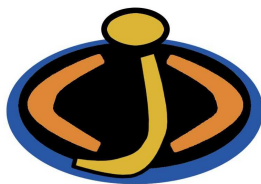


The “Ponki” Victim Offender Mediation Program on the Tiwi Is



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Introduction

The Tiwi

The Tiwi Islands of Melville and Bathurst, with a combined area of 8320 km², are located 80 km north of Darwin, at the junction of the Arafura and Timor Seas. They are separated from mainland Australia by the Dundas Strait. Melville Island is the larger of the two Tiwi Islands and is Australia's largest island after Tasmania. The Tiwi are a culturally and linguistically distinct people and number around 2500, with approximately 1200 residing in Wurrumiyanga (Nguu) on Bathurst Island.

Figure 1 Tiwi Is Map



Tiwi language is spoken on both Melville and Bathurst Islands. Although English is taught at the local schools and there is a high degree of fluency in both spoken and written English amongst Tiwi people, Tiwi is the principal language spoken.

All Tiwi people belong to one of the four following Skin Groups: Miyartuwi, Takaringuwi, Warntarringuwi and Lorrula. The Skin Groups is one of the fundamental building blocks of Tiwi society and critical to understanding family and community life. Members of each Skin Group have particular cultural responsibilities and obligations to each other including 'avoidance relationships' and 'right way/wrong way' 'marriage' relationships between certain skins.

Figure 2 Ponki Skin Group Relationships

Relationships - in particular skin group relationship or kinship – are central aspects of contemporary Tiwi and Indigenous societies. Kinship systems can allow for the extension of kin relationships to locate everyone (including non-Indigenous people) in some form of relationship.

Kinship relationships define inter-personal obligations, rights and privileges. They form a vital and intimate component of community governance, providing



commonly recognised forms of constraint on interpersonal behaviour and promoting broad community cohesion. Kinship relationships results in people holding a complex range of obligations and duties towards each other in the close-knit Community where living on an island means the community simply has no choice but to find ways of getting along.

The prioritisation of “relationships” and the “community” in Indigenous dispute management processes contrasts to the dominant culture or western processes, where the emphasis is often on the “dispute” or the “individual.”

Managing Conflict through Mediation

Indigenous communities, like all communities, experience a range of conflicts, although in the Northern Territory many Indigenous communities experience levels of violence and conflict that are exceptional and often lethal.

Common sources of conflict on Tiwi Is repeatedly identifies the 3Gs – grog, ganja (marijuana) and gambling – as the source of many community problems and part stem from, and in part are informed by, historical and contemporary sources of disadvantage and alienation from the formal justice system. Grog is commonly singled out for its role in inappropriate behaviour and in triggering fights and violence. The most common symptoms of conflict on the Tiwi Is include:

- breakdown of relationship from jealousy, rumours, gossip and unfaithfulness;
- alcohol and other drug abuse, including problems arising at the Nguui Club;
- financial issues, including gambling and debts;
- teasing, social network intimidation and staring;
- children’s behaviour;
- housing; and
- tensions from unresolved business that happened a long time ago.

The ability of Indigenous communities to deal with conflict in ways that reflect their local values and reinforce local community authority not only helps to make communities safer places to live, but also go some way to addressing the sources of dysfunctional and systemic conflict.

One of the strengths that mediation offers is that it does not have an advisory, quasi-judicial-activist or even a counselling role. Mediators do not change, interpret or influence established Laws - whether it is dominant Australian Laws or local Traditional Laws. Mediator practitioners focus on create safe environment and an opportunity for parties to find better ways to *manage* obligations under Traditional and Australian (modern) Laws that are in conflict without severing relationships that interview the community.

"Ponki" Mediators

Figure 3 Achieving National Accreditation Status (Photo Indigenous Times)



In the Tiwi language the word Ponki means 'welcome' It also means 'peace' or '..it's finished' and the spoken word is often accompanied by a hand gesture; a waving of the hand away from the body. In recent years on the Tiwi Islands there's been a concerted effort to combine this traditional concept of Ponki with western mediation techniques.

