

**THE NEED FOR AN ABORIGINAL AND TORRES STRAIT ISLANDER
MEDIATION, FACILITATION AND NEGOTIATION SERVICE AS PART
OF A NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER
GOVERNANCE INSTITUTE**

SUBMISSION TO 2020 SUMMIT

Engagement between Governments and Aboriginal and Torres Strait Islander communities at local, regional, state and national levels is a critical issue in addressing the crisis in Aboriginal and Torres Strait Islander communities. Decision-making and dispute management processes are core business for all who work in Aboriginal and Torres Strait Islander affairs in developing partnerships and agreements which are fair, contribute to strategic pathways for community cohesion and represent the interests of all relevant parties.

Decisions must be owned not only by Aboriginal and Torres Strait Islander people, but also by Governments, to ensure that joint responsibility is taken for their implementation and that they are sustainable. The absence of free, prior and informed consent in Aboriginal and Torres Strait Islander decision-making processes has contributed significantly to failures in Aboriginal and Torres Strait Islander affairs, as has a lack of resources to implement decisions.

Typically, Aboriginal and Torres Strait Islander communities have experienced pressure to accept solutions often imposed by non-indigenous agencies, without having the opportunity to understand their implications, develop other options and reality check solutions. 'Big meetings' with their 'talking heads' have become the *modus operandi* of 'consultation'. People often leave such meetings, having nodded their heads in assumed agreement to closed questions such as 'Do you understand?' and 'Everyone agree?', unable to explain what they have agreed to and agreements break down.

Proceeding with agreements without considering the full range of emotional, procedural and substantive needs to ensure their successful implementation and sustainability is an ethical issue. Effective negotiation incorporates a range of design elements which ensure robust, equitable, inclusive and appropriate processes that best enable parties to do business with one another. It also ensures that planning is matched against secured short medium and long term resources and that there are sufficient funds for implementation.

Priority setting and agreement-making paradigms have created an urgent demand for 'arms length' process experts to support Aboriginal and Torres Strait Islander communities to achieve sustainable outcomes in a 'whole-of-community' integrated approach. The Indigenous Facilitation and Mediation Project at AIATSIS receives regular calls seeking skilled locally and regionally based Aboriginal and Torres Strait Islander (and non-indigenous as appropriate) process experts who can support and manage processes of engagement between and within communities and government, industry and Aboriginal and Torres Strait Islander organisations in a timely and impartial manner. There have also been repeated calls from a range of sectors for dispute management services and in particular, locally and regionally based Aboriginal and Torres Strait Islander practitioners. Disputes between Aboriginal and Torres Strait Islander people are often used as excuses for inaction by bureaucracies.

Access to local services would allow communities to respond promptly and effectively to issues as they emerge. Delays in dealing with matters often lead to the escalation of disputes, ultimately making it harder to deal with the initial matters and further eroding local capacity to deal with issues. Community process practitioners could also facilitate a whole-of-community approach which avoids duplication and provides the missing piece of infrastructure which links ICC offices and communities and builds the relationships and trust necessary to work effectively with Aboriginal and Torres Strait Islander communities.

There is also a need to foster Aboriginal and Torres Strait Islander capacity in the following areas:

- identifying and exploring the causes and potential solutions to problems;
- responding in meaningful and sustainable ways to changing government agendas;
- developing appropriate strategies and capacities to engage, manage and utilise relevant technical expertise;
- ensuring decision-making and dispute management processes are embedded in good governance structures and locally managed;
- planning and implementing workable community strategies and solutions including the identification of:
 - the appropriate group to be involved in decision-making;
 - how decisions should be made about particular issues; and
 - strategies for managing conflict; and
- monitoring, renegotiating, modifying or adapting, strategies and solutions as required.

However, there is a dire shortage of skilled facilitators who can support, assist and manage processes of engagement and a lack of specialised training which provides the micro process communication skills which are required.

There is an urgent need for a nationally coordinated Aboriginal and Torres Strait Islander Mediation, Facilitation and Negotiation Service supported by locally and regionally based practitioners. The Service could be located in a national Aboriginal and Torres Strait Islander Governance Institute and could:

- **co-ordinate the roll out of a regional network of Aboriginal and Torres Strait Islander mediators, facilitators and negotiators;**
- **develop and provide a range of training tailored to local needs and contexts eg housing, health, native title, family etc;**
- **provide employment opportunities, academic and vocational pathways for Aboriginal and Torres Strait Islander people;**
- **conduct evaluation of strategies trialled and implemented;**
- **act as a clearing house responsible for ensuring what works is communicated quickly to others; and**
- **provide ‘internships’ for business, government, and community who wish to focus on improving ways of doing business with Aboriginal and Torres Strait Islander groups.**

Toni Bauman, Indigenous Facilitation and Mediation Project, Australian Institute of Aboriginal and Torres Strait Islander Studies.