

Regards

(Dr) Kathleen Clapham
Head
Yooroang Garang: School of Indigenous Health Studies

P.O. Box 170, Lidcombe, NSW 2141, Australia,
Telephone. (02) 9351-9393, Fax (02) 9351-9400
Dear Participant,

We would like to invite you to participate in a study which will be looking at Aboriginal Dispute Resolution Program in Queensland and the Aboriginal Alternative Dispute Resolution Program in Western Australia. The outcome of this study will have the benefit of investigating the best alternatives for an Aboriginal Dispute Resolution Program in NSW.

The name of the study is "Yengarrahween Narrloo, Developing An Aboriginal Dispute Resolution Program for NSW". 'Yengarrahween Narrloo' are words from the U'Alarai Aboriginal Nation from north western NSW. In English, the words are similar to 'The Ritual of Healing Talk, Circling Sacred Fire'.

The field researcher in this study is Aboriginal, has a 'grassroots' background and works as a Dispute Resolution Practitioner and Aboriginal Loss and Grief Counsellor within Aboriginal communities in NSW. The study will be conducted under the supervision of the Yooroang Garang, School for Indigenous Health Studies at The University of Sydney.

Feedback of the results of this study will be given to each community before the final publication. The field researcher will inform you where these results will be placed within the community for you to be able to have access to it.

We will ask you about your experience with the Aboriginal Dispute Resolution Program in your state. The study has been approved by the University of Sydney and meets the guidelines for ethical research, which requires full disclosure to participants of the purpose of the research and guaranteed confidentiality to all participants.

The answers you provide to questions are confidential and your identity will not be disclosed to any other person. All notes taken about the interview will be destroyed at a later stage of the study.

You do not have to answer the questions if you do not wish to do so and may stop the interview at any time. You may contact Mr. Tim Earnshaw on 02-93519238, if you wish to discuss any aspect of the questions asked of you or this study.
Any person with concern or complaints about the conduct of a research study can contact the Secretary of the Human Ethics Committee, The University of Sydney on 02-93514811.

Your contribution to this study would be greatly appreciated.

Yours sincerely

(\textsc{Dr.}) Kathleen Clapham
Yooroang Garang School for Indigenous Health Studies.

21/7/99
Appendix B

Consent

Form
CONSENT FORM

I voluntarily agree to participate in the study of an appraisal of the Aboriginal Dispute Resolution Program of Queensland and the Aboriginal Alternative Dispute Resolution Program of Western Australia.

I have been given a written explanation of the study and I have had an opportunity to ask questions and my questions have been answered to my satisfaction. I understand that by agreeing to participate, I will be asked to talk about my experience of the Aboriginal Dispute Resolution Program in my state.

I give my permission for notes to be taken in the interview and these notes to be transcribed onto a computer, for use in this study.

I give my consent to participate in this study with the understanding that such consent does not affect my legal rights. I understand that the interviews are confidential and my identity and the identity of anyone mentioned during the interview will not be revealed at any time. I understand that information from this interview will be used only for research and I may withdraw my consent at any time. I understand that if I have any questions or problems I may contact the study supervisor at Yooroang Garang the Centre for Indigenous Health Studies on 02-93519238.

________________________________________  __________________________
Name  Signature

________________________________________
Date

Any person with concerns or complaints about the conduct or a research study can contact the Secretary of Human Ethics Committee, University of Sydney on 02-93514811.
Appendix C

Approval
from
The University of Sydney
Human Ethics Committee
14 December 1998

Dear Mr Eamshaw,

Title: Yengarrahween Narrloo, an Aboriginal dispute resolution program for NSW

Ref No: 98/12/24

I am pleased to inform you that the Human Ethics Committee at its meeting on 7 December 1998 approved your protocol on the above study. Please note that the approved protocol is in accordance with the original protocol submission.

In order to comply with the National Health and Medical Research Council guidelines, and in line with the Human Ethics Committee requirements the Chief Investigator's responsibility is to ensure that:

1. The individual researcher's protocol complies with the final and Committee approved protocol.
2. Modifications to the protocol cannot proceed until such approval is obtained in writing.
3. The confidentiality and anonymity of all research subjects is maintained at all times, except as required by law.
4. All research subjects are provided with a Subject Information Sheet and Consent Form.
5. The Subject Information Sheet and Consent Form be on University of Sydney letterhead and include the full title of the research project and telephone contacts for the researchers.
6. The following statement appears on the Subject Information Sheet:
   Any person with concerns or complaints about the conduct of a research study can contact the Manager of Ethics and Biosafety Administration, University of Sydney, on (02) 9351 4811.
7. The standard University policy concerning storage of data should be followed. While temporary storage of audio-tapes at the researcher's home or an off-campus site is acceptable during the active transcription phase of the project, permanent storage should be at a secure, University controlled site for a minimum of five years.
8. A progress report is provided by the end of each year. Failure to do so will lead to withdrawal of the approval of the research protocol and re-application to the Committee must occur before recommencing.
9. A report and a copy of the published material is provided at the end of the project.

Yours sincerely,

[Signature]

Professor B Baker
Chairman
Human Ethics Committee
Appendix D

Western

'12 Step Mediation Model'
Pre-mediation stage

1. Contact: dispute referred to mediation centre of network from various sources.

2. Intake assessment: intake workers interview all parties and determine whether or not the dispute is suitable for mediation.

3. Co-ordination: intake workers arrange place, date, time and session and mediators for appropriate dispute settlement.

Mediation process - 12 steps

1. Preparation: working as a team - mediators establish roles and functions.

2. Introduction: mediator 1 welcomes, introduces ground rules, authority established.


5. Summaries: mediator 2 summarises the main issues of A's and B's concerns respectively.

6. Agenda: mediator 1 draws up an agenda from the summaries.

7. Exploration: the parties in dispute communicate directly with each other assisted by mediators.

8. Private session: mediators speak privately with parties A and B respectively.

10. Agreement: the nature and content of the parties agreement if determined.

11. Closing statements: of thanks and offers of assistance.


Post mediation

1. Final procedures: agreements and records referred back to coordinator.

2. Follow-up: the mediation centres may follow-up the agreement at specific intervals of time.
Appendix E

AADRS

Adapted Mediation Model

with stated and unstated modifications
AADRP MODEL

Pre-mediation

1. Contact: dispute referred to Aboriginal Dispute Resolution Office from various sources - eg. family members, police/aides, relatives, neighbours, community leaders, community workers, etc.

2. Screening: coordinator/intake officer interviews all parties to the feud and with their help, determines:

   (a) if the feud is suitable for mediation and if it is, gets the parties agreement to mediate

   (b) discuss the ground rules and get the two parties' agreement to accept and stick to the ground rules at the mediation meeting

   (c) identify all key players and make sure of those people's co-operation and participation as well

   (d) with the parties, select and confirm the choice of mediators.

3. Co-operation: coordinator/intake officer arranges place, date, time of meeting and notifies selected mediators.

   The main purpose of the pre-mediation process, apart from gaining important information on the feud, is to get the two parties to accept responsibility for their family taking on board the tasks mentioned in this part of the process. Aboriginal people won't accept these
responsibilities if they are not committed to mediation for resolving their problem.

Mediation process

1. Preparation: mediators arrive at the meeting place 20-30 minutes before the meeting. Check out the venue. Are there enough seats? If outside, is there some shade or shelter, particularly for the elderly. Boil the kettle - they might be prepared to have a cup of tea together after the meeting.

   Arrange the seating (if necessary). Talk about where people should sit.

   Talk about the information you have been given about the feud what things might happen in the mediation, and the steps you might take.

   Work out who is to carry out which roles and functions (mediator 1, mediator 2 etc).

   The mediators should:
     (a) relax the people
     (b) build trust in mediation
     (c) say what mediation is and what it is meant to do
     (d) say what the ground rules are and get the people to
     (e) tell the people that what happens in the mediation will be confidential, that the mediators will be neutral and remind them that everyone has agreed to take part
     (f) help the people to feel that they can talk in the mediation.

   It is important for the people to know that the mediators have no authority to hand down a judgement like in a court.

   Mediators have authority in the mediation session because they have learnt the mediation process. They know how to handle the mediation by going through the process step by step, and know how, when, where and why to stick to the rules.

2. Welcome/opening statements:

   (a) Welcome the two families: the people in the feud are met by the mediators, show them in and, if necessary, show them where to sit; put them at ease.

   (b) Make introductions: they may not know you both, or they may not all know each other (it happens).
(c) Make opening statements: opening comments by mediators are important; however as most Nyungar disputes involve many people (multi parties), how you introduce yourselves and all those present will depend on how many people are involved and present.

(d) Run through ground rules.

(e) Tell parties your responsibilities and ask them to accept your authority in these areas.

(f) The families should enter the mediation process knowing why they are there, and what to expect. Pre-mediation meetings should have encouraged them to understand and to think about all their options.

(g) The families should be able to feel comfortable with their surroundings; the venue should be 'neutral', and the mediators should be accepted by the families as being neutral. (While we accept that in small country communities, anonymity will be probably impossible to achieve, the mediators and the service will have to establish the concept of neutrality and will have to work hard on the credibility of the mediators as third party neutrals).

(h) Pre-mediation 'haggle': ask the families to help decide who is to begin telling their story.

3. Stage One: Story telling/summarise issues:

(a) The families have a chance to explain the problem, in their own words, in the presence of the mediators and the other family. (Everyone will have a chance to tell their story).

(b) The mediators give feedback to show their understandings and acceptance to both families. The mediators summarise the main points of each person’s story.

(c) The problems, as they are told and seen by the two families and as they accept the families, are checked with each person, to make sure they are clear.

4. Stage Two: Agenda/issues to negotiate:

(d) The families help the mediators to identify the issues which can be mediated. These issues are isolated so they can be discussed by the families, one at a time.

(e) These issues are discussed in an orderly and constructive way. (Each person who has something to say about each issue will be given a chance to speak about their story
5. Stage Three: Explore/discuss items on agenda:

(f) The mediators get the families to talk about each thing on the agenda, for as long as they like. Once one family has spoken, they get the other family to speak on that issue, and so on for each thing on the list.

(g) Families gain an understanding of each other, and an understanding of how the problems are affecting the other family, as well as themselves. (They get to see that the pain they feel, is also felt by people in the other family too).

(h) Choices for the future (and for settlement) are created. (People think about the ways they can deal with the same sorts of problems next time, so that they can make sure things are sorted out without fighting each other).

(i) All the options are discussed by the parties.

(j) Realistic options or choices are chosen by the parties, then explored in depth and tested by the families and the mediators to make sure that they are the choices or options that WILL WORK for those people.

(k) Offers for settlement are received, clarified, and negotiated. Each offer must be seen as realistic and practical for it to be acceptable to the other party.

6. Stage Four: Write up agreements.

(l) Agreements are put into specific terms, in the language of the parties. Care should be taken to make sure that the agreement is written in general terms, to avoid any future problems (Examples discussed).

(m) Issues that are not resolved must be noted for future negotiation.

(n) Make sure the agreements DO NOT implicate anyone from either family (i.e. legal or criminal).

(o) Closing statements: thank the people for using the service; praise them for their efforts; offer them the assistance of the service to follow-up with them at regular intervals; arrange for copies of their agreements to be made, if requested, but only for them to distribute, or to use as they wish; goodbyes.
Appendices F

Flow Chart

by

Wendy Faulkes

for

AADRS
FIGURE 1: FLOW CHART: MODEL DEVELOPMENT

Stage 1
learn generic mediation process (CJC NSW)

Stage 2
establish, define traditional dispute resolution (WA exp)

Stage 3
develop possibilities

Stage 4
test against developed standards

Stage 5
test against cultural acceptance

Stage 6
re-define and modify

Stage 7
identify legal/ law issues

Stage 8
test against philosophy of mediation

Stage 9
test against WA program requirement

Stage 10
re-define/modify develop strategies

Stage 11
design process (draft)

Stage 12
check developed standards

Stage 13
check against acceptability

Stage 14
access resource realities

Stage 15
define training needs/ how best they can be met

Source: Wendy Faulkes, Director of Community Justice Centre, NSW
Appendices G

Table One of the 1995-96 Queensland Alternative Dispute Resolution Branch Annual Report

illustrating costs of disputes to the State
<table>
<thead>
<tr>
<th>Typical Dispute Type</th>
<th>Mediation Frequency</th>
<th>Potential Non-ADR Involvement</th>
<th>Potential Cost to Agencies and Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. NEIGHBOURS</td>
<td>6.5 per week</td>
<td>• Police called several times—1 to 2 hours</td>
<td>$1,000 plus</td>
</tr>
<tr>
<td>Neighbours in dispute and threats made in relation to barking dogs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. FAMILY/Household -Non Spousal</td>
<td>2 per week</td>
<td>• Police • Psychiatric Services • Local Court (Peace and Good Behaviour Order) • Private lawyers</td>
<td>$1,000—$2,000</td>
</tr>
<tr>
<td>Son who is unemployed and 'given up' has become violent and threatening.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Spousal</td>
<td>2 per week</td>
<td>• Family Court • Police • Local Court • Private Lawyers</td>
<td>$2,000—$10,000</td>
</tr>
<tr>
<td>Peace and Good Behaviour Order taken out against husband relating to threats of violence against wife. Husband wants to meet wife to discuss property/access details.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Workplace</td>
<td>0.5 per week</td>
<td>• Education Department • Union • Anti-Discrimination Commission</td>
<td>$5,000 plus</td>
</tr>
<tr>
<td>School teachers in dispute with Principal over working relationships.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Aboriginal Community</td>
<td>5 per year</td>
<td>• Local Government • Police • Aboriginal Legal Aid Service • State Government agencies • Community agencies • Courts</td>
<td>$100,000 plus (most of this relates to savings in police overtime)</td>
</tr>
<tr>
<td>Community wide tension resulting in near riots relating to: • inter-racial relationships • provision of services • alcoholism • vandalism • police relations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Public Interest and Multi-Party</td>
<td>3 per week</td>
<td>• Police • Local Government • Environmental groups • Industry groups • Private lawyers • Government</td>
<td>$100,000 plus potential savings in future litigation, damage to property values etc.</td>
</tr>
</tbody>
</table>
Appendix H

Prompt Questions for Key Informant Interviews and Client Feedback Assessments
In Client Feedback Assessments, the interviewees will firstly be given the opportunity to tell their stories at their own pace and with as much or little information as they feel comfortable in giving. The questions will be asked as prompts, only if the information being sought is not forthcoming in their stories and will be asked with the proviso that the question does not have to be answered if the person is not comfortable doing so.

Questions for Client Feedback Assessments

1. How did the ADR service become involved in this conflict and did you know about it before this time?

2. Do you think that there is a lot of disputing and fighting in Aboriginal communities?

3. If so, why do you think this is so?

4. Do you think a specific AADR service is necessary for Aboriginal people and why?

5. Was ADR helpful to this situation?

6. How was the AADR service helpful to the conflict?

7. In what ways was the AADR service not helpful to the conflict?

8. Was the AADR service culturally appropriate for everyone in the conflict?

9. Were others from the community that were not involved in the conflict included in the AADR process?

10. Why (or why not) was this important to the resolution of the conflict?

11. What were the most important outcomes for you in finding a resolution?

12. How would you change the AADR service to assist Aboriginal people in conflict?
**PROMPT QUESTIONS FOR KEY INFORMANT INTERVIEWS AND CLIENT FEEDBACK ASSESSMENTS BASED ON UNSTRUCTURED INTERVIEWS WITH INDIVIDUALS.**

In Key Informant Interviews, the interview will be somewhat more structured than the Client Feedback Assessment Interviews, however the individuals will be given the opportunity to relay any anecdotal information they feel appropriate. Information will also be gathered from Annual Reports, training manuals and policy documents.

**Questions for Key Informant Interviews**

1. Why was it necessary to establish and maintain a separate AADR service here?

2. What do you see as the underlying reasons for so much disputing and violence within Aboriginal communities?

3. What are the effects of this?

4. How does the AADR service differ from the mainstream ADR service of this State?

5. Do you specifically work for the AADR service or with generalist ADR as well?

6. How do you feel it works when non-Aboriginal ADR practitioners do AADR work?

7. How prevalent is the Aboriginal culture in community life?

8. How do you determine ‘successful’ resolution to conflicts?

9. What do you believe are the benefits of the AADR service for Aboriginal people in conflict?

10. What criteria is used to determine if the conflict is suitable to be ‘mediated’?

11. What importance do you put on Elder and community involvement in AADR?

12. What changes to the AADR service would you like to see?
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