In 2008 CJC were approached by the Mediation Coordinator at NAAJA seeking to work together to develop mediation training program¹ based on the National Mediation Accreditation System that provides

"an experienced qualified recognition for those who are resident in a linguistically and culturally diverse community for which specialised skills and knowledge are needed and/or from a rural/or remote community where there is difficulty in attending a mediation course or attaining tertiary or similar qualifications;²"

However, the Tiwi elders insisted they undertake the *ab initio* training course which involves thirty-eight hours of training³ through the CJC to critically examine and also build upon the western mediation model. In 2009 15 Tiwi completed the course and assessment to be formally nationally Accredited– the same rigorous training, assessment and remuneration standards as any other "retired Judge who does mediations for CJC"

Figure 4 Ponki Mediators Barry and Teresita Puruntatameri

As part of the curriculum the CJC mediation manual was re-designed translated and appropriate role plays were scripted in consultation of the Tiwi elders. The participants named graduates of the course "Ponki mediators" and created an enhanced mediation model and design that incorporates a strong Tiwi tradition that require the input of representatives all four main skin groups to be present as mediator when facilitating all mediations.



This innovative combination of traditional and modern mediation skills is now used in three ways: when long-term prisoners seek to return to the islands

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<http://www.naaja.org.au/index.cfm?fuseaction=viewMediaRelease&pid=169&y=2009&mo=1>

¹

² National Approval Standards 5(3)(b)

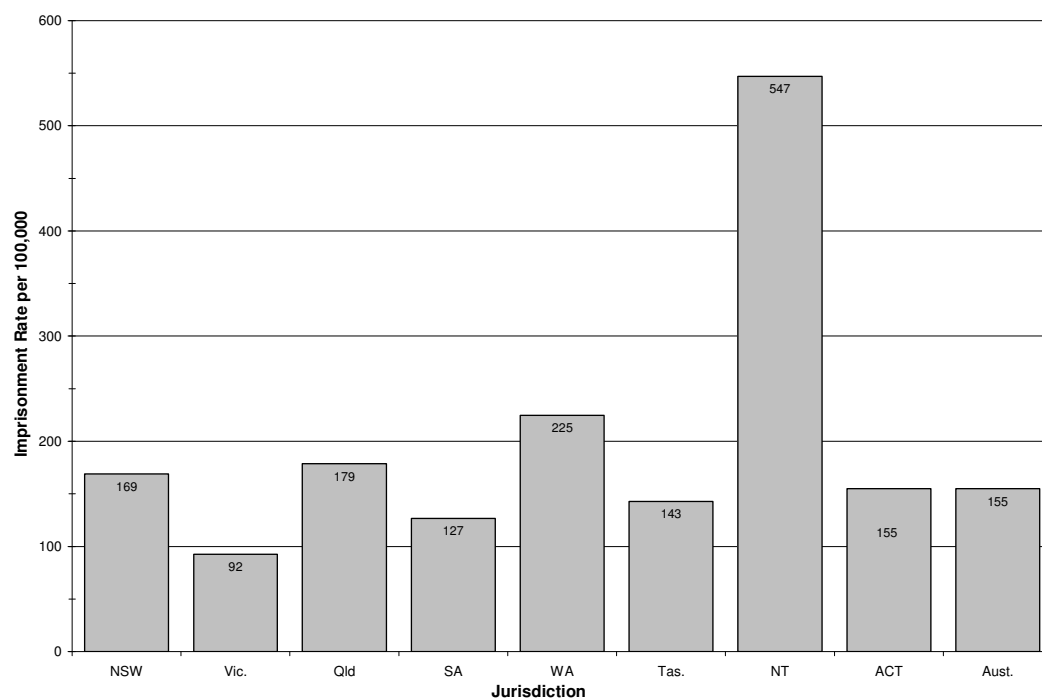
³ National Mediation Approval Standards www.msb.org

upon release, when young people commit crime and when there's general conflict in the community.

Recidivism in the Northern Territory

The 2009 Census of Adult Prisoners⁴ outlines that as 81.8 percent of Territory inmates are Indigenous. In 2008-09 the Australian Bureau of Statistics (ABS) reported that the Northern Territory recorded the highest imprisonment rate of 652 prisoners per 100,000 adult populations, representing three times the national rate with projections are that this number will grow by one third in the next five years.

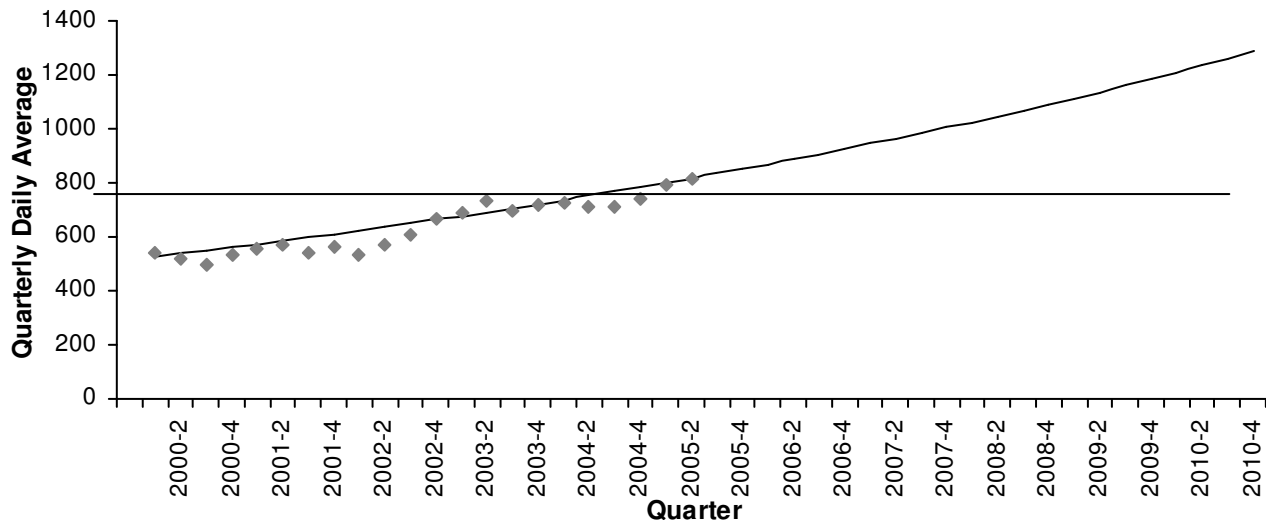
Figure 5 Estimated adult imprisonment rates by jurisdiction, 2004-05.



Estimates of imprisonment rate per 100,000 adult population based on ABS Corrective Services Australia (4512.0).

⁴ A Review of the Northern Territory Correctional Services – adult custodial operations, “A Path to Good Corrections”, CAYA Management Consulting International Inc, March 2004

Figure 6 Projected Figures



Quarterly Daily Average (Excl. People Smugglers) – Proportional Growth Projection⁵

The NT Legal Aid Commission produced *Managing Prisoner Growth in the NT*⁶ identified 3 key areas which have the impact to blow out the prisoner number projections: Demographic change; Socio economic issues; and legislative and policy change.

In relation to demographic change, the Commission concludes:

This profile will result in rapid changes in the age structure of the Indigenous population over the next two decades. The Indigenous population of 'imprisonable age' will remain disproportionately higher than the non-indigenous population and is predicted to increase the number of Indigenous people in gaol.⁷

In relation to legislative and policy change, the Commission points to changes to Northern Territory legislation had impacted on the prisoner numbers:

- Amendment to the *Bail Act*, extending the presumption against bail;
- Amendment to the *Domestic Violence Act*, extending the power to make restraining orders to police;
- Amendment to the *Criminal Code* repealing the offence of dangerous act; and

⁵ Graph utilized in the NT Corrections Indigenous Economic Development Taskforce Presentation, January 2006

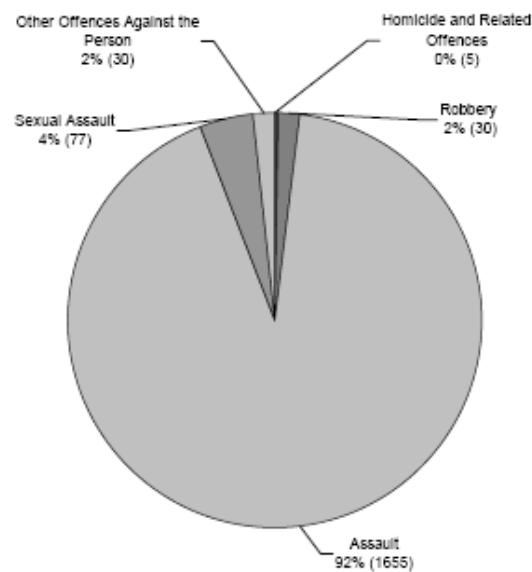
⁶ NT Legal Aid Commission, January 2006

⁷ Ibid @ 8

- Introduction of legislation in relation to anti-social conduct.

Finally; the Commission raised concern on 'tough on crime' and "zero tolerance" law and order policies by government also impacts on incarceration levels.

Figure 1 Recorded Offences Against the Person in the Northern Territory – Current Quarter



⁸ NT Quarterly Crime and Justice Statistic Issue 35 March Quarter 2011

Correctional Centre Conferencing

This project, based on prisoner reintegration Memorandum of Understanding between Larrakia Nation Aboriginal Corporation and Northern Territory Correctional Services (NTCS), aims to assisting people who have been incarcerated in returning to their home communities.



The program provides an opportunity for mediation between the victims' families and offender and provides additional support to the victims and families of serious crimes. The pilot program is aimed at Indigenous clients and incorporates language, kinship and other cultural elements to reduce the risk of recidivism.

The Department of Justice (DoJ) approved a Larrakia Nation Aboriginal Corporation special purpose grant for the project in Darwin. Funding assists in meeting travel costs associated with bringing victims and supporting family members into NTCS facilities to participate in mediation sessions delivered by the CJC mediators from both Darwin and Ponki mediators from Tiwi Is.

All mediations are conducted under the provisions of the *CJC Act 2005 (the CJC Act)* where all parties to the mediation are attended voluntarily. Parties are made aware that the offender receives no discounts to the sentence by merely agreeing to attend mediation.

Under the *CJC Act* the content of the discussions at mediation are strictly confidential and no report is generated by the CJC (ie to parole board) following mediation – unless all parties involved in the mediation consent to the agreement being released outside mediation.

Referrals to the program are determined by the CJC in collaboration with NT Correctional Services (Aboriginal Liaison Officers and Elders Visiting Program), Community based Council of Elders and Respected Persons, Aboriginal Legal Aid services and Families.

The victim attends with support members of the community that have been harmed and enters a meaning dialogue regarding the realities of returning to the community; and "have a proper talk" (often in language) about the crime that was committed that the victims feel they were denied during the court process.

Therapeutic Jurisprudence

Conferencing attempts to bring together not just the individuals involved in the particular criminal offence but the wider community who may be affected. This might include anybody who has been affected by the criminal behaviour.

The community affected by a crime act can come together to discuss and respond to what has happened. For example, the family of an offender can provide support for an offender and also describe their own "secondary victimisation" in a conference. In a conference the focus is not on a dispute but on the offence, its consequences and upon those affected and what they can do to repair the damage and minimise further harm.

Benefits for victims

Mediation provides an opportunity for victims to hold offenders accountable for their crime, while also providing the offender with an opportunity to offer the victim their thoughts on what they were thinking at the time of the crime and what they are thinking now and how they seek to make things "right" for everyone.

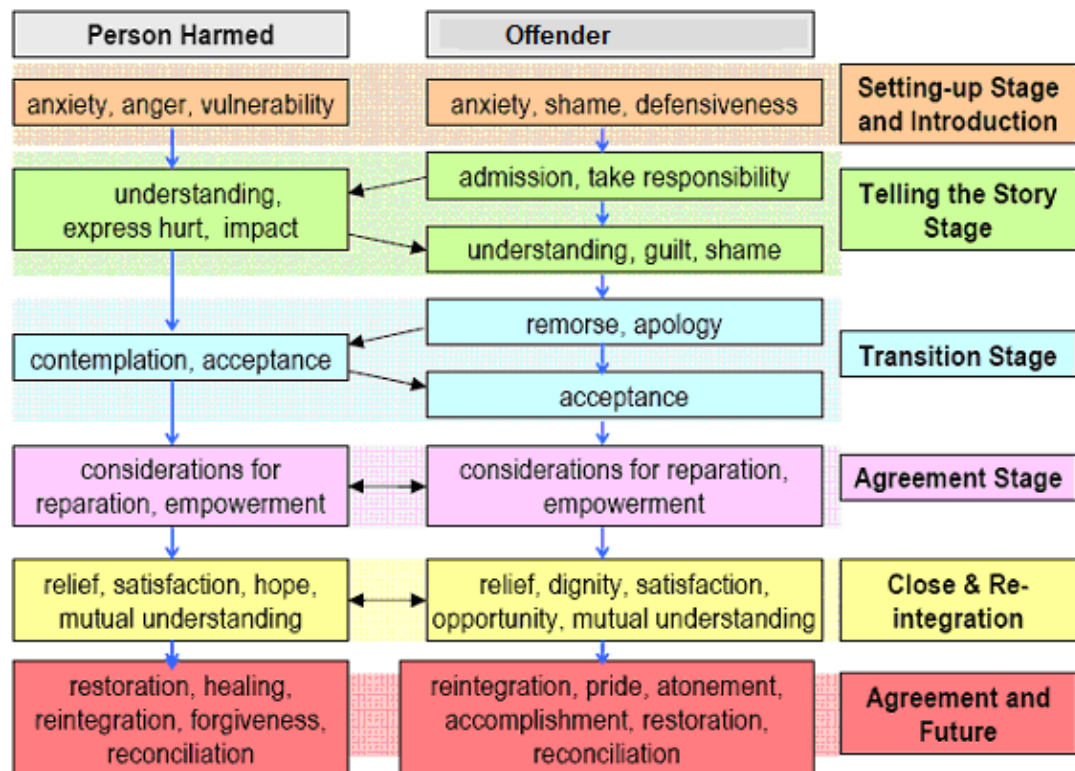
It provides victims with an opportunity to inform the offender about the impact the offence has had on them, as well as raising any issues about the offender's motivation or rationale that may concern them. More importantly, it is one of the few opportunities victims have to be directly involved in criminal justice proceedings and is far more effective than a 2 page Victim Impact Statement quoted by a legal practitioner.

Benefits for offenders

In the broadest sense, mediation provides an offender with an opportunity to be seen to be as accountable for their actions, while also providing clarity about life outside incarceration. Offenders can offer an apology and explanation for the offence and (where appropriate) make amends through various forms of compensation or restitution.

The wider and longer term benefit of mediation to offenders (and the community) is that they have an opportunity to gain a better (and direct) understanding of the broader impact of their offending behaviours - and as a consequence may decide to pursue a more law-abiding lifestyle.

Figure 7 Therapeutic aspects of the Conferencing process



For the community

Whilst the victim-offender mediation process is confidential, there is a potential benefit to the wider community. As offenders are “exposed” to their victim through the mediation process, they have an opportunity to appreciate the wider impact of their offending behaviour.

In addition, the parties have an opportunity to reality-test the practicalities and risk of re-integration for the offender back in the community this may include managing revenge, access to services and housing.

Reducing the Risk of Recidivism ⁹

Mediation has been proven to dramatically reduce the risk of recidivism by providing an opportunity for the extended Indigenous families of victim and offenders are invited to talk about the realities of life outside incarceration before the offender is released.

It is an opportunity that could not be replicated in a Court setting where victim and the offender as well as the both families and support persons from both sides can to meet with and hear directly from the individual whose lives their offending behaviour has affected. Thus, providing the most powerful space for encouraging offenders to accept full responsibility for their behaviour and, again, a very real insight for everyone the ripple effect of crime can affect the community.

In addition mediation is future focused and discusses positive steps to mitigate the risk of violent revenge and provides ways to realistically support both victim and offender's families to look at meaningful ways of reintegrating possