

Consultation and Development Phase

Report on the Mornington Island Restorative Justice (MIRJ) Project

Phil Venables 2009



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The Junkuri Laka Justice Association Inc.

The Councillors of the Mornington Island Shire Council

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Consultation Phase Report Executive Summary

Mornington Island was identified as a location for the project in the Commonwealth Attorney-General's Restorative Justice Action Plan. The project formally commenced on 19 May 2008 with the appointment of a project manager.

The island is home to the Lardil people who share it with the Kaiadilt of Bentinck Island and the Yungkal of islands to the south. Their cultures enjoy an international reputation for their art and dance. Family relationships are maintained through ongoing links to land and sea country.

The future of the growing youth population and their ability to maintain these proud traditions is of greatest concern to the decreasing population of Elders. The Gununa Township has a 1200 population people.

Project description, funding and evaluation

The Mornington Island Restorative Justice (MIRJ) Project proposes to establish a community-based alternative dispute resolution or peacemaking¹ service that respects traditional culture and conforms to the requirements of the criminal justice system.

The project is currently funded \$209,000 by the Commonwealth Attorney-General's Department to June 2009. As project partner, the Queensland Department of Justice and Attorney-General (JAG) manages the project through its Dispute Resolution Branch (DRB). It is funded in phases, each depending on successful completion of the previous phase, the enlistment of community support and securing further funding. Consultation and development will run to June 2009.

Consultation outcomes; May 2008 – January 2009

The project manager spent a total of 16 weeks consulting some 200 island residents. For useful discussions to occur, the process required the development of credibility and trust. Six casual cultural advisors were employed to assist, whose participation improved the quality of discussions and led to effective working relationships.

Unanimous support for establishing a peacemaking project was provided by families, community agencies and justice system stakeholders. Evidence of need was demonstrated by repeated requests to mediate community conflicts. The project manager and the Justice Association co-mediated one such family dispute.

In the final week of consultations the project manager was invited to meet with the *Muyenda* (Council of Elders) to discuss their involvement in peacemaking. This was seen as significant as they had not met for a number of years. Elders viewed their

¹ The terms 'mediation', 'peacemaker' and 'restorative justice' are used interchangeably in this document as they were throughout the community consultation.

leadership in peacemaking as a means to address ongoing community violence and high incarceration rates and, as a means of re-establishing their leadership roles.

Traditional and contemporary dispute resolution practices

Cultural and emotional components of traditional conflict resolution (known as 'Square-up') are maintained in contemporary disputes and indicate that peacemaking must have a high degree of local input and be informed by cultural needs.

Of major concern to community leaders is the erosion of family life and the increasing alienation of young people with poor life chances, accompanied by increasingly complex interventions into community life and a crisis of confidence in leadership to address conflict. The last major community managed mediation was said to have occurred some years ago. The majority of mediations are now conducted by police.

Community needs to be met for mediation to be successful

People expressed the need to feel safe and confident to participate in mediation and be supported in a fair process where procedural rules and lines of authority are clear and accepted. All parties need to access accurate information on issues giving rise to their conflict and to see the potential benefits of participation in mediation.

Elders asked to be respected for their way of conducting peacemaking and valued for the knowledge and skills they could contribute. They called for improved dialogue with stakeholders in the justice system. In their view government often failed to understand the level of support required to facilitate real community change.

Strong calls were made for government agencies to intensify their support for locally run mediations to divert people from custody. The capacity of mediation agreements to refer participants to local programs was seen as crucial to successful mediation.

Developing a model of service - options to be considered

Development and implementation of an "experiential learning model"

A major finding is that a sustainable model is most likely to arise from conducting and learning from mediations. It is informed by culturally based learning styles and reached through consistent messages provided in the consultation. This approach is recommended as an interim initiative to run for the remainder of the pilot period and beyond if supported by evaluation.

Mediations would be managed by an independent coordinator and Elders and/or Justice Association members. This approach will need to reconcile western notions of justice and fairness with cultural values through ongoing dialogue, debriefing and on the job training to reach a sustainable model.

Creation of a coordinator position

People acknowledged the need for a coordinator to work independently of kinship obligations to assist Elders and be advised by them. An accredited mediator is

needed to accept diversionary court referrals and manage the interface between justice system requirements and cultural needs. If a local worker cannot be found, then recruiting externally will prove costly in terms of delay, providing accommodation and remote area financial incentives.

Creation of 'conflict resolution workers'

Conflict resolution workers would be employed on a casual basis to support Elders and participants through the peacemaking process. They would ideally be nominated by family groups and represent all major social groups on the island. Their co-opting into a mediation would be along kinship lines.

Options for delivering an 'experiential learning model'

DRB visiting service (Cairns or Townsville based)

Expanding existing DRB services on a fly in fly out basis cannot provide mediation to prevent the escalation of violence and has limited capacity for local input.

Local mediators employed through the Dispute Resolution Branch

Recruiting local mediators requires intensive on the job training which cannot be sustained on a fly in fly out basis. This remains a longer term goal however.

Service provided by the Junkuri Laka Justice Association

Advantages

This option implies community ownership from an agency with an existing court role and offers the efficient use of resources (e.g. office space) and current funding of some \$97,000. Additional funds can be provided via existing funding arrangements. Justice Association members have requested employing a coordinator to assist address their current operational issues.

Disadvantages

Community feedback indicated low levels of support for this option and would require skilled negotiation to enlist community support and participation. Justice Association members reported their current inability to function effectively and may not in a position to provide an effective service until current issues are addressed. This option would require time to negotiate a service agreement and appoint project staff.

Service provided through another community organisation

Advantages

This also provides an opportunity to increase community ownership and control. An organisation with no links to justice issues may provide greater independence to work more freely across the community. A community organisation may be able to provide accommodation for any externally appointed worker.

Disadvantages

There would be delays in establishing funding and operational arrangements and the risk of duplication of services and role confusion with Justice Association.

Maintain current project arrangements - recruit locally based DRB mediation coordinator to implement the 'experiential learning model'

Under this proposal the coordinator would work with all stakeholders to develop community capacity to manage the project. It is envisaged that this position would be at A06 level.

Advantages

A coordinator could be appointed in a relatively short period with the requirement to be accredited under the *Dispute Resolution Centres Act 1990* to accept diversionary court referrals. They could work within existing administrative and organisational guidelines. If externally appointed a DRB employee with no family affiliations may be able to work independently across all community agencies and family groups.

Disadvantages

A government officer may be counter-productive to enlisting community ownership and control. The stress involved to conduct mediations may result in local pressure on an externally appointed coordinator to take primary responsibility for mediations.

The lack of available accommodation on Mornington Island is a critical issue not yet addressed. There is a community preference for a locally based coordinator.

Further Funding

Implementation of an 'Experiential Learning Model' has been costed and funding currently being sought. The outcome of a Commonwealth funding submission for \$330,000 is expected in the first week of June 09. Complementary funds of \$185,000 are also being sourced within JAG to continue employment of the project manager and contribute to project costs.

Recommendations

Following unanimous community support for a peacemaking service on Mornington Island it is recommended that an 'experiential learning model' of development be implemented as soon as possible.

Stakeholder negotiation on this approach and on options for the most effective agency to management the project must occur on the island to as a precondition to maintain community support.

It is proposed to implement community peacemaking under current arrangements within the DRB as an interim measure to run the remainder of the pilot period. This provides the time necessary to develop community capacity to manage peacemaking and a planned handover of project to community management.

It is recommended that all work carried out under the MIRJ project be directed towards strengthening local capacity to manage community conflict and that local ownership and control of the project be maintained as the central project goal.

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1. Introduction

1.1 *Community overview – Mornington Island*

Mornington Island in the Gulf of Carpentaria is the largest island in the Wellesley Island group and the traditional home of the Lardil people. For social and ceremonial purposes they comprise four major land owning groups; Barlumbenda (West), Jirrurumbenda (Leeward-North), Lilumbenda (East) and Larlumbenda (Windward-South). Other land owners include the Kaiadilt people of Bentinck and Swears Islands and the Yungkal people whose lands extend through islands to the south and onto the mainland.

The island is approximately 20 km off the southern gulf coastline with Doomadgee some 140 km to the South South-East. Karumba in the South East corner of the gulf is approximately 190 km away. Mornington is a low lying island, some 65 km in length and 30 km at its widest point. The island is subject to a tropical monsoonal weather pattern including frequent cyclones.

The town of Gununa in the South-West corner of the island has a population of some 1,200 people: 10% are aged 50 and over while 40.5% are aged 19 years and under.

It was established in 1914 by Presbyterian missionaries when the Lardil and Yungkal peoples were brought together. The Kaiadilt people were brought into Gununa in 1948, following the devastation of their water supply by a tidal wave.

In the years following European settlement, people who were displaced and disbursed on the mainland were sent to Mornington with children going into the dormitory system. They and their descendents are referred to as Historical Residents of the island.

Initially church-managed under the *Queensland Aborigines Act*, the Queensland Government took administrative control of the island in 1978, amid strong community protest. This decision led to the current local government structure on the island.

Wellesley Island cultures enjoy an international reputation for their art, dance and storytelling traditions. The unique Mornington Island identity is maintained through continuing links to land and sea country, hunting as an important economic activity and ongoing resistance to external forms of control. The island has a proud history of strong leadership and survival amid very testing physical and social circumstances imposed upon them. The names of past leaders with extraordinary life experiences are legendary.

The future of the burgeoning youth population on Mornington and their ability to carry on these proud traditions is of greatest concern to the ever decreasing population of Elders. Elders report their authority being severely eroded particularly since 'the takeover' in 1978. However many younger Mornington Island residents maintain the traditions of their Elders and extended their talents into music and sport.

1.2 *Infrastructure and town services*

The island comprises some 200 residences with seven houses are currently under construction. Despite people's close and ongoing connection to their traditional lands and a previous investment in outstation infrastructure, many outstations are in disrepair with little prospect of further funding.

Following the financial collapse of MacAir in January 2009 gulf air services from Cairns and Mount Isa now operate three days a week. Mount Isa, 450 km to the south is the nearest and most utilised service centre. The island is also serviced by a weekly barge from Karumba which is cut off by road for many months in the wet season.

Basic town services include a small community owned supermarket, a bakery, kiosk, post office, library and garage. Local government services include rubbish collection, environmental health support, and sponsorship of the Community Development Employment Project (CDEP).

Community enterprises including cattle, a vegetable farm and a guesthouse have not been sustained. The cost of living is compounded by low wages and high unemployment. Freight costs increase in the wet when essential items are flown in. Finding appropriate skilled workers across a variety of trades and professions has been an ongoing problem compounded by the ongoing shortage of island accommodation. This often delays projects and programs.

1.3 Community based agencies and services

Justice services include the Junkuri Laka Justice Association, made up of elders representing the Island's major social groups. It provides support for people attending court and makes submissions to the monthly magistrates circuit court. There are 10 police officers based on the Island and Probation and the Parole established a permanent presence in July 2006.

The Police Citizens Youth Club (PCYC) provides a range of well attended activities. The Mornington Island State School goes to year 10 and has 34 staff. Children in higher years attend boarding school in regional centres.

The Safe Havens project is a developing family support program that aims to prevent children coming into care.

Mornington Island Hospital has 29 staff including a resident doctor. It provides inpatient, emergency and visiting specialist health services. The Royal Flying Doctor Service (RFDS) provides child health services and emergency evacuations. Oxfam (Community Aid Abroad) provides a health promotion program and work closely with related services.

Mount Isa based services include an alcohol and other drug counselling (ATODS). Youth Justice Services include Youth Justice Conferencing. The Department of Child Safety has a locally based non-statutory support worker with statutory officers visiting from Mount Isa. A Department of Communities provides coordination of government services and monitors implementation of the Local Indigenous Partnership Agreement.

The Woomera Aboriginal Corporation employs local visual and performing artists and the Community Ranger Program is tasked with environmental and cultural management projects. Both projects are important culturally. Their success is attributed to being well set up and supported.

Appendix 1 provides an overview of community agencies and services.

Despite a burgeoning infant population the Child Care Centre is not operating and its building is in a state of disrepair. Unsuccessful attempts have been made to recruit and train child-care workers.

Attempts to recruit a coordinator for the Women's Shelter have recently been unsuccessful. Attracting and retaining local and external staff to work in human service agencies has resulted in high job vacancy rates on the island. Community participation in school life and support for community agencies is provided by a dedicated minority of community members.

2. Mornington Island Restorative Justice Project (MIRJ)

2.1 Background

Mornington Island was identified as a location for the project in the Commonwealth Attorney-General's Department Restorative Justice Action Plan. In addition the Commonwealth Secretaries Group on Indigenous Affairs had identified Mornington as a 'strategic intervention site' and funding to run a pilot was sourced through the National Petrol Sniffing Strategy. Mornington Island was one of two Queensland locations included in this strategy.

From a state perspective the project followed repeated requests from stakeholders including the visiting magistrates, local police and community justice groups for assistance in remote communities experiencing high levels of conflict.

Initial scoping was conducted by the Commonwealth with local agencies and the magistrate. The Queensland Department of Justice and Attorney General agreed to partner the project from its Dispute Resolution Branch (DRB). A steering committee established the project's scope and objectives.

The Commonwealth Coordinator on the Island then consulted with the Junkuri Laka Justice Association, Mornington Island Shire Council, and other service providers. Community approval to proceed resulted from this process.

Despite this, nearly all people consulted sought an explanation as to the origins of this initiative as it did not emanate from the community. This often had to be addressed before moving onto discussing project development.

2.2 Project Description

The MIRJ project proposes to establish a formal community-based alternative dispute resolution or peacemaking service that recognises and respects traditional culture and conforms to the requirements of the adult criminal justice system. **Appendix 2** sets out the initial project plan.

Objectives

- Enhance the capacity of the community to deal with and manage its own disputes by providing ongoing training, support, supervision and remuneration for mediators.
- Reduce Indigenous people's contact with the criminal justice system.
- Encourage community ownership of the program.
- Improve the justice system's responsiveness to community needs.
- Increase satisfaction with the justice system for victims, offenders, their families and the broader community.

Scope

The scope of the project includes the following:

- Funding - the project may be limited to phase one unless further funding is provided to continue until June 2010.
- The extent of the MIRJ project may be limited by the outcomes of the consultation. For example, the term “mediation” is not used consistently as the actual form of dispute resolution will be decided following completion of this report. However, it is anticipated that it will be a restorative justice model of dispute resolution.
- Policies developed throughout the project may also limit the kinds of disputes for which the model of dispute resolution is considered to be suitable.
- The project will be working with adults only at this stage.

Budget

The project is a three year pilot, to be funded in phases, each depending on successful completion of the previous phase including the enlistment of community ownership and support, and the project team's ability to secure further funding. The project is currently funded as a pilot to run to June 09.

The following funding was provided to the project by the principal partners for 2007-08:

Australian Attorney-General's Department	\$220,000
Indigenous Justice Program (JAG)	\$ 20,000
Dispute Resolution Branch (JAG)	\$ 10,000
TOTAL	\$250,000

These funds were used to employ the project manager and cultural advisors and for accommodation, flights, car hire, laptop, phone and administration costs. They also covered the delivery of the three day *Managing Community Relations* training on the island in November 2008.

2008-09	\$209,000 (plus \$20,000 for the MCR training) was carried over to 2008-09.
2009-10	<p>A Commonwealth funding submission for \$300,000 was completed on 27 February 09. Formal notification on the outcome is not expected until the first week of June 09.</p> <p>Complementary funds of \$185,000 are also being sourced within JAG to continue the employment of the Project Manager and contribute to project costs.</p>

Time frames

Implementation is to occur in the following phases:

1. Consultation, development of a service model and negotiating its implementation will run to June 2009. This phase was extended in June 2008 from six to 12 months following additional funding provided by the ADG.
2. The implementation of a developmental model of mediation service is timed to run from June 09 – June 2010 subject to further funding. It is also subject to community negotiations around adoption of a service model. It will involve an action learning approach with intensive training and support for those participating in mediation services.
3. Full implementation will be subject to demonstrable success in the period July 2009 – June 2010 and the securing of long-term funding. It will involve securing community management of the project and involve refinement of roles, responsibilities, working relationships with stakeholders, communication links and implementation of long-term operational arrangements.

If the pilot is successful the model will be promoted and utilised in other remote Indigenous communities across Queensland.

2.3 Evaluation

A process evaluation framework was developed to assess the effectiveness of the consultation. Key outcomes are summarised in **Appendix 3**.

An evaluation framework will be developed following community agreement on adopting a particular service model. It will assess its' effectiveness in responding to community conflict and diversion from the justice system.

Data collection will include:

- quantity - number of mediations conducted by type of referral and participants
- quality - mediation agreement rate and participant / stakeholder feedback
- timeliness - average number of days between accepting a referral and completing mediation.

Case studies will also inform the evaluation and practice development.

3. Managing the consultation process

3.1 Establishing credibility and the right frame of working relations

Engaging the community in discussions on the sensitive issue of conflict was a slow process involving the development of credibility, trust and effective working relationships. It was most evident that the community holds a negative perception of the effectiveness of government workers who frequently pass through on brief working visits. Comments included:

'They take up your time talking, go away and write their report and nothing ever changes'. Chicko Toby

'How do we know this is not just going to be another program that the government sets up and then lets fall on it's a....' Councillor Allan Seckington.

'You can write your report mate but when you go back to Brisbane the government will just twist your words to suit themselves.' CDEP worker.

'People come in here starting an organisation and build it up then leave it. We need to get support right through. Programs happen only for a little while and as soon as the money runs out they leave us and forget about it. We need to stop so many people coming in here – people come in to train themselves' (Promote their work agendas). Cecil Goodman, Mayor, respected Elder.

The Justice Association chairperson expressed concern that as the project was only a pilot it could mean that people give their time for very little gain.

In response to these comments the level of mistrust was acknowledged as a feature of the relationship until a peacemaker program provided demonstrable community benefits. It was stated that an effective program was most dependant upon community support and involvement.

Communication with community members improved with more time spent on the island, particularly on week-ends in informal situations, shopping, fishing at the wharf and taking elderly people on outings. Relationships also improved by assisting people to access other services on a variety of issues not related to peacemaking.

Regular feedback meetings were held with the Shire Councillors and the *Junkuri Laka* Justice Association, though neither organisation was available to meet in the last two visits. Alternative meetings to brief individual Justice Association and community councillors on progress made occurred.

At state level the consultation and development phase was managed by the Project Manager with support provided by a reference group comprising of AGD staff and JAG staff including experienced Indigenous mediators.

3.2 Employment of cultural advisors

Eight identified cultural advisor positions were created to advise and support the project manager in consultations. These were temporary casual positions at the AO3 level. Following a fortnight of advertising on radio, community notice and word of mouth, one verbal expression of interest was received. Eight people representing the island's major social groups and providing an age and gender balance were then recommended by Shire Councillors and the Justice Association. Six were employed after a brief interview.

Their participation in the latter half of the consultation significantly increased the participation of elders and family groups. The support provided to family members impacted positively on the quality of discussion while ensuring any intrusion to family business was minimised.

3.3 Surveying community opinion

A set of principles to guide the consultation was developed and approved by the Justice Association and shire councillors. They covered voluntary participation in discussions, respect for any non-participation, a commitment to confidentiality; permission to identify and quote

people, a commitment to listen and accurate reporting (see **Appendix 4**). This initiative is in line with the ethical considerations set out in the Indigenous Facilitation & Mediation Toolkit, (Indigenous Facilitation & Mediation Project 2006, P21-22. AIATSIS).

These principles were discussed at the beginning of every meeting. The issue of confidentiality did not arise as no one provided information they regarded as confidential and all people approached agreed to participate. In all cases permission to identify and/or quote on specific issues was granted.

Consultations with a cross-section of family groups and all community agencies occurred in the course of five visits between June and December 2008. A total of 16 weeks including weekends was spent meeting and consulting in a variety of settings. These included formal agency meetings and pre-arranged family meetings in people's yards or on their outstations. Formal and informal discussions were also held in public spaces at the local store, the post office, Larry Landley Park, after the Sunday church service, on work sites, at the local jetty, and when people visited socially after hours.

Formal input from the four Lardil social groups, Kaiadilt and Yungkal peoples and other island residents was provided through meetings with individuals, families and Elders. A total of 17 men and 18 women, identified by the cultural advisors as respected family leaders were provided with a detailed briefing on the project. In all 14 men and 14 women of those identified, were interviewed and provided significant input. Eleven family consultations were held involving extended family groups. Where family meetings could not be organised several members of each extended family were interviewed individually. Younger people (aged 17 – 21) years generally were more difficult to engage in conversation however 14 young people were interviewed while others participated in family group meetings.

Approximately 200 family representatives and other island residents participated in the consultation. **Appendix 5** provides an overview time spent in the community and people and groups consulted.

3.4 Other consultation initiatives and experiences

These included:

- A flyer briefly explaining the project and providing contact details was posted around the community and handed out. An article was published in the community newsletter and promoted on local radio.
- Two meetings with some 40 CDEP workers were followed-up with five smaller individual work gang meetings including a meeting with the community ranger program workers. People spoke of their scepticism about government's ability to listen to and act faithfully upon the feedback provided about peacemaker services providing adequate recognition of Mornington Island culture. CDEP workers providing feedback however were particularly positive about the need to proceed with an effective well supported peacemaker service.

- In the final week of the consultation the project manager was invited to a significant Muyenda² meeting to discuss community ownership and control of the project and processes that meet cultural needs. This group of Elders had not met for some years and were seeking support to re-establish a more significant leadership and mentoring role for themselves and younger leaders in family and community life. They saw community peacemaking as an opportunity for this to occur.
- A three day “Managing Community Relations” training program was delivered in November 2008. It was attended by 11 community members including a teacher aide, family support workers, Justice Association Elders and three cultural advisors to the project. It provided for a detailed discussion on culturally appropriate mediation needs and processes which were recorded for future program development and training purposes. Evaluation and other feedback indicated that the training was effective in meeting people’s needs. Requests were made for more training in 2009.
- Regular briefings were provided back to those who had already participated in discussions. Significant points of common agreement emerging from the consultation were highlighted in this feedback to establish a common base from which to proceed with the project.

3.5 *Involvement in community dispute resolution*

As the project manager became better known in the community he was increasingly requested by community members for direct assistance in resolving conflicts. Requests came at the rate of almost one per week in the latter six weeks of the consultation. In all but one case it was not appropriate to offer a mediation service as the project was in a consultation phase. Assistance was provided to access legal and other services in these cases.

In one case the police offered mediation but the offer it was not accepted by one party. In another, police initiated mediation prevented the escalation of a potentially serious conflict. The success of this mediation was reported by family members and by police who had no follow-up involvement. One of the parties involved also reported satisfaction with the police mediation.

Repeated requests for assistance to resolve conflict with no clear mandate, presented a credibility issue for the project manager. This was viewed by community members as only being interested in talking about mediation with no ability to act when really needed or in local terms not ‘walking the talk’.

However the project manager was requested by parties to a dispute and by the Justice Association to co-mediate an extended family dispute involving some 40 adults and young people. Although hastily organised to prevent a further escalation of the conflict and poorly planned the mediation was reported weeks later by participants from both parties as being successful.

Feedback from community members also suggested that this experience did much to demonstrate to the wider community the nature and purpose of the project. A young leader later

² Council of Elders who in the recent past have provided managed a range of community issues including family conflict.

commented: 'at least everyone knows what you are on about now'. Community participation in the consultation increased and improved after this event. The experience also provided a learning opportunity for the Justice Association and project manager in relation to planning, timing and participation.

The information exchanged between residents, agency workers, the project manager and the Cultural Advisors now forms the basis of this report.

4. Consultation – what people said about peacemaking

4.1 *Traditional dispute resolution: square up*

Mornington Island people referred to their traditional dispute resolution as 'square-up'. Paul Memmot³ reports the language name as *Mirindi*. (Pers. Com.)

'...yes I remember it - square-up. Those old people - they used to do it. Come together down there - festival grounds or a place near the old village – two noisy mobs singing out (at each other); have a big fight – they knew how to do it. A peacemaker was there (to moderate the fight). Women and children would go away. Throw spear, boomerang, block him, (deflect) fight with nulla nulla – blood! - no one would really get hurt, not bad. Then everyone would finish up; the peacemaker would say "see your cousin there (hurt) - you finished now?" everyone would say 'oh what I gotta fight you for?' you my cousin, you my brother, you my uncle - Cry, hug'. They would have a big feast; give each other presents and everything would be ok then, friends again – square up.' Ossie Escott, Gungalida Elder.

Similar accounts remain vivid in the memory of people born well into the 1960's. Remarkably similar stories were told with much admiration for those involved: their physical fighting skill, their highly tuned social skills in managing anger, respect accorded the peacemakers moderating the 'fight' and strict adherence to ritual. Square-up was said to occur in response to serious wrongdoing, especially following a death when the families of the deceased would end their grieving and cease accusations about the death. Square-ups occurred in designated places and followed a ritualised process.

The practice was reportedly stamped out by missionaries. *'They didn't want to see people with blood coming out their head'*. However most people pointed out that only skilled fighters were involved and that *'it looked and sounded as if someone would get killed but no one was really hurt'*. Others however reported that in mission times everyone would know when a square-up 'fight' was to occur as the mission bell was rung to signify this.

Later in missionary times other locally controlled initiatives to address criminal justice matters were also reportedly effective.

'When Old Alec Hills was here as the only Policeman it was all sorted out without anyone going to jail. Give punishment like cutting wood – the Father and Mother couldn't

³ University of Queensland anthropologist with a 30 year association with the Mornington Island community.

say anything. There were different amounts of wood to be chopped depending on how severe the crime was'. Graham Toby, Yungkal Elder.

And more recently:

'Scotty Maxwell (A Uniting Church Community Worker in the 1970-80's) used to work with the Muyendas and it worked well. They would do peacemaking and prevent people going to jail. Now people are sent out for 4-5 months and that is not on. There is no explanation to anyone about what's happening'. Graham Toby, Yungkal Elder.

4.2 Community responses to contemporary disputes

The erosion of Elders' authority and loss of conflict management skills

Despite the belief that square-up was effective in its time there was no suggestion that it could or should be revived as the lines of kinship authority to manage it are now unclear and the social skills and the fighting skills required to engaged in such a practice are now lost.

'In the old days law was very strong. Us old people still know the law. I can be a peacemaker and talk to people and say 'hey bungy – no more argument, no more fight – you relations – come together – square-up'. After a square-up there was a party – no more grudge or fight, invite to country, hunt together'.

"Today the younger generation, the great grandchildren never learnt much discipline. We learnt it from the old people. Only old people know how to square-up; young people don't know." Reggie Robinson, Elder.

Elders consistently volunteered that young people 'can't listen' to them anymore and that most conflicts stem from boredom among younger people (young women were mentioned in particular) roaming the streets at night.

'Most of the problems today are between younger people. They go off on their own way and do as they please.' They say to older people – 'your times are already gone'. We try to stop them from fighting but overpowerment from families – very hard to control'. Rev Richard Roughsey, respected Lardil Elder.

Younger people reported a loss of respect for many Elders because of their personal conduct. Some however said the bonds that remain between elders, parents and children are often overlooked. Young people still go to their parents and Elders for help.

A Safe Havens worker reported that when a fight occurs and people are concerned someone can always be heard saying 'quick go get (So and so).' However in many cases fights were reported to 'get out of hand' with no one other than police willing to intervene:

'Nowadays people just go and go. A big crowd will stand around and watch. Who knows where it ends up – fighting for a week – it spreads – people go to jail – no one to stop it.' Ashley Gavenor.

There was a widely reported reluctance on the part of many senior family figures to become involved in mediation because of the risk of being coopted into the conflict. Others suggested that it was very difficult for kinsfolk to be seen as neutral or accepted as a mediator in a

particular circumstance. The following comments were made in a conversation with the Lorraine family:

'Peacemaking doesn't last long – people are friends for a week and then it is on again. There is nobody much who you can get for help to make peace. Just ourselves or the police that's all. Our grandfathers used to do it'.

'We need a local person to be a peacemaker not people from outside. But I don't think you can get anyone to do it. They will take sides and not stand in the middle". That is when the police come in' (and mediate).

Sceptical comments were made by local people and outsider agency workers in relation to the viability of a locally managed and sustainable peacemaking program. To support this view people pointed to the absence of any existing community managed initiative and past failed initiatives. All cited limitations arising from kinship obligations, the erosion of Elders authority and as one resident put it the inability of government to provide long-term 'support without interference'.

Sgt Richard Maza of the Mornington Island Police offered the following summary as to why local mediation is becoming ineffective:

- Elders no longer hold the authority they once did
- payback / traditional forms of retribution are no longer legal
- there is "cultural confusion" about dispute resolution (i.e. people are no longer certain about protocols, norms, rules, lines of authority etc)
- most conflict is short lived, sporadic or suppressed so there is no motivation to attend or no opportunity to intervene early with mediation
- fights are based upon rumours; sometimes deliberately spread misinformation or incomplete information is too pervasive
- many fights are triggered by children fighting at school which then escalates into the adult domain
- widespread alcohol abuse and unpredictability of when it becomes available results in people not participating and a high probability of mediation agreements not being kept by those who abuse alcohol.

Enduring cultural and informal responses to disputes and conflict

Most verbal disputes and fights end without any intervention or require minimal support only from close relatives. However the public expression of grievances is a regular occurrence on Mornington. Most often no attempt is made to make grievances private. Many result in physical combat in a prominent part of town. The public expression of anger is not viewed as socially unacceptable as is it may be in the wider community. The public nature of conflict has always provided the opportunity for other kin to either step in to support their relative's cause or to act a peacemaker.

A Justice Association member reported that traditional peacemakers stopped intervening in fights in about 2001 after being arrested themselves.

'When people go into a fight to make peace it looks very rough - what the peacemakers do - yelling and shouting. Peacemakers have been arrested themselves (by police who misinterpret their behaviour) – no questions asked.' Roberta Felton, Justice Association Member and Yungkal Elder.

Ironically in many cases today when conflict escalates and no-one steps in as peacemaker some people have appeared relieved and/or compliant when police arrived to arrest them.

As for all communities, avoidance was the most commonly reported strategy to deal with conflict. Elders with long held grudges were said to just live peacefully as near neighbours, only expressing their antagonism through avoidance. Young women were reported to have stayed away from PCYC events to avoid further conflict.

Avoidance was seen as a good thing in many cases:

'Just forget about it, that's all we do'. Mickey Bush, Lardil resident.

But for others:

'Some fellas don't say anything. They won't talk, they just bottle it up inside. Then when they drunk they just explode'. Laurie Pamtoonda, Historic Resident.

Many aggrieved parties were said to have a remarkable capacity for forgiveness and to move on, while others subverted their feelings. For these reasons many conflicts identified in need of mediation may never be mediated. An example cited was an instance involving a serious stabbing. The couple involved were said to resume living together upon the victim's return from hospital a week later with no further recriminations (Eddie Fewings, Community Justice of the Peace).

One person reported offering themselves up to be traditionally bashed by appropriate kin in another community, following their release from a lengthy prison sentence. However the aggrieved family had seen the prison sentence as enough. This family independently volunteered this to be the case as well.

There were corroborating stories from others suggesting that lengthy prison sentences were sufficient and final punishment. However one inquiry to organise mediation was received relating to a person's release on parole after a lengthy sentence. The inquirer was very concerned about possible ramifications from the victim's family upon the release of this relative.

4.3 Current community peacemaking initiatives

Informal police mediations

Police currently provide mediation when approached by residents in conflict or initiate it themselves in a crisis to prevent an escalation of violence or as an alternative to laying charges where appropriate. There were many reports and complaints voiced about police practices, mostly centring on the enforcement of the unpopular alcohol restrictions. Despite the apparent poor relations between police and the community, police reported receiving requests for mediation at the rate of approximately one per week.

In one case a person who had previously expressed a strong desire for families to manage their own mediation, promptly requested police assistance for when faced with a crisis following their

involvement in a fight. It is clear that people would prefer to manage conflict better within their own cultural domain but seek police assistance as the only immediately available and safe alternative. All people proposing community run mediations indicated the need for a police presence 'off to the side in case things get out of hand'.

There were reports of police not understanding a situation or where they could have done this better. Despite no mediation training, there were many more reports of good outcomes from police run mediations.

Community members reported a high level of relief when police intervened following the death of a young man some years ago:

"I think people do want mediation.

A grandson and a nephew of mine got into a brawl and one got killed. They grew up together and were good mates. It was one of those things that didn't mean to happen. Grog was involved.

Although everyone on both sides were close family they were all affected and things got very hot. Something needed to be worked out quick and immediately after both sides went down to the police station and worked something out down there. I was one of the main speakers at that meeting. Although they were all very hot, after that the mediation settled down a lot of things. This was in Sgt Joe's time. It does work and this mediation stopped things from being a lot worse'. Bobby Thompson, respected community member.

Mediations conducted by the Junkuri Laka Justice Association.

The only reports of community managed peacemaking processes came from the Junkuri Laka Justice Association who conducted four voluntary mediations between disputing families in 2008. Matters mediated include disputes over custody and access of children, domestic violence, marital disputes and inter-clan or family feuds. In all cases mediation was said to be successful however some conflicts were mediated a second time following continued fighting.

A Junkuri Laka Elder described the settling of an ongoing fight between two large extended families.

'Even girls, they were fighting too. It happened a few years ago and was held in the festival ground. All the elders were there and the police were on the side to make sure they settled down. The Community Chairman spoke to them and told them they are all family. They all got a chance to speak and say their part. After they talked it out all shook hands and made friends again'. Hugh Ben, Justice Association member and Lardil Elder.

This mediation was jointly conducted by the Justice Association and community leaders. The reason for community initiated action in this case was the reported ongoing and escalating nature of the conflict and the involvement of a large number of people. Community leaders became very concerned and this was the motivating factor to initiate the mediation. One party to this dispute clearly understood the significance and impact of it being driven by the community rather than police.

'It was better with the Elders down there in the park, everyone knew it was serious and they were worried. It was better doing it amongst ourselves because we all knew about it and what to do'.

Most community residents reported a lack of confidence in Junkuri Laka, citing that its membership included Justices of the Peace who also sat on the Magistrates Court. They were also perceived to be 'too close' to the police and courts as evidenced by their meetings with the Magistrate and reported lack of equal consultation with people attending court. Justice Association members however, reported incurring community displeasure mainly when providing the court with accurate information about a defendant's circumstances when this information did not favour the defendant.

Junkuri Laka members self reported that they have not been functioning well for some time, with meetings infrequent, lacking cohesion and needing a coordinator. Most people reported not enlisting their support for these reasons. However it was evident that some people did access their support in a crisis or had an impending court appearance.

4.4 Enduring cultural aspects evident in cotemporary peacemaking

Most discussions on disputes were oriented through people's experience of past traditions. People saw future initiatives as a continuation of these traditions or being influenced by them. Important cultural and emotional components of a square-up have endured and are evident in the way people understand and engage in managing conflict. In particular:

- There was a belief that some ongoing conflicts or 'grudges' could never be mediated. Fighting itself was reported as part of a continuing tradition. Conflict management may be the more appropriate or realistic goal rather than conflict resolution.
- Young and old shared a clear understanding that the festival ground was the community space allocated for community controlled peacemaking as it has been for a number of decades.
- There was a shared understanding that maternal uncles – *gagu* - from both sides of a dispute were (nominally at least) the most appropriate people to support and manage their respective families through peacemaking. Some women also suggested that big sisters were appropriate supports for younger sisters in dispute settlement.
- The conduct of disputes remains mostly in the public domain. This potentially conflicts with legal requirements regarding confidentiality.
- Although the peacemaker's authority and acceptance has diminished over time, their role was discussed as relevant in peacemaking today.
- The practice of hugging and crying at the successful settlement of a physical or verbal conflict remains in contemporary peacemaking. This was both observed and reported as an emotional release in much the same as it was at a square-up in times past.
- There was consistent reporting of the sharing of gifts and other restorative activities following resolution of a dispute. This ranged from the sharing of cigarettes or home

brew to the exchange of small gifts, money and/or food caught through hunting or going out to country together.

An Elder reported the resolution of a serious dispute with a close relative:

‘Our girls became involved in a jealous fight. They just come over and started shouting and swearing at us and we had a big argument. We all got upset because they were our close relations too. My girl moved (out of town) for a while to keep out of more trouble. A few days later ... came over and said ‘Auntie I don’t want to fight with you any more’. He apologised and gave me \$60 to show he really meant it. He is a good man’.

4.5 ‘Mediations’ may differ to mediations in the wider community

- The peacemaking process on Mornington may involve the vociferous public airing of grievances, accusations and blaming prior to resolution.
- Obligations and imperatives imposed by kinship may result in family members other than the main parties to a dispute, or victim and offender, having a more prominent role in mediation.
- Peacemaking conducted by Elders may involve minimal input from the disputing parties, with Elders using their authority to reinforce both their cultural and kinship duties, and elicit their commitment to this.
- In other situations a peacemaking meeting may primarily serve to more publicly affirm what has already been reconciled in private negotiations.
- The omission of important family members from mediation is possible in a variety of circumstances and may result in ineffective agreements.
- Cultural values around kinship and violence may conflict with justice system views on what constitutes serious and not serious disputes or crimes. In many instances people may be more attuned to who did what to whom than what was actually done.
- Police experience of mediation shows some mediations need to occur at short notice to address the threat of escalating violence.
- Other mediations may take months to prepare and involve a number of prior mediations or negotiations about who can/should attend, speak and decide outcomes.
- A mediation referred by a court for a specific matter may be of secondary importance to other underlying matters which must be dealt with first as a matter of priority.
- Mediations may involve providing services such as medical or counselling or particular cultural supports to help people through the process. These may be provided during the mediation by elders/mediators.
- Managing community conflict may be a more appropriate goal than resolving conflict.

These findings are consistent with the writings of Kelly and the findings of the final report of the Indigenous Facilitation and Mediation Project. Both provide a comprehensive discussion on

elements of good practice (Kelly 2006 p 189 – 1940) and principles and guidelines in Indigenous dispute management. (Report # 6; Bauman, July 2003 – June 2006 p 28 - 36).

They may differ in some respects should the Mornington Island community adopt a model of service, guided by cultural values, with minimal use of mainstream frameworks or participation of trained mediators.

4.6 Establishing local ownership and control

Local ownership and control of programs and ‘culturally appropriate’ service delivery have been the aim of program initiatives since the self determination policy of the 1970s and are stated aims of the MIRJ project. It is generally accepted that the higher degree of community ownership of a project the greater chance of it becoming effective. Ownership of the MIRJ project requires the community accepting a request to take ownership of a stressful task rather than it being a local initiative from the outset.

References made to the lack of community involvement in such initiatives, the erosion of family authority and the constraints placed by kinship obligations on individuals to act indicate considerable challenges to enlist community ownership for the MIRJ project. In addition legal requirements placed on the conduct of mediation, particularly court referred mediation imposes a set of conditions seen as external and significantly different from Lardil, Kaiadilt and Yungkal cultures. Mornington Island residents maintain their very strong cultural identity and sense of independence from mainstream Queensland.

The following statements illustrate some of these issues:

“When outsiders come in they want us to do things their way. I just go along and do it my way. If we want to do it our way then you have to give (us) respect....We want to run it (peacemaking) the way we want to run it. Too many people coming in here telling us what to do”. Cecil Goodman, Mornington Shire Mayor and Lardil Elder speaking at the Muyenda meeting.

‘Nowadays police just gather the families up and take them to the police station for mediation or just arrest them and put them in the cell. We would like to see the elders sort out the fight first before police take any action. If no good then police gotta take over’.

‘We know the right place (to manage a conflict) and we know the right people to get... the (maternal) uncles from both families..... and we know what they have to do before they get together” “It doesn’t happen because of interference – there should be no interference from outside (government or other families) – we know how to do it but we need support....support without interference.’ Leon Roughsey, Larlumbenda clan member.

‘People need to have control over what is mediated rather than have it prescribed for them (to mediate)’. Nicholas Evans⁴.

⁴ Visiting Professor of linguistics (ANU) with a 30 year association with Mornington Island.

In working through these issues it is clear the community wants more effective conflict management strategies based on cultural traditions recognition of local knowledge and skill and support for those committed to peacemaking. There was no intention evident to work outside the requirements of the legal system but rather a desire for better communication, mutual respect and support.

The request for 'support without interference' was made in a myriad of ways and many times over throughout the consultation. The need for support was also demonstrated through people's direct requests for assistance to address conflict. A successful precedent for locally owned and managed peacemaking was reported by the Muyenda from the 1970s and 80s where a Uniting Church community worker supported them to mediate family disputes. His approach was more a therapeutic one however. (Nicholas Evans, pers. com).

People found it quite difficult to define 'support without interference'. In the course of the consultation it emerged that people needed information, advice, encouragement, supported learning opportunities and debriefing on justice issues. Although available these are not readily accessible within their own personal and community networks. Support therefore has to be intensive and accessible and more than just an information package, training package or community promotion. The challenge to achieving local ownership and involvement is balancing the provision of support without taking responsibility for the project. Examples are easily cited of externally appointed coordinators, facilitators and those in mentoring roles taking control of a project or being handed control in difficult situations.

The importance of local knowledge and interpersonal skills

Justice Association members and others pointed out the need to have local people centrally involved in peacemaking as:

- local people were knowledgeable of local issues and circumstances – especially personal and family circumstances, customs and history
- local people had the capacity to find out what needed to happen/who needed to be involved in any given set of circumstances
- local people had the capacity to communicate in ways not available to outside 'mediators' who might come in.

However Nicholas Evans commented that:

'People do have highly developed communication skills, particularly their awareness of others. This may not necessarily transfer into talking about grievances, emotions, and negotiating a resolution. There may also be a need to get people to be realistic in their expectations of mediation and managing expectations of the outcomes'.

This statement was supported in feedback provided by participants of the 'Managing Community Relations Training' who all agreed on the high need for people to improve their communication skills in relation to sensitive matters.

4.7 *Peacemaking in the wider context of social problems and social disadvantage*

Many agency workers suggested that the concept of mediation is a good one but highlighted the risk of it being used when other approaches such as counselling, education and training or basic negotiation were needed. One respondent suggested that mediation should address poor school attendance whereas another argued that for cultural reasons many parents see their children as autonomous decision makers and it is not their role to enforce school attendance. If this is the case then school attendance may be more effectively addressed by parenting programs or incentives to promote the valuing of education.

Providing mediation to address conflict when most conflict is caused by alcohol abuse also needs to be acknowledged with strategies developed to address this. It cannot be assumed that people will attend mediation sober and be willing and able to talk or that mediation agreements will not be sabotaged by further alcohol abuse. A mediation service on its own is not an effective response to alcohol abuse. Success is more likely to arise from partnerships with other services including those which address alcohol abuse.

Young emerging leaders including Chicko Toby, Frank Watt, Ashley Gavenor and Caleb Jacob independently identified that if people begin to address issues in mediation those issues will go unaddressed in everyday life unless mediation agreements include involvement in remedial or developmental opportunities. Effective mediation can only occur within the context of people taking control of their lives. Strong calls were made for the MIRJ project to include in its scope assistance to create developmental such opportunities.

4.8 *Government / community perspectives on doing business*

In keeping with the Mornington Island approach to social issues, these young people saw the MIRJ project as a useful but incomplete strategy, limiting their vision of an effective response to community conflict. It would make sense to them if offenders involved in justice mediations could participate in local diversionary education, training and men's programs, currently unavailable.

Men have long held hopes for a revival of a men's group and the plan to revive the Goobadunga⁵ camp on the Leeward side of the island. The creation of a range of diversionary options to address the increasing number of young men in particular, going into custody is high on the community agenda. Improved diversionary opportunities were reported as of greater importance to address this than mediation.

People asked for the space to better manage their lives; the ability to address their issues and concerns in accordance with their priorities and respect for their cultural values. Many concerns raised are not within the ambit of mediation to address. These may include the trauma caused by alcohol abuse, the lack of economic opportunity, motivating children to see that they have a future, community – police relations, the ability to negotiate over the Alcohol Management Plan and initiatives to address alcohol abuse. While resources are devoted to addressing these

⁵ Goobadunga means "good man" in the Lardil language.

issues most of the 200 or so consultation participants had little understanding of how government operated and what was being done to address some of these issues.

Nicholas Evans suggested that people understood the workings of missionaries better than they understood the workings of government. In keeping with culture, missionaries had a primary focus on relationships and people whereas bureaucrats maintain their focus on initiatives and outcomes.

The move to a shire structure in 1978 has seen an ever-increasing complexity imposed on community life. Community leaders and agency workers spoke of their limited personal resources consumed by meeting officials and the complexities of program management. This was reported as a reason for low community participation, poor project performance and may explain the lack of community interest in government business.

This perhaps explains in part the ability of the Uniting Church worker in the 1970s to work successfully with the Muyenda on peacemaking. People referred to this worker and other outsiders who have worked effectively on the Island for many years by adopting such a 'people-centred approach'.

The degree to which the MIRJ project is compatible with this Mornington Island world view and holistic responses to conflict and other social problems will significantly determine the level of community interest and participation.

4.9 Strengthening community capacity to manage conflict

While there was unanimous agreement about the need for peacemaking there were few suggestions as to how diminishing kinship authority and current ad hoc practice might be strengthened and improved. It was suggested that the authority of elders once lost is hard to regain and that their authority needs to be backed up by an agreed process.

Young people had clear ideas about developing peacemaking on their Island.

*'Find the strongest heart and the strongest mind and build them up and keep building them up. Get a brother and sister and father from each clan to go around and ask them who is the best one to get the family thinking about how they are going to do this peacemaking. Find the best person to speak for them. Get their names and keep it. Get the **movement** in the family.'* Chicko Toby, cultural advisor to the project.

'You need rules (for peacemaking) just like the rules for sharing out a turtle. Everyone knows what they are. The way to get back those rules for peacemaking is by doing it every day. Then talk about it and get better at it. You just do it and do it and people will get used to it.' Ashley Gavenor.

'To get the rules back for mediation you just start it off and keep building up so everyone gets used to it. Then it can pass on from generation to generation'. John Yunkaporta.

In a meeting with Larlumbenda clan group a younger woman indicated that people had lost confidence to address conflict even though they knew how to do it. In the presence of her elders she spoke softly:

'They should just try it and see they can do it – they could surprise themselves'. Kerry Roughsey.

Developing a mediation project by utilising the social capital of the kinship system is clearly evident in Chicko Toby's statement above. Paul Memmott, an advisor to this project and others reported that Indigenous people devote significant time to building social capital which centres on kinship rather than community. It often occurs in ways that don't match mainstream criteria of 'good governance'. (Memmott and Meltzer 2005: P105).

Throughout the consultation the same people were mentioned as potential peacemakers, though opinions varied on the most suitable characteristics of an effective peacemaker. Many of these people provided self reports of their alcohol abuse, criminal histories and involvement in community and police conflicts. However their nomination as a peacemaker was based on kin relationships, other personal qualities and their acceptability to act as peacemaker with particular parties in dispute was more critical.

Some community members however argued that if a peacemaker was not of good character they would run the risk of being abused by a party when mediation wasn't going their way. Using such people as peacemakers runs counter to the DRB notions of 'good governance'.

While this suggests potential difficulties in utilising locally selected mediators few other options in terms of people acceptable to the community appear to be available. It is argued here that strengthening capacity to manage conflict can only be achieved by building on kinship based social capital.

4.10 Peacemaking by Elders and emerging young leaders

Australian Bureau of Statistics census figures indicate that 10% of the Gununa population are aged 50 and over and 40.5% are aged 19 and under. The high birth rate and high death rate indicates increasing responsibility falling to younger more inexperienced emerging leaders. Repeated calls were made for younger people to '*start now and take over the reins from us older people* (on the Justice Association)'. Hugh Ben Lardil, Elder.

However the Muyenda emphasised reasserting traditional leadership roles and like the Justice Association called for younger people to assist them in peacemaking. As many Elders were becoming frail young people were also needed for their energy to move around the community and communicate with younger people. Three emerging young leaders were invited into the Muyenda and showed their pride and respect in attending.

While Elders said they did not want or need mediation training, younger people emphasised their need for formal training. A mediation program on Mornington may therefore involve the collaboration of Elders and younger people: Elders performing consultative and mediation roles and younger people being supported intensively through experiential learning and formal training to equip them with the skills to manage conflict into the future.

Collaboration between Elders and young people in conducting mediations was reported as a key element to mediation success in Pormpuraaw on western Cape York. (Kurt Noble, 2008, pers. com.)

Peacemaker and participant needs for mediation to be successful

The Muyenda and the Justice Association asked to be respected for their way of doing things and valued for the knowledge and skills only they could potentially bring to peacemaking. They called for improved dialogue between Elders and stakeholders in the justice system.

In their view government often failed to understand the level of long-term support required to facilitate real community change and did not have the ability to provide this.

For people to feel safe and confident to participate in mediation they needed to be supported in a fair process where procedural rules and lines of authority are clear and accepted by participating families and other stakeholders. Both parties to a dispute needed to see the potential benefits of their participation.

Younger people identified potential recruits to become peacemakers, expressed a need for training that included 'mainstream' content. Elders emphasised their need to regain traditional authority to manage peacemaking. People were seeking respect and recognition for any contribution to diverting people from custody including financial recognition for themselves or their agency or group.

Many fights were reported to arise from misunderstanding and misinformation. Those participating in mediations have a need to access accurate information about the issues or incidents giving rise to their conflict.

Community leaders and family representatives consistently articulated the need for allied cultural and developmental programs to refer people to after mediation. Outstations were repeatedly mentioned in all consultations as providing the necessary space for people to regain control over their lives.

4.11 Matters suggested that may be mediated

Family conflicts

Mediation was most commonly suggested as an appropriate response to family conflicts, in particular the relatively frequent family feuds triggered by teenage jealousy surrounding boyfriends /girlfriends. It was said that these conflicts often escalate when other adolescents and adults become involved through family allegiances.

Many people clearly indicated that more serious offences should be dealt with by courts. Examples of serious offences that may result or have resulted in District Court hearings were cited. It was suggested that very serious crimes were not only too emotive to deal with but were most appropriately dealt with in the criminal justice system. In a few instances victims and perpetrators of serious crime and their respective family members all reported the justice system the most appropriate place to deal with these matters and a satisfactory conclusion to the matter when the perpetrator was released. One request for assistance however did involve a concerned relative of a person about to be released on parole after serving a lengthy sentence.

Domestic violence

There was no definitive view or consensus of opinion on how this issue should be most effectively responded to. Many respondents reported that mediation should be an effective response which assisted the perpetrator to understand the consequences of their actions. Others pointed out that many women victims are too afraid to speak up for fear of further violence and that separate counselling was needed for both parties as a first step. While the

Island has no women's shelter and informal support is provided to women through their family networks this issue as the subject of mediation requires further investigation.

It may well be that parties to domestic disputes volunteer to have their issues mediated. However police currently do not refer domestic violence matters to mediation. DRB has a policy of not mediating about domestic violence although it will mediate about relationship issues.

Other family and community conflicts.

There were a variety of other causes of conflict leading to fights within family groups which could be mediated. These arose from the pressures of town living in overcrowded housing and were triggered through the loss of money at gambling schools, repeated requests for loans or failure to contribute to the household expenses and boredom. While mediation may assist people work through these issues they also need to be addressed in the context of disadvantage and strategies to address overcrowding.

A variety of other conflicts involving individuals or families, community and state organisations were suggested as matters for mediation. These included truancy, alcohol reform, police practices/community relations and the prevalence of dogs in the town as well as property offences which were most seriously perpetrated against community organisations. While some conflicts arising in these areas may lend themselves to mediation it should be assessed in every case that mediation is in fact warranted. There may be a temptation to provide mediation if it became available in circumstances where other strategies such as information provision, meetings or negotiations, counselling or legal assistance may be more appropriate.

Mediation between parties where there are significant power imbalances (for example between individuals and a powerful organisation or where there are language barriers that disadvantage a party) special supports to address the imbalance need to be built in.

5. Potential for police and court referred mediation

Diverting people from the criminal justice system is both a community priority and a State Government policy objective. The potential demand for diversionary mediation services can be broadly assessed from anecdotal police information coupled with the following profile of offenders on community-based orders and sentences for offences on Mornington Island. A detailed profile appears in **Appendices 6 and 7**.

For the period at each quarter from March 2005 to June 2008:

5.1 Offender profile

- The average age of those on a supervised community-based order was 30 years. The Queensland average was 31 years. The proportion of female offenders reduced from 38% to 23% at June 08. Those serving community-based orders who are Indigenous were above 90%.

5.2 Supervised community-based orders

- The number of offenders under supervision by probation and parole ranged from 37 to 102. The peak of 102 followed the introduction of a permanent probation and parole office in 2006. It has since declined to 52.

- The proportion of offenders on probation orders varied from 31% to 60% of all orders. Probation was the most common order.
- In September 2008, the proportion of offenders on probation was 50% of all supervised orders.
- Significantly, following a permanent probation and parole presence being established on the Island the proportion of probation orders increased and the proportion of fine option orders decreased.
- In March 2005, 50% of offenders on a community-based order had an offence against the person as their most serious offence. In September 2008, this had reduced to 35.9%. Elders have indicated their desire to mediate such non-serious matters.

5.3 Offenders sentenced in the Mornington Island Magistrates Courts

- The number of people sentenced to imprisonment in 2005-06 was 12; in 2006-07 it was 16; and more than doubled to 35 in 2007-08. Suspended imprisonment orders and intensive correctional orders totalled 14, 17, and 35 in 05 – 06, 06 – 07 and 07-08 respectively.
- If matters that may attract such serious sentences were referred to mediation, those making the referral need to be confident in the process. In particular the availability and diversionary merit of activities for inclusion in mediated agreements, that activities are appropriately monitored and reported and that the needs of the victim are met.
- Public order offences rose sharply from 238 in 2005-06 to 253 in 06-07 and again to 524 in 07-08. Increases are attributed to breaches of the zero alcohol carriage limit coming into force in late 2003 and the ban on home brew and closure of the community tavern in late January 2008.
- People believed that this problem required wider responses to addressing alcohol abuse. However courts may take the view that recidivist breaches of public order may be suitable for mediation. This offence category gave rise to suggestions that mediation should occur with the government on community input into restrictions and programs to address alcohol abuse.
- The number of defendants sentenced in the Mornington Island Magistrates Court in 2005-06 was 364. In 2006-07 it was 375 and in 2007—08 it increased to 576. Given community and court confidence in a well established program there is potential to refer matters for mediation from small percentage of offence categories and sentence order types.
- Based on a referral rate of less than 5% of the 576 defendants sentenced in the Magistrates Court in 2007-08, it may be inferred that potential exists for the Magistrates Court to make a minimum of 25 referrals per year.

Based on anecdotal police information that they mediate an average one matter each week it could be expected that a mediation service on Mornington Island could potentially mediate

upwards of 75 matters per year though this may well test the level of voluntary participation and program capacity. It could also be inferred that twice this number of matters could at least be referred to a mediation service if properly resourced.

6. Requirements of police and court referrals.

Police and Magistrates Court referrals to mediation are made under SS 53A and 88 (1B) of the *Justices Act 1886 (Justices Act)* which allows for matters to be adjourned for mediation under the *Dispute Resolution Centres Act 1990 (DRC Act)*. A mediator appointed under the *DRC Act* must conduct the mediation and mediation is defined under S 2 (1) of the *DRC Act* to include:

- the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes
- the bringing together of the parties to any dispute for the purpose, either at the request of one of the parties or on the initiative of a director
- the follow-up of any matter subject of any such discussion or settlement.

Formally recognised mediations, including diversionary justice mediations, may therefore need an appointed mediator to at least be present. It may be possible for others such as Elders to take a leading role in the mediation and for it to be formally recognised under legislation. Advice will be sought in relation to clarifying this situation. Courts may also need to be satisfied that procedures are in place to assess and accept referrals and arrangements are in place to monitor and report on mediation agreements.

The employment process for people to be mediators under the *DRC Act* is currently under review. It is anticipated that DRB will be in a position to begin appointing more mediators from July 2009.

It is possible for police to suspend a decision to charge a person and refer the matter for informal mediation with a person not appointed by DRB. A magistrate may also adjourn a matter to allow time for an informal mediation to take place outside of the *Justices Act*. Conducting private mediations outside the scope of the *Justices Act* and the *DRC Act* has a number of implications. For instance, the referring police officer, court or judicial officer may not recognise the outcome of the informal mediation.

Critically, there is potential for informal mediation to prejudice possible future criminal or civil proceedings. Mediations conducted outside of the *DRC Act* do not have the protection of confidentiality and privilege as afforded by SS 36 and 37 the *DRC Act*. A defendant who made admissions of guilt (often a requirement in restorative justice processes) in an informal mediation would not be protected by these sections should the matter later come to court. Defendants properly informed of this situation may not agree to participate.

Early indications from the magistracy and police on Mornington Island indicate that should a viable mediation service become operational on the Island appropriate referrals would be made.

The legal requirement of confidentiality in formal mediations and the public nature of dispute resolution on Mornington Island remains an issue for careful consideration, negotiation and resolution.

7. Other referral sources

All agencies on the island with the exception of the hospital indicated a willingness to make referrals to a properly functioning mediation service. Referrals of a complex nature such as some workplace disputes or potentially litigious civil disputes may need to have specialist services imported.

A survey of agency participation in supporting the project will be timed to occur when the future of the MIRJ project is more secure.

8. Developing a model of service: options to be considered

8.1 *Development of an 'experiential learning model'*

The consultation did not identify a model of peacemaking to implement. This was due to limited DRB and community experience with what is needed to meet complex cultural needs and legal requirements and incorporate them in a community based mediation project. People also gave little consideration to developing a model in the absence of assured funding. However the consultation provided a learning opportunity for the MIRJ project and for community participants.

A major finding is that a sustainable model is likely to be developed only through the shared experience of conducting mediations and shared learning from these experiences. This finding is also informed by the following separate, consistent points which support an experiential learning approach:

- the culturally based experiential learning styles of residents
- the learning gained by all who participated in a family mediation and in the follow-up debriefing sessions
- the insightful suggestions made by young people in relation to developing a model of service through experiential learning
- experience gained in providing *Managing Community Relations* training
- experience and learning still needed to establish or re-establish peacemaking values and rules to meet cultural needs which cannot be prescribed but only discovered and shared through experience.

Components of an 'experiential learning model'

Purpose

This approach aims to establish over time a sustainable locally owned and controlled peacemaking service by supporting and facilitating locally managed mediations and learning from these experiences.

Operational arrangements

There is a clear community understanding that locally managed conflicts occur at the festival ground and that a police presence is required 'at a distance' to ensure the peace is maintained.

There is no intention at this stage to mediate serious matters which may more appropriately be dealt with in higher courts.

Mediations would be carried out by Elders and/or Justice Association members as is sometimes the case now. Others contributing to the process may include significant kin such as maternal uncles (*Gagu*), emerging young leaders or older brothers or sisters co-opted into the process on the basis of particular kinship obligations and conflict circumstances.

The model proposes the creation of a 'mediation coordinator' to be advised and assisted by Elders, some of whom may be included in a pool of 12 recruited and trained 'conflict resolution workers'. Negotiation with stakeholders is needed to determine roles, responsibilities and procedures for assessing, planning and organizing community based mediations and the circumstances for voluntary roles and paid positions.

Creation of a coordinator position.

People widely acknowledged the need for a coordinator to work independently of kinship obligations and provide a long-term commitment to the project. If an appropriately qualified worker cannot be found locally then recruiting such a qualified worker externally will prove costly in terms of delay and providing accommodation and remote area financial incentives.

A coordinator would work with their employer and all participating agencies and family groups to:

- support Elders in bringing together people to resolve their conflict
- act as mediator in limited circumstances and only when necessary
- manage the interface between the requirements of the justice system the needs of mediation participants and family and cultural needs
- provide community education, on the job training and formal peacemaker training for the Islanders' peacemakers
- supervise, support and train 'conflict resolution workers'
- refer people to appropriate support services where indicated
- establish and monitor mediation activities, referrals and agreements
- monitor and evaluate the outcomes of peacemaking processes.

It is highly desirable for a coordinator to be an accredited mediator to accept diversionary court referrals.

Creation of 'conflict resolution workers'

'Conflict resolution workers' would ideally be nominated by family groups with two representatives each from the four Lardil groups and two each from the Kaiadilt and Yungkal families. There is provision in the funding submission to employ conflict resolution workers on a casual basis.

Conflict resolution workers would be supervised by the coordinator and work with all participating agencies and family groups on the basis of appropriate kinship affiliation. Conflict resolution workers would:

- support Elders in bringing together people to address their conflict
- inform and support parties to a conflict through the process
- participate with Elders as mediators whenever appropriate
- receive on the job training and formal peacemaker training to become accredited mediators
- provide family and community peacemaker education
- assist in establishing and monitoring mediation activities, referrals and agreements
- provide feedback to the coordinator on the outcomes of peacemaking

It is envisaged that the salary level would equate to A03 in the public service.

Training needs

This approach acknowledges the possibility of 'mistakes' being made, especially in reconciling western notions of justice and fairness with cultural values and highlights the necessity for continuous dialogue, learning and development. Community acceptance of community based mediation will be dependent on positive outcomes and community confidence in the process meeting participants' cultural needs and their need for safety and fairness.

Debriefing for all participants and on the job training for peacemakers be crucial in gaining community support and developing a sustainable model.

Action learning in a supportive environment are held to be most effective in developing peacemaker confidence and skills. There is also an important need to compliment this learning with formal peacemaker training including justice system issues. This will be offered to the wider community and provided in conjunction with a complimentary community education strategy.

This approach is recommended as an interim initiative to continue for the remainder of the pilot period or beyond if supported by evaluation at the end.

8.2 Options for delivering an 'experiential learning model'

For an 'experiential learning approach' to become a service model, further negotiation with community stakeholders must occur to establish the most appropriate sponsoring organisation to manage the program.

A visiting service provided by the Dispute Resolution Branch based in Cairns or Townsville.

Advantages

- it can be implemented quickly by expanding existing resources in Cairns
- the opportunity to utilise a wider pool of Indigenous mediators with no kinship obligations to Mornington Island families
- there are indications that it would be utilised once working relationships were established

- Over time a pool of expertise could be developed and there would be flexibility to provide mediations into other remote communities.

Disadvantages

- Cannot provide early intervention to prevent escalating conflict
- a high risk of outcomes not being implemented, given the lack of community ownership and the externally imposed service model
- there was no support for it evident in the consultation (however people demonstrated a willingness to seek external assistance to resolve conflict)

This model is not recommended however external mediators may well be invited into the community in circumstances requiring specialist mediation or a standard model of service facilitated by an external mediator.

Local mediators employed through the Dispute Resolution Branch

Advantages

- provides some degree of local ownership and control of the process
- local people have existing knowledge of kinship and cultural values not available to external workers
- may provide the cheapest service model with accommodation issues already addressed.

Disadvantages

- consultation feedback and departmental experience indicates that kinship pressure on local people paid as departmental mediators would result in high staff turnover
- it would be difficult to recruit, train and select a pool of mediators of sufficient size to be able to choose culturally acceptable mediators in any given conflict.
- The provision of on the job training and support would be far less effective on a fly in fly out basis.

This model is not recommended. However community management and support for the project, including a pool of skilled local mediators, is a longer term objective.

Service provided through additional funding of the Junkuri Laka Justice Association

Advantages

- provides an opportunity to provide community ownership and control
- the Justice Association the most logical agency with existing court role and is the only community group to provide mediations in 2008
- efficient use of resources (e.g. office space) and existing justice functions including existing relationships with justice system

- is currently funded some \$97,000 and can receive additional funds through the existing Community Justice Program funding arrangements
- may include the creation of a coordinator position - Justice Association members have requested employing a coordinator as a matter of urgency to assist address their current operational issues.

Disadvantages

- community feedback indicated current low levels of community confidence in the Justice Association and members also reported their current inability to function effectively
- the Justice Association may not be in a position to provide a sustained peacemaking service until these issues are addressed, thus carriage of this additional project may not be in the Justice Association's best interests
- Justice Association acreage of the MIRJ project would require skilled negotiation to enlist full community support and participation
- this option is likely to require a long lead-in time to negotiate a service agreement and appoint additional staff to run the project.

It is recommended that this option and other options be the subject of community negotiations to maintain broad community support and determine the most suitable and workable model.

Service provided through another community organisation

This option involves tendering the project out to a community organisation with the most effective proposal. Other groups such as the Muyenda, Men's Group/Indigenous Catholic Services Mount Isa, and the Uniting Church may have the capacity to manage a peacemaking service and some have expressed an interest in being involved. The Muyenda and Men's Group would require incorporation to receive funding. Although they have not met for some time the Muyenda have provided leadership with conflict resolution in the past and is recognized as the most appropriate cultural entity for this.

Advantages

- an existing community organisation or an organisation with existing links provides an opportunity to increase community ownership and control
- another community organisation rather than an organisation connected to the court may provide a greater degree of independence that will enable it to work more freely across the community
- a community based organisation may be able to provide its own local accommodation for any externally appointed workers.

Disadvantages

- is likely to take time too much time to incorporate a community body and establish funding and operational arrangements

- clarification of roles between the Justice Association and another community organisation would involve detailed negotiations and could create opportunities for duplication of services and confusion of roles.

This option may lend itself to longer term development. This and other options need to be the subject of community negotiations to maintain community support and determine the most suitable and workable model.

Maintain current MIRJ project arrangements. Recruit a locally based DRB mediation coordinator to implement an ‘experiential learning model’.

This is proposed as an interim measure to run for the remainder of the pilot period. It is envisaged that the position would be at A06 salary level.

Advantages

- a position may be created, recruited and an appointment made in a relatively short period, requiring one funding agreement to be negotiated between Commonwealth and state
- an accredited coordinator operating under the *DRC Act* can work within existing guidelines to accept diversionary police and court referrals
- administrative and organisational support is in place to manage project components, including employing casual conflict resolution officers and administering ancillary project funds
- this option provides time to further develop community capacity to locally manage peacemaking when negotiated milestones within a set period.
- a local person employed in a government position may be able to use this role to work outside their existing community affiliations. If appointed from outside the community this person may earn greater acceptance in working impartially across all agencies and family groups.

Disadvantages

- the role of a government officer may be counter-productive to enlisting community ownership and control as the stress involved for local people to carry out mediations may result in pressure on an externally appointed coordinator to take more responsibility for conducting mediations
- the lack of available accommodation on Mornington Island is a critical issue not yet resolved and there is a community preference for a locally based coordinator.
- community support for this option is yet to be negotiated.
- Under this proposal, the coordinator would work with community residents and agencies to develop community support and local agency capacity to sustainably manage the project.

9. Conclusion and recommendations

Following an extended but successful consultation, unanimous community support was provided to proceed with developing a peacemaking service on Mornington Island. Community interest in the MIRJ project is derived out of the value Mornington Island families place on kinship and the importance of addressing escalating family conflict, particularly among young people.

Its' success will depend upon the effectiveness of Elders and emerging community leaders to re-establish community norms and practices to better manage conflict. It will also be dependent upon the effectiveness of a sustained collaborative partnership with the Dispute Resolution Branch, other justice system stakeholders and community agencies to support their efforts.

It is recommended that stakeholder negotiation occur as soon as possible on implementing an 'experiential learning model' of service and identification of the most suitable agency to management the project long term.

It is proposed to commence implementation of an experiential learning model under current arrangements from within the DRB as an interim measure to run the remainder of the pilot period.

This provides the opportunity necessary to further develop community capacity to manage peacemaking and work towards a planned handover of project to community management. Any extension would be on the basis of time needed to meet negotiated milestones.

All work carried out under the MIRJ project should be directed towards strengthening local capacity to manage community conflict and local ownership and control of the project should remain as a central project goal.

10. Proposed steps forward: February – June 2010.

Steps to implementation February – June 2009 (currently funded)		
Milestone	Timing	Deliverable
Recommend a process to develop and implement the 'experiential learning model'. Gain approval to proceed with funding submission.	February 09	Consultation <u>draft</u> report finalised 16 February 09 Director-General approval provided to proceed with Funding submission. 17 February 09
Develop ADG funding submission.	By 27th February	Extension of deadline approved to 27 February 09 Funding (e-sub online) submission sent and received by due date.
Evaluate Consultation (Phase one) of the MIRJ project.	27 February 09	Draft evaluation completed.
	13 March 09	Evaluation finalised.
Incorporate all feedback and finalise Consultation Report. Gain D-G approval to send report out for community consultation.	By 31 March 09 By April 09	Consultation Report delivered to all stakeholders and feedback provided back to community participants
Continue community negotiations while funding submissions are being decided.	By April 09 By April 09 By June 09	Project manager position extended for the remainder of the pilot period. Mornington Island community groups are kept updated on progress and negotiation meetings are organised. ADG funding submission outcome is known and funding agreement finalised.

Negotiate with Elders and Justice Association, roles and responsibilities for conducting mediations, the location, line management and roles of a mediation coordinator and conflict resolution workers.	By June 09	Agreement reached on model of service, implementation process and operational guidelines and recruitment and appointment process for mediation coordinator and 'casual conflict resolution workers'
Report back to the Mornington Island community for endorsement via a public meeting.	May 09	Residents publicly informed on nature and direction of project with opportunity for their further input.
Practices and procedures relating to court and police referrals identified and documented.	By June 09	Practices and procedures approved by key justice system stakeholders.
Negotiate other agency based stakeholder support. Identify linkages and potential resources.	By May 09.	Stakeholders notified of funding outcomes.
	By May 09	Stakeholders formal support and participation invited via letter and questionnaire on their participation.
Establish evaluation framework for the implementation - phase two of the project.	May 09	Evaluation framework drafted.
	July 09	Evaluation framework finalised.
Obtain formal endorsement and support through the Mornington Island Negotiation Table.	2-4 March	Negotiation Table has been cancelled. All other planned negotiations to proceed including formal briefing of community champions to obtain continued support.

Hold community workshop to develop practice and procedures for conducting of mediations.	By June 09	Practice and procedures for MIRJ implementation written up.
Negotiate funding agreements and memoranda of understanding with key stakeholders.	By June 09.	Funding agreement(s) finalised and signed off.
Culturally relevant training package developed.	April – July 09	Culturally relevant training package available for training after July 09
2009-10 (subject to funding approval)		
Mediation coordinator appointed.	By August 09	Community peacemaker 'group' accepts referrals for peacemaking. Limited mediation referrals accepted by project manager until mediation coordinator commences.
Training delivered	Aug – Sep 09 and ongoing	Identified community members and agency workers trained to assist facilitate community mediation using the new culturally inclusive dispute resolution process.
Community information and awareness campaign conducted.	July – August 09	Mediation information package distributed throughout the community, including posters and local radio coverage.
Dispute resolution process implemented.	to June 2010	Restorative justice dispute resolution/mediation service to continue on the island.
		Coordinator and local provided with ongoing support, training and supervision.

On the job training incorporated into practice.	Ongoing	Mediation participants' feedback obtained and documented. Debriefing sessions provided to those conducting mediations after each mediation or critical incident.
Quarterly review of project to inform quarterly reports to funding body.	Quarterly	Quarterly reports to funding body delivered on time.
Develop a sustainable model of service.		Emerging good practice identified and documented in quarterly reports.
Project evaluated	July 2009 – June 2010	Project evaluated using methodology developed following identification of a service model. Evaluation to identify sustainable model of service based on experiential model and good practice.
Evaluate potential for model to inform mediation program development in other Indigenous communities.		

11. References

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- Nolan C. Alternative Dispute Resolution in Aboriginal and Island Communities: the Community Justice Program's Experience.
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12. Appendices

Appendix 1:	Overview of community based agencies and services
Appendix 2:	Project plan
Appendix 3:	Process evaluation framework for phase one of the MIRJ project
Appendix 4:	Undertakings provided to those participating in the MIRJ consultation
Appendix 5:	Overview of people and agencies consulted and time spent in consultations in the community
Appendix 6:	Summary of Individuals, Families and Agencies participating in the consultation
Appendix 7:	Profile of offenders serving community-based orders on Mornington Island 2005 – 2008
Appendix 8:	Overview of charges and defendants appearing in Mornington Island Magistrates Courts

APPENDIX 1: Overview of Community based agencies and services

Justice Agencies

The **Junkuri Laka Justice Association** was established under the Local Justice Initiatives Program in 1996. Junkuri Laka is also a Community Justice Group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation 2008*, providing it with authority over justice and alcohol management issues. It is required to have representation of at least 5 but no more than 15 members representing the Lardil (Windward and Leeward groups) the Yungkal and Kaiadilt people as well as people with an historical association to the Island. The Association focuses mainly on its court work and other justice related matters including liaison with the Probation and Parole Service and support for people in prison and coming out on parole.

There are 10 **police** officers based on the Island with the Officer in Charge a Senior Sergeant. The **Probation and the Parole** Service established a presence on the Island in July 2006 and employs two officers. Both agencies are located within the Court House. The Magistrate visits monthly from Mount Isa. The District Court sits twice yearly.

Health

Mornington Island Hospital has 29 staff. Thirteen Indigenous employees include an administrative officer, groundsman, cleaners and health workers. Other staff includes two permanent doctors, 13 nurses and an administrative officer. Within the hospital services there is a Community Health Clinic which employs a Team Leader, five Aboriginal health workers, and an Alcohol, Tobacco and Other Drugs Services (ATODS) worker assigned to a mental health position. The clinic also has a community midwife and a mental health nurse. A counsellor position is provides life promotional, healing and life skills.

Hospital services include a range of other allied services are provided from other sources including a consultant physician, life promotion officer and visiting counselling service dietician and diabetes education service. In addition to emergency evacuations the Royal Flying Doctor Service (RFDS) provides fortnightly child health services. Other specialist services such as obstetrician and gynaecologist, outreach surgeon, paediatrician, ophthalmologist and optician services are provided from Mount Isa.

A hospital doctor indicated that grievances are a common occurrence and are dealt with directly or by way of complaint with the DON. The hospital has a standard internal procedure for dealing with grievances and this is reportedly effective.

There is an incident reporting system in place whenever something happens that may require scrutiny. Some grievances are found to be legitimate and are addressed accordingly while others are found to be unreasonable. The Doctor believed that this would negate the need for the hospital to become involved in community based mediation.

Oxfam (Community Aid Abroad) provides an Australian Government-funded community development primary health promotion project. It works in close association with the school, hospital, Community Health Service and other related services.

Education

The **Mornington Island State School** goes to year 10 and has 34 staff inclusive of teachers, teacher aids/groundsmen/administrative/cleaners, of whom 13 are Indigenous. Indigenous employees include one teacher, eight permanent ancillary staff (teacher aids/groundsmen/administrative) and five casual or temporary ancillary staff. While school attendance varies over the course of the school year attendance is reported to be as low as one third for the whole school and this is a major community issue with no foreseeable significant improvement.

The School Principal was interested in investigating the possibility of holding mediations in schools and teaching it as well. She said she has already seen a number of fights between children where there could be an opportunity through mediation for children to learn how to resolve disputes. The Deputy-Principal later reported a short lived mediation initiative that operated in the school for children who were fighting. It was reported that children were quite a challenge to engage in meaningful dialogue and quickly learnt to shorten the whole process by apologising

Sports and Recreation

The Police Citizens Youth Club (PCYC) operates out of a new large cyclone proof stadium type building providing a morning breakfast program, after school and vacation care programs and regular weekly structured sporting activities. A disco is run on Friday evenings. All programs are well attended and work well for the Islands young people who have little else in the way of social and developmental activities. The service has a stable staff establishment of three youth workers and a Manager.

Family support

The Safe Havens project is a developing family support program to prevent the increasing number of children coming into care and fostered off the Island. Strategies include working with families where there is domestic violence addressing alcohol abuse and other interventions to minimise children and young people's exposure to violence. It employs a coordinator and two family support workers.

Arts Culture and Land Management

The Woomera Aboriginal Corporation employs local visual and performing artists, including 15 painters aged from 22 – 84 years, who work out of the arts centre and produce contemporary fine art and traditional works. A pool of up to 200 dancers are registered and may be paid to rehearse and perform.

The **Community Ranger Program** is tasked with environmental and cultural management projects including the ghost net program, (removing discarded professional fishing nets out of the gulf waters), weed and other pest control and mapping of significant, cultural, environmental and historic places. It employs six rangers and a coordinator and currently operates within the CDEP project. Rangers have been appointed to appropriately represent the major culturally groups on the Island. The program enjoys a high degree of community support.

Employment, training and income security.

The **CDEP** is the major employer with some 260 people registered to work. Most work two days per week with additional working days dependent on residual funding. CDEP operations are made up of work gangs responsible for road maintenance, mowing, fencing and a successful sewing project. Others CDEP workers are employed in community enterprises such as the garage and local store and have their wages topped up by those enterprises.

Centrelink employs two agents on the Island with regular visits by officers from Mount Isa. Centre link in conjunction with the Commonwealth **Department of Education, Employment and Industrial Relations** are currently implementing the Pathways to Employment Strategy. Under this initiative every person of working age, on CDEP or not currently in the workforce will receive an individual vocational assessment. Some 250 people have already been assessed. Each assessment results in individual plans to either identify and secure people's most appropriate benefit or identify and address their vocational needs. Individual vocational plans are linked to job oriented training which is currently being provided by two employment agencies **Job Find** and **Job Futures** who are based on the Island.

Q-Build maintain an office and work depot on the Island. Seven houses were under construction in the December 2008.

Visiting Government Services

The **Indigenous Coordination Centre** in Mount Isa supports and coordinates all Commonwealth funded projects on the Island in close association with the State coordination processes.

A State Government coordinator based in the **Department of Communities** operates out of Mount Isa and convenes monthly meetings to coordinate services and monitor progress with implementation of the Local Indigenous Partnership Agreement.

Mount Isa based Government services include a visiting **Alcohol, Tobacco and other Drug Service** (ATODS) counsellor, **Youth Justice Services** including a visiting **Youth Justice Conferencing Service** based in Townsville.

The **Department of Child Safety** has a permanent non-statutory support worker based on the Island with statutory officers visiting from Mount Isa.

APPENDIX 2: Project Plan



Australian Government
Attorney-General's Department

**Indigenous Justice and
Legal Assistance Division**

PROJECT PLAN - UPDATE

MORNINGTON ISLAND RESTORATIVE JUSTICE

MIRJ PROJECT

VERSION 7

15TH OCTOBER 2008

1.0 PROJECT OVERVIEW

1.1 PROJECT PURPOSE

The purpose of the Mornington Island Restorative Justice Project (the Project) is to trial the delivery of restorative justice mediation for adults on Mornington Island.

1.2 PRINCIPAL PROJECT PARTNERS AND PROJECT TEAM

- a) Dispute Resolution Branch, Dept of Justice and Attorney-General (JAG)
- b) Australian Government Attorney-General's Department (AGD)
- c) Courts Innovation Programs, Indigenous Justice Programs, Dept of Justice and Attorney-General (IJP)

Members of staff of the three principal project partners comprise the MIRJ Project Team which oversees all aspects of the project.

Further partnerships with existing State, Commonwealth and non-government service providers on Mornington Island (e.g. Youth Justice Conferencing – Queensland (QLD) Department of Communities.) may develop as potential linkages are identified.

1.3 IMPORTANT TERMS

For the purpose of this project the terms listed shall have the following meanings:

- Dispute resolution: This may refer to a variety of methods / models of resolving disputes that are non-violent, respectful, and collaborative which empower parties to shape their own outcomes. This may include (but is not limited to) mediation, conferencing, victim-offender mediation and justice mediation.
- Mediation: “An informal problem-solving conversation that is facilitated by an experienced third party. It is (generally) a voluntary consensus-based method of resolving disputes that uses facilitated communication, emotional processing, problem solving, collaborative negotiation, brainstorming, expertise, impasse resolution, and heart-to-heart communication to bring conflicting parties into a constructive, creative dialogue with each other.”⁶
- Restorative justice: (A mediation process) “used to repair the damage caused by an incident or as a result of harmful behaviour by a person who has admitted it or at least not denied it, so that further harm can be minimized and amends made.”⁷

⁶ Cloke, K. & Goldsmith, J. 2005, quoted in Brandon, M. & Robertson, L. 2007 *Conflict and Dispute Resolution – A Guide to Practice*, Oxford University Press, Melbourne, 83

⁷ Brandon, M. & Robertson, L. 2007 *Conflict and Dispute Resolution – A Guide to Practice*, Oxford University Press, Melbourne, 67

1.4 CONTEXT

- Mornington Island is a remote Indigenous community in the Gulf of Carpentaria, QLD. It experiences high rates of crime including violent responses to conflict and the related social and economic consequences.
- It has been identified as a priority in AGD's Restorative Justice Action Plan and as a Strategic Intervention Site by the Secretaries Group on Indigenous Affairs. It is one of only two Queensland sites included in the Australian Government Petrol Sniffing Strategy. The Secretary of AGD is the Australian Government Champion for Restorative Justice and Alternative Sentencing.
- The Chief Magistrate of QLD and the A/Director-General (JAG) support the provision of culturally appropriate mediation services on Mornington Island.
- DRB is well placed to deliver this project because it has a proven 17-year record of assisting members of the QLD community to resolve conflicts respectfully and cost effectively. Consequently requests are regularly received from stakeholders such as Magistrates, courts, police and Community Justice Groups to assist in remote communities that experience a high level of conflict.
- The Indigenous Justice Programs (IJP) supports Community Justice Groups in addressing and administering activities to assist in reducing the over-representation of Indigenous people in the criminal justice system. Community Justice Groups play an important role in the implementation of a range of initiatives to address Indigenous over-representation in the criminal justice system and address alcohol management. They support Indigenous victims and offenders at all stages of the legal process, encourage diversionary processes and develop networks with other agencies to ensure that issues impacting on Indigenous communities are addressed.

1.5 Project Description

- This is a three-year pilot project⁸ to deliver culturally-appropriate restorative justice mediation processes for adults on Mornington Island.
- The first phase of the project⁹ commenced on 19th May 2008 with the employment of a project officer to develop a model that meets the needs of people on Mornington Island and of the formal criminal justice system.
- Consultations will occur over a six months period with community and government agencies and community members. This process will build the community's knowledge of restorative justice and invite community support and ownership.
- This phase will also include the identification and training of community members and stakeholder agencies that are to have a role in implementing the model. A three-day Managing Community Relations training program will be delivered in September 2008 to community members and key agencies with an interest in restorative justice.
- An evaluation methodology and criteria will be developed to assess the effectiveness of the first phase.

⁸ subject to outcome of a Short Form funding submission and/or additional funding from AGD.

⁹ The first phase was extended in June 2008 from six to 12 months following additional funding provided by the ADG.

- The second (implementation) phase of the project is dependant on successful completion of the first phase, including the enlistment of community ownership and support and the project team's ability to secure additional funding in 2008-09.
- Implementation will involve proactive community education and further training for those involved in the service in relation to their roles, responsibilities, working relationships with stakeholders, communication links and implementation of procedures to manage remuneration and ongoing support for community members and agencies involved in service delivery.
- An evaluation framework for the implementation phase will be finalised following finalisation of an agreed service model.
- The MIRJ project will also develop new justice models, for example early intervention strategies to divert adult offenders from the criminal justice system.
- If the pilot is successful the model will be promoted and utilised in other remote Indigenous communities across Queensland.

1.5 PROJECT OBJECTIVES

The objectives of the MIRJ project are to:

- enhance the capacity of the community to deal with and manage its own disputes without violence by providing ongoing, training, support, supervision and remuneration for mediators
- reduce Indigenous people's contact with the formal criminal justice system
- encourage community ownership of the program
- improve the justice system's responsiveness to the needs of the community
- increase satisfaction with the justice system for victims, offenders, their families, and the broader community

The project has the potential to increase community safety by changing attitudes and behaviours and improving relationships between potential victims and offenders. However, this is not defined as a project objective as it is difficult to measure and dependant on a range of factors outside the control of the project.

1.6 SCOPE

The scope of the project includes the following:

- a) Funding: The project may be limited to phase one unless further funding is provided for years two and three in 2008/09.
- b) Recruitment of a Project Manager (AO7 level) through to delivery and evaluation of the pilot of culturally appropriate dispute resolution on Mornington Island.
- c) The extent of the MIRJ Project may also be limited by the outcomes of the Scoping in phase one. For example, the term "mediation" is not used more widely in this plan as the actual form of dispute resolution will not be decided until the completion of the scoping study. However, it is anticipated that it will be a restorative justice model of dispute resolution
- d) Policies developed throughout the project may also limit the kinds of disputes for which the model of dispute resolution is considered to be suitable.
- e) The project will be working with adults only at this stage.
- f) Time frames – see 2.0 *Project Deliverables and Schedule*

1.6.1 Constraints

- a) Funding: See 1.6(a)
- b) Community perceptions of MIRJ as an externally imposed initiative.
- c) Limited community capacity to become involved given competing priorities and current self-reported instability of the justice group.
- d) Community acceptance and confidence in consultation and restorative justice processes to address their needs and the time to develop working relationships.
- e) The complexity of community needs, yet to be accurately ascertained.
- f) Community isolation impacting on costs and capacity of DRB to provide training and ongoing support for mediators.

1.7 BENEFITS

Benefits include:

- a) Community involvement in managing disputes and enhanced capacity to manage conflict and improve relationships
- b) Potential reduction of community conflict
- c) Parties retain control over resolving their disputes and receive assistance with healing the relationships.
- d) Greater satisfaction for the parties to a dispute
- e) Culturally appropriate model of managing conflict and restoring relationships that is specifically tailored to that community
- f) Potential diversion from punitive forms of justice
- g) Reduction in Indigenous people's contact with the criminal justice system
- h) Potential for improved relationships with an aspect of the justice system that is more responsive to the needs of the community
- i) Reduction of costs to courts
- j) A partnership approach resulting in integrated service delivery

1.8 METHODOLOGY

The scoping study will occur through culturally-inclusive consultations with relevant stakeholders (see 3.2), held on an individual basis or in group settings. Family groups in particular will be identified and provided with an opportunity to participate. Discussions will be informal, using open-ended questions to ascertain:

- respondent's knowledge of Restorative Justice
- respondent's support for Restorative Justice on Mornington
- how it could best work to meet local needs and
- practical issues such as who could be involved and how.

Successful consultations will in part be dependent upon the level of community involvement in facilitating discussions and a cross-cultural exchange of ideas and concepts relating to restorative justice. At the conclusion of the consultations, the information will be collated and conjointly analysed with community representatives to identify a model which meets community need and standards of best practice. The consultation process and development of a model will be informed by ongoing advice sought from the Junkuri Laka Justice Group and other relevant agencies who will also be invited to endorse a set of ethical standards in relation to the consultation and use of sensitive information gathered through the process.

Recommendations will be made by the Project Manager to the MIRJ Project Team and DRB staff will work with the Project Manager on the development of new models, policies and procedures.

Organisational Capability Branch (JAG) will be consulted regarding HR issues (including position descriptions and evaluation of positions).

The most appropriate form of evaluation will be identified during the scoping.

1.9 REFERENCE DOCUMENTS

- Approval from QLD AG to proceed with the project in partnership with AGD.
- 2008-09 CBRC Short Form Funding Submission
- Partnership Agreement between AGD and JAG (DRB and IJP) – To be drafted in January 2008. Will be comprised of letter of offer and program funding agreement.

2.0 PROJECT DELIVERABLES AND SCHEDULE

Deliverable	Time-Frame Commencement	Completed by
Project plan developed and sent to DG	December 07	January 2008
Partnership agreement signed off	December 07	January 2008
Position description identified, approved and evaluated	January 2008	February 2008
Recruitment and induction of a suitable Project Manager (AO7 level) on a temporary basis for Phases 2 and 3 of project (& beyond if funding is provided)	February 2008	May 2008
PHASE ONE		

<p>Scoping conducted to include:</p> <ul style="list-style-type: none"> a) Research / map out relevant existing service delivery and all relevant stakeholders. b) Consult all relevant stakeholders about existing dispute resolution practices, potential linkages and willingness to participate c) Consult with stakeholders and make recommendations to MIRJ team and regarding <ul style="list-style-type: none"> (1) Process Justice Group and <ul style="list-style-type: none"> • Model(s) of Dispute Resolution • Service delivery options (2) Training (3) Evaluation of phase one 	May 2008	<p>October 2008</p> <p>November 2008</p> <p>December 2008</p> <p>January 2009</p> <p>January 2009</p>
Delivery of 3 day Managing Community Relations training program on the island	July 2008	November 2008
Appropriate dispute resolution model(s) and service delivery options negotiated with community stakeholders and finalised.	August 2008	February 2008 ¹⁰
Training needs identified	January 2009	February 2008
Culturally relevant training package developed	January 2009	February 2009
Model of service delivery integrated into DRB Policies and Procedures	January 2009	March 2009
<p>Trainees selected</p> <p>Training needs reviewed and refined</p>	February 2009	March 2009
Training delivered	March 2009	May 2009
Phase one evaluated	May 2008	June 2009

¹⁰ Annual leave to be taken 22/12/ 08 – 09/01/09

END OF PHASE ONE (Scoping consultation and development of a model)		June 2009
Dispute resolution process implemented (including community education campaign, ongoing support, training, and supervision of appointed staff)	TBC Subject to further funding	Ongoing

3.0 PROJECT STRUCTURE

Project Owner	Dispute Resolution Branch - JAG Represented by Lindsay Smith Executive Manager
Project Partners	Indigenous Law & Justice Branch, Australian Government's Attorney-General's Department Represented by Paul Denny Regional Coordinator – QLD Indigenous Justice Programs - JAG Represented by Jason Webb A/Manager
Project Sponsor	Dept of Justice & Attorney-General Represented by Julie Grantham Director General
Project Manager	Phil Venables Dispute Resolution Branch – JAG
Project Advisor	Charlie Watson Mediator with DRB

3.2 STAKEHOLDERS

Stakeholders include (but are not limited to):

- The Mornington Island Shire Council
- Junkuri Laka Justice Association Inc.
- Community Elders and residents, particularly extended family groups based around land ownership.
- Judiciary and Courts staff
- Officer in Charge, Mornington Island Police
- Other State Government services– e.g. Department of Corrections and DPP Department of Communities (Youth Justice Conferencing) and, Community Health, Hospital, School.
- Australian Government services– e.g. the Federal Government Coordinator
- Non-government agencies - e.g. Yuenmanda Women's Shelter, Safe Havens, PCYC, Oxfam, ATSILS,
- Other relevant State Government services not on the island – e.g. Legal Aid's Indigenous Family Conference Program at Yarrabah

4.0 QUALITY

Monitoring against criteria set out in Phase One evaluation framework will be conducted throughout the project.

DRB's existing quality control measures will be amended to suit the project and applied as appropriate.

Formal evaluation process will be undertaken towards the end of the project.

5.0 PROJECT RESOURCES

5.1 Human Resource Requirements

The Project Manager will carry out the bulk of the project.

The DRB Staff will be required to assist with the development of procedures, policy and training.

5.2 Project Budget

2007-08	The following funding was provided to the project by the principal partners:
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AGD	\$220,000
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IJP	\$20,000
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DRB	\$10,000
-----	----------

TOTAL	\$250,000
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These funds were used for Project Manager's AO7 salary plus accommodation, flights, car hire, laptop, phone and administration. They will also cover the delivery of the 3 day Managing Community Relations Training on the island in September 2008.

2008-09	\$209,000 (plus \$20,000 for the MCR training) was carried over to 2008-09
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2009-10	Yet to be funded.
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6.0 COMMUNICATION

The Project Team will meet on a monthly basis or as needed.

The Project Manager will attend the monthly meetings (by teleconference) and provide a status report.

6.1 Reports

A brief quarterly progress report will be provided to the Project Sponsor

Financial reports will be provided quarterly and/or as departmental policies dictate

Annual reports will also be provided

6.2 Issues Register

A register will be kept of outstanding issues which are unable to be resolved during the project and/or need follow-up action.

7.0 RISK MANAGEMENT

Identified Risks	Action
Inability to recruit appropriate project manager	Recruit widely and use informal networks Provide appropriate remuneration
Inability to find appropriate accommodation for project manager	Plan trips well in advance to allow sufficient time to book Consider alternative options, such as sharing
Community does not support project	Ensure culturally appropriate scoping study that builds trust
Unable to secure additional funding in 2009-10	Keep funding agencies informed of progress and sell successes of project; collect information to demonstrate on-going need.
Inability to retain community members once trained	Remunerate community members sufficiently in order to keep them in the community

8.0 ENDORSEMENTS (NOTED ON DRAFT 7TH DECEMBER 2007)

APPENDIX 3: Process Evaluation framework for Phase One (Consultation and Development) of the MIRJ Project

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Introduction and negotiating role	Research Island history. Identify relevant stakeholders and social structures	Identified agencies and family groups are documented	Service map of agencies/ services and family groups documented.	To provide worker orientation and inform scope of consultation.	20 th June	Family groups and other stakeholders identified and details documented. Island history researched and provided orally in consultations. Brief history details provided in Draft Consultation report.	20 th June 08
	Community visits 26 May – 2 Jun 08	Stakeholders introduced to the project and provide information.	Record of discussions	Information recorded to inform consultation phase.	11 th July	Consultations commenced 26-30 th May and 30/6 – 11/7 08 with Mornington Shire Council, Junkuri Laka Justice Group, Community Health, Oxfam, Safe Havens, Probation and Parole and Queensland Police Service.	Ongoing
	2 - 5 June (Mt Isa agencies)					Expressions of support provided by Mount Isa based agencies including:- ATSILS, visiting Magistrate, senior officers of QPS, and Probation and Parole.	Ongoing updates provided to Mt Isa agencies
	1 – 14 July 08					Informal introductions and brief consultations occurred with approximately 100 community members. Communication barriers acknowledged.	20 th June
Prepare consultation structured discussion	30 Jun – 14 Jul 08	Meetings held with all stakeholders	Written records of meeting outcomes.	Information to inform consultation process and to structure consultation discussions	6 August	Meetings held with all identified stakeholders.	Ongoing
	4-6 August 08				26 th Sept	200 project flyers printed, posted around community and distributed to residents.	Prior to Implementation
					15 August	Article submitted for publication. 7/11/ 08.	on 11 July 08

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Produce Service Delivery Map	Write-up of service map to indicate agency roles and potential project resources	Service Map is utilised	Service Map usage	Service directory to be used as a consultation resource.		An annotated agencies list compiled recording agency functions/ services. Initial discussions held with all stakeholders re making mediation referrals and supporting people through mediation and implementation of mediated agreements. Service map to be finalised when further funding is secured and potential agency roles are clarified.	12 Sept 08
Stakeholder Consultation	Commence Consultations with informal individual meetings	Family meetings occur as planned	Written records of family meetings	Focus on family and culture as the domain in which most conflict occurs.	18 August	6 Advisors representing all cultural groups were employed. 290 hours of planning and consultation were carried out.	Aug to Dec 08
Enlist participation	Employ Cultural Advisors (Specified, Casual Positions AO3 level)	Stakeholders are well informed on the project. Meetings with agencies occur as planned.	Written records of meeting outcomes	Focus shifts over time from information provision to community input on culturally inclusive service, preferred service options.	October	Family participation increased as evidenced by increasingly extended discussions and helpful information obtained. Participation also increased following Project Manager's invited participation in mediating an extended family conflict.	Oct, Nov, Dec
Identify existing dispute resolution practices/ linkages with DRB practice		Support indicated by Justice Association and Shire Council.	As above Written records of meeting outcomes.	Support from key organisations.	October	Formal meetings with Shire Council and Justice Association did not occur as requested in August – December 08. Individual Justice Association members and Councillors approached instead.	October - December
					October	Shire Council CEO offered of letter of support for further funding following discussion with Mayor.	26 Feb 09

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Community visits; 18 Aug – 27 Sept 08 20 Oct – 7 Nov 18 Nov – 5 Dec 08	Conduct consultations with Cultural Advisors	Community reference group is established and meets as planned.	Reference group meeting records and outcomes	Group to have culturally inclusive membership, project oversight & facilitate discussion	October	Cultural Advisors were employed instead of setting up a reference group. Oxfam and Safe Havens Agency workers became informal reference supports.	Not completed
		Working partnerships are formed with Justice Association, and relevant agencies.	Meeting records to provide evidence of or barriers to working partnerships.	Consultation to identify & address emerging issues, highlight points of agreement; inform further activities; and develop service delivery options.		Monthly reports provided to existing interagency meetings. Working partnerships not well formed. Uncertain nature of pilot project, early stages of development, lack of clear role for stakeholders are contributing factors.	5 th December
		Agencies and family groups have an opportunity to provide their input.	Level of input from agency and family groups as demonstrated by information documented in meeting records	Consultations to ensure all family groups consulted in a culturally inclusive way.		Approximately 200 community residents from all six major social groups on the Island participated in consultation discussions. This included 11 extended family consultations. All recorded in 57 pages of notes. Quotes from family meetings used extensively in draft consultation report.	5 th December
		Stakeholders report project ownership, and commitment to success	Written records of consultation and meeting discussions.	Dependent upon addressing communication barriers and		The <i>Moyenda</i> (Council of Elders) meet in final week of consultation to express their support and desire to be involved in community peacemaking. Support for the Project identified in Draft Consultation Report as evidenced by level of individual and family participation in discussions, support offered by the <i>Muyenda</i> and community requests for mediation.	2/12/08

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
	Complete formal consultation process and finalise Consultation Report	Report consistent with consultation information and legal requirements. Report approved for release to stakeholder feedback.	Draft Consultation Report to include a preferred model of service. Finalised document	Consultation Report to contain recommendations to inform implementation of a service delivery model Report to initiate negotiations on implementation	Dec 8th	Consultation Report Drafted 27 Feb09. Consultation period extended to December and unforeseen unavailability of project staff contributed to delay.	Consultation Report to stakeholders by 25/3/09
Deliver Managing Community Relations training	Tailored training package delivered to Justice Association and key stakeholders on Mornington. Begin to assess training needs	Participant formal and informal feedback Training needs assessment completed	Participant's Evaluation Questionnaires required a 1-10 rating scale on course content, presentation learning process and outcomes. Formal and informal feedback from participants	Training provides for participants input on conflict management and local options for peacemaking on Mornington Island. (See Below)	Oct 5-8th	11 participants including 2 CJG members. 7 attended the last day and completed evaluation which indicated high satisfaction with content, process and skill development. Role plays most beneficial. Informal feedback links high rating with participants need for conflict resolution skills and skilled presentation. Notes taken during course to inform practice and procedures and next training. The group requested a continuation of mediation training in 2009 and further training required for participants to become competent mediators. On the job training identified as the most effective/ culturally appropriate delivery method and is implicit in the recommended "Experiential Learning" service model. Training needs assessment ongoing.	5-7 November

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Budget submissions to implement Phase 2	Submit funding application for Implementation (Phase 2) to Australian Attorney-General's Department. Approval granted to submit a late application.	Success of Consultation Phase (Phase one) to influence funding for implementation.	Completed eSub Online	Director-General approved funding submission to proceed. Draft Consultation Report to inform funding and implementation.	27/2/09 17/2/09	Funding Submission completed and sent Formal outcome to be advised by line Management.	27/2/09 Outcome expected in early June 09
	Secure extension of temporary Project Manager Position.	Project Manager extended for another year	Draft Consultation Report including Phase one Evaluation.	Director-General to determine JAG funding for MIRJ Project including extending Project Manager	16 April 09	Awaiting Outcome of JAG Funding	April 2009
	Address implications of unknown outcome of funding submissions on community negotiations and ability to plan Implementation (Phase Two).	Community participation in Negotiation a service model to implement while budget decisions are pending.	Feedback on Consultation Report and recorded Outcomes of discussions with key stakeholders in this period	Need to plan for implementation while budget decisions are pending		Delayed due to unforeseen unavailability of Project Manager to travel to Mornington Island.	

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Negotiation phase Develop Model(s) of dispute resolution and Service Delivery Options	Obtain internal approval to present Consultation Report to community and stakeholders	Models of Service and recommendations approved.	Feedback from management, MIRJ reference group and CCU	Consultation Report and feedback provided in response to Consultation report.	Dec 8 / 08	Consultation Report currently in Draft awaiting approval to be sent out for community/ Stakeholder consultation.	By 8 April 09
	Present recommendations to community	Level of negotiated community agreement for recommendations	Formal advice to be provided by stakeholders and community Residents	Stakeholder workshops to identify implementation issues and processes.	Jan – Feb 09	Delayed due to unforeseen unavailability of Project Manager to travel to Mornington Island.	By 29 May 09
	Negotiate preferred model with community and other stakeholders.	Formal agreement reached	Agreement formally documented	Funding Agreement or MOU signed with key stakeholders.	Jan –Feb 09	Delayed due to unforeseen unavailability of Project Manager to travel.	29 May 09
Complete Training needs analysis	Identify a wider pool of community members interested or nominated as family peacemakers.	Number of people expressing interest in training or nominated by family / community as emerging leaders who need to be involved in peacemaking	Documented training needs linked to on the job training for those assisting in mediations and to the development of a training package for the Island. Data collection instrument to assess mediation outcomes and on the job training needs.	Link with recent training needs assessment conducted for approx 260 CDEP workers under the Pathways to Employment Program.	30 June 09 30 June 09 and ongoing	On the job training identified as the most effective/ culturally appropriate delivery method and is implicit in the recommended 'Experiential Learning' service model. Little interest shown in participation in formal training. Training needs assessment ongoing.	

Stage of project	Component/ Activity	Performance Indicators	Data required	Rationale / process issues	Due date	Outcomes	Completion Date
Develop culturally relevant training package	Write training package in consultation with stakeholders	Culturally relevant training package approved and available for training.	Local information and existing training packages to inform writing of mediation package for Mornington Island	Link with recent training needs assessment conducted for approx 260 CDEP workers under the Pathways to Employment Program. Establish training schedule for 09-10	31 July 09	Pending	Not completed
Project Evaluation	1. Consultation Phase (Process Evaluation)	Consultation Report Provided to ADG as Funding Body	Data collected as per Evaluation Framework	Evaluation to assess effectiveness of consultation	Phase 1 evaluated Jan 09	Delayed due to unforeseen unavailability of Project Manager to travel to Mornington Island.	20 March 09
	2. Implementation	Consultation Report Provided to ADG as Funding Body	Process recording Data and outcomes of mediation	Evaluation to assess consultation and effectiveness of mediations Framework to be developed upon finalisation of model to be implemented	Phase two June 09 30 June 09	Implementation Phase now extended to 30 June 2010 Framework developed and Interim Evaluation conducted by M. Browning	30 June 2010 October 2010
	Develop practice and procedures for conducting culturally inclusive mediations on Mornington Island.	Practice and procedures for MIRJ implementation written up	Input from all stakeholders Legal and policy advice	Community workshop	30 June 09	Elders Rules and 8 Step process later developed July – September 2009	Signed off by Elders December 2012

APPENDIX 4: Undertakings provided to participants in MIRJ consultation discussions.

This is to ensure participants are treated with respect; that they understand their participation is voluntary; that confidentiality is maintained and that they feel confident to speak freely. Ethical responsibilities to all stakeholders involved in the consultation will be considered and maintained.

It is acknowledged that discussions about family and community disputes may be stressful. Being asked to talk about these issues can increase stress for some participants. Therefore before conducting interviews or entering into discussions, participants will be informed on:-

- The purpose of the consultation
- How their information will be used and who will see it.
- Their right not to participate in any discussions and that their decision not to participate will be respected.
- The form of reporting on personal information
- Arrangements about safeguarding identities and confidentiality and anonymity (e.g. by writing the discussion paper in a general way that only reflects specific information.
- The manner in which any quotes might be used (if at all)

Those involved in the consultation and privy to consultation information will not:

- Get involved in personal or organisational conflict or views
- Make judgements on the beliefs or opinions being expressed
- Disregard information that project workers do not agree with
- Identify participants (by name) in the consultation report unless specifically given permission to do so.
- Prioritise one or two dominant people's viewpoints over others.

Consultation workers will undertake to:

- Listen carefully to the range of perspectives and viewpoints
- Respect the rights of people to participate or not
- Protect participant's confidentiality and anonymity as agreed
- Respect sensitive information that participants share but do not want included in a report or shared with others.
- Speak to and survey a range of people and listen to criticism.

APPENDIX 5: Visits to Gununa Community: Orientation and consultations with agencies and family groups.

Visit one 26 th May -2 nd June 2008	7 days	Introduction to community and community agencies.
Visit two 23 rd June – 14 th July 2008	21 days	Negotiate consultation process
Visit three 4 th – 6 th August	3 days	Interagency Steering committee meeting
Visit four 18 th August – 26 th September 2008	40 days	Employ Cultural Advisors and community consultations
Visit five 17 th October – 8 th November 2008	23 days	Community Consultations and provide training
Visit six 17 th November – 5 th December 2008-12-09	19 days	Finalise Community Consultation

APPENDIX 6: Summary of Individuals¹¹, Families, and Agencies participating in the consultation

Jirrurumbenda (Leeward- North),	Larlumbenda (Windward- South)	Lilumbenda (East)	Barlumbenda (West),	Kaiadialt	Yungkal	Wik Residents	Gungalida Residents
Five Families	Five Families	One Family	One family	Four Families	One Family	Seven adults	One Family

¹¹ Families are only identified by their cultural affiliation. The many individuals who participated are not named for confidentiality reasons. Those named below provided consent to be identified.

Muyendas (Council of Elders) meeting

Cecil Goodman (Mayor), Gordon Watt, Matthew Peters, Rev Richard Roughsey, Cyril Moon, Hugh Ben, Garth Adams, Graham Toby, Howard Wilson, Sidney Wilson, Reggie Robinson, Roger Kelly. **Others:** Laurie Burke, Chicko Toby, Frank Watt, Leon Roughsey.

Women Elders

Roberta Felton, Annie Chong, Karen Chong, Lillian Peters, Valmay Yarrak, Netta Loogoth, Juliana Jacob, Ellen Roughsey, Louisa Roughsey, Edna Hills, Judy Walpo, Averill Thompson, Mary Cameron.

Dulmadas (senior member of a land holding family): Eleven senior family members.

Young people identified by community members as emerging leaders

Alfred Williams, Sean Lyndon, Chicko Toby, Caleb Jacob, Ashley Gavenor, Lloyd Chong, Peter Nathan, Frank Watt, Alan Seckington.

Community based Agencies

Mornington Island Shire Council, *Junkuri Laka* Justice Association, Community Health, Hospital: Dr Eritaka Tekaeru, Oxfam, Safe Havens, Community Ranger Program, School Principal, Deputy Principal, teaching staff. CDEP workers meeting and individual work gangs, Probation and Parole, Police, PCYC staff Remote Indigenous Broadcasting Service (RIBS), Woomera Dance Company.

Local Justices of the Peace: Ila Amini, John Lewis, Eddie Fewings.

Externally based agencies:

Mount Isa Magistrate, Police Mount Isa and Cultural Advisory Unit Brisbane, ATSILS Mount Isa and Brisbane, Department of Communities, Youth Justice Conferencing, ATODS Mount Isa, North West Qld Indigenous Catholic Social Services. Carpentaria Land Council Aboriginal Corporation, Kelly Gardner,

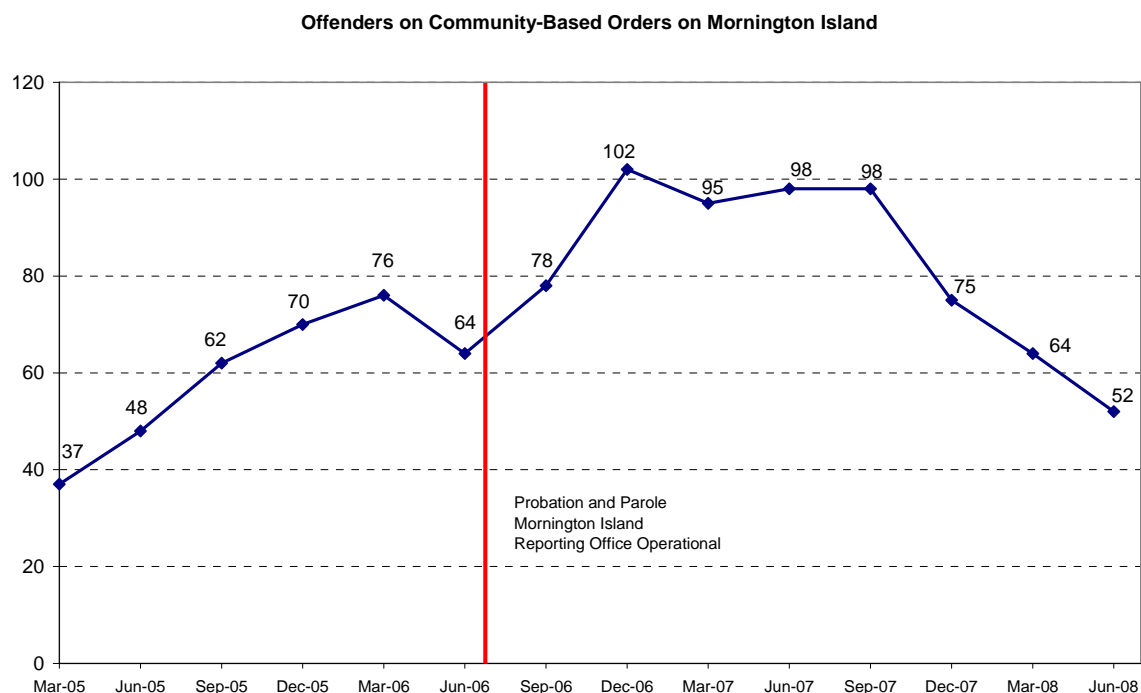
Community Champions: Bob Atkinson APM, Commissioner of Police, Michael Kinnane, Director-General, Department of Local Government, Sport and Recreation.

APPENDIX 7: Profile of Offenders Serving Community-Based Orders on Mornington Island 2005 – 2008¹²

Offender Numbers:

The number of offenders serving community-based orders on Mornington Island experienced an initial increase following the introduction of a permanent Probation and Parole presence on the island in July 2006. However, by July 2008 the number of offenders had returned to pre-July 2006 level.

The graph below reflects the number of offenders under supervision by Probation and Parole on Mornington Island at each quarter for the last three years. The graph demonstrates the initial growth in offender numbers on Mornington Island following the opening of the permanent Probation and Parole staffing presence and the subsequent gradual decline in order numbers from September 2007.



Data recorded prior to the introduction of a permanent Probation and Parole reporting office in July 2006 consists of offenders sentenced in a Mornington Island court and may be less than the exact number of offenders supervised at the time.

¹² Source: Department of Corrective Services Research and Analysis Unit.

Indigenous Status:

Since March 2005 the proportion of offenders serving community-based orders on Mornington Island who are Indigenous has remained above 90%.

Age:

The average age of an offender sentenced to a community-based order supervised on Mornington island remained relatively steady during the period March 2005 – June 2008 at approximately 30 years of age. This is directly comparable to the average age of a community-based offender in Queensland, which is 31.

Gender:

The proportion of female offenders has gradually reduced during the period March 2005 – June 2008. In 2005 the proportion of female offenders serving community-based orders on Mornington Island was as high as 38%. This has decreased over time and at June 2008 only 23% of community-based offenders supervised on Mornington Island were female.

Most Serious Offence:

Offenders serving a community-based order on Mornington Island were most likely to have an offence against the person as their most serious sentenced offence. In March 2005, 50% of all offenders were serving a community-based order and had an offence against the person as their most serious offence. In June 2008, this had reduced to nearly a third (34%).

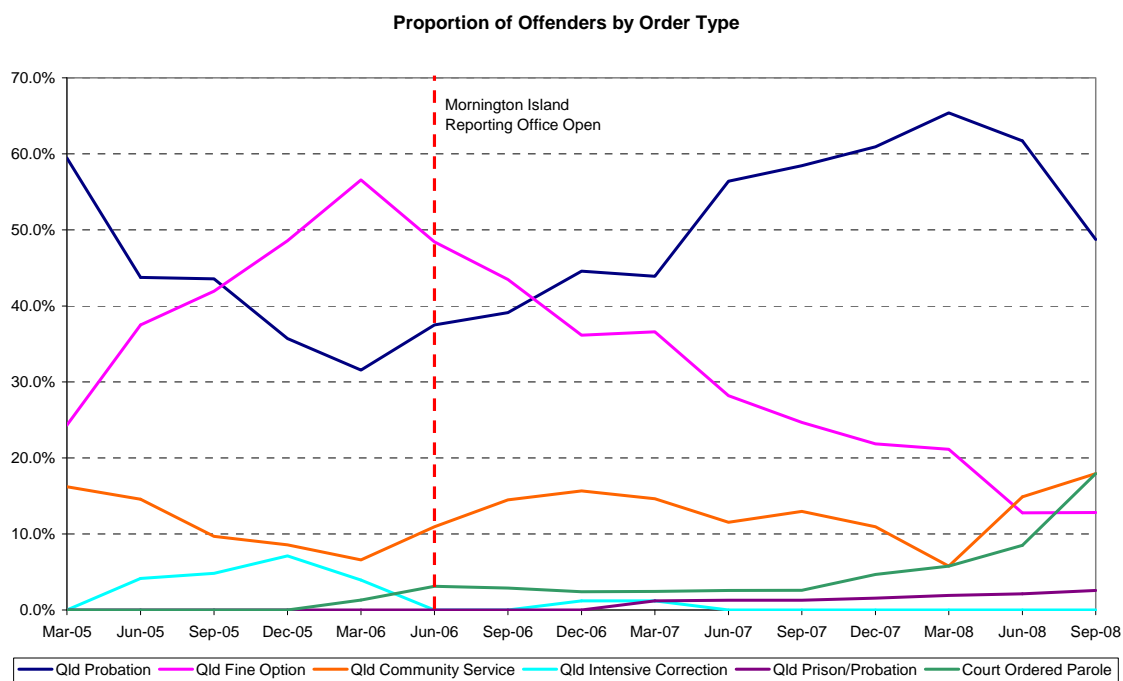
Since 2005, the proportion of offenders sentenced to a community-based order who had a Motor Vehicle, Traffic and Related Offences as their most serious offence has grown from 5.9% to over one fifth of the offender group (21.3%).

The table below reflects the proportion of offenders under supervision on a community-based order on Mornington Island by most serious offence during on a 6 monthly basis during the period from March 2005 – March 2008.

Proportion of Total Population by Most Serious Offence as at Date						
	Offences Against the Person	Property Offences	Offences Against Justice Procedures	Offences Against Good Order	Motor Vehicle, Traffic and Related Offences	Other Offences
31/03/05	50.0%	20.6%	14.7%	8.8%	5.9%	0.0%
30/09/05	37.3%	16.9%	16.9%	10.2%	13.6%	5.1%
31/03/06	27.0%	17.6%	12.2%	18.9%	18.9%	5.4%
30/09/06	20.9%	14.9%	14.9%	26.9%	11.9%	9.0%
31/03/07	20.7%	11.0%	11.0%	28.0%	15.9%	12.2%
30/09/07	18.2%	13.0%	14.3%	16.9%	18.2%	19.5%
31/03/08	30.8%	11.5%	15.4%	3.8%	25.0%	13.5%
30/09/08	35.9%	15.4%	10.3%	5.1%	17.9%	15.4%

Order Type:

The graph below demonstrates the proportion of offenders on Mornington Island by the type of community-based supervision order being served. The majority of orders served by offenders on Mornington Island during the period 2005- 2008 were probation and fine option orders.



Significantly, following a permanent Probation and Parole presence being established on Mornington Island the proportion of probation orders has increased and the proportion of fine option orders has decreased. This suggests that the courts are sentencing offenders to periods of supervision by Probation and Parole rather than imposing fines.

APPENDIX 8: Overview of charges and Defendants appearing in Mornington Island Magistrates courts¹³

Number of charges proven in Mornington Island Magistrates courts in financial years 2005-05 to 2007 – 08 by offence type

Offence type	2005-06	2006-07	2007-08	
Offences against the person and weapons offences	70	52	100	
Property and theft offences	66	112	88	
Drug offences	27	12	12	
Public Order offences	238	353	524	
Traffic offences	90	72	105	

¹³ Source: Statistic Analysis Unit Department of Justice and Attorney-General

Defendants¹⁴ finalised in the Mornington Island Magistrates Court in financial years 2005-06, 2006-07, 2007-08 by outcome and gender

	2005 - 06			2006 - 07			2007 - 08		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Imprisonment order	10	2	12	16	-	16	32	3	35
Intensive correction order	2	-	2	1	-	1	-	-	-
Wholly Suspended Imprisonment Order	19	1	20	9	-	9	16	2	18
Community Service Order	7	1	8	19	4	23	11	6	17
Probation Order	20	7	27	24	18	42	16	6	22
Monetary order	177	85	263*	159	96	255	288	163	455*
Good Behaviour / Recognisance Order	3	3	6	1	1	2	2	3	5
Convicted not further punished, Reprimand, property forfeiture orders	1	1	2	6	7	13	2	2	4
Committal order	4	5	9	4	3	7	2	5	7
Total defendants placed on orders	243	105	349*	239	129	368	369	190	576*
Charges unproven /withdrawn	10	5	15	4	3	7	8	5	13
Total finalised court appearances	253	110	364*	243	132	375	377	195	576*

- The total is higher than males plus females as in a few cases gender was unknown and these defendants were still counted as “unknown” gender.

¹⁴ This does not count distinct persons as a defendant may have more than one finalised matter within the financial year.

Summary of findings to provide community feedback.

Support for a peacemaking project

- Nearly all 200 people consulted expressed their support for peacemaking on Mornington. There was a strong desire for families and their elders to be more involved in sorting out conflicts and widespread agreement how it should happen.

Dispute resolution today

- At present people sort out disputes by themselves or with the help of relatives. More serious conflicts are mediated by police or by Junkuri Laka. People are worried when fights spread and police involvement is the only way to stop it.
- Elders said their authority is not respected like before, especially among young people. They want to reaffirm their leadership by managing community conflict and believed they have the knowledge, skill and a responsibility to do so.
- Men expressed a need to show leadership through their involvement in Men's Group activities and to contribute to family and community life.

Getting the community involved in peacemaking

- People said it was important to choose the right place and to have the right relatives there to guide their families. Conflicts must be guided by customs and accepted protocols. Elders wanted young people to work with them in leadership to achieve this.
- The community would support mediation and it will be successful if:-
 - Families are given good information to help them make their decisions and are consulted on the right way for them to go about peacemaking.
 - Mediations happen when people are ready and no one is forced to go.
 - People believe that they will be treated fairly.
 - There is respect for the peacemakers and confidence in their ability to stay strong and not become involved or take sides.
 - Everyone feels safe and their rights are respected.
 - Everyone who should speak has a chance to say their part.
 - The right family members must attend but meetings should not be too big.

- Support is available to help people through mediation and follow up support for people when they have agreed to sort it out.
- The community accepts mediation rules and protocols that they develop, and everyone learns how to make it better by experience.
- Everyone can see that this is better than going to court or police.
- Police support is needed 'on the sideline' to remind people that it is better to talk it out amongst themselves than go back to being charged and going to court.

Diversion from the justice system

- Everyone was concerned with the high number of young men especially going to jail and the number of people fined for contravening the alcohol restrictions.
- People said it was right for serious offences to be dealt with by a higher court.
- For mediations to be referred by police or courts they must be managed according to the law to be able to divert people from the justice system.
- A Department of Justice and Attorney-General mediator may need to work closely with the elders to manage court referred mediations, which in some cases must be reported back to the courts.
- If someone is charged with an offence against another person, mediation may not be possible unless it is referred by a court or police. The rights and wishes of the victim must be respected. A person charged or the alleged victim has the right not to go ahead with it.
- Intensive on the job training and formal training is needed to assist local people become accredited mediators.
- The development of local programs to divert people from the justice system, especially from custody, is a community priority. Such programs were needed so people attending mediations could have follow-up support.

Steps to implementing a service

- No clear picture emerged as to who could best manage a peacemaking service and how it should operate.
- Four young people suggested that the only way to get peacemaking happening on Mornington was to make a start and everyone learn together from experience and see that it is better than going to court.
- Commonwealth funding has been applied for to continue the project in 2009-10 and the outcome of this will be known in early June 2009.
- For the coming year 2009 – 2010, it is planned to employ a mediation coordinator to work with the Elders, the Junkuri Laka Justice Association, Police and the Courts to start mediating community disputes and in the right circumstances reconciling victims and offenders.
- Further negotiate with Elders and community agencies, including the Junkuri Laka Justice Association to establish who is best placed in the long-term to manage peacemaking and make it a community owned and operated service.
- Community and justice system support for the agency managing a peacemaking service is needed for participants to be confident in accessing the service and for the service to operate effectively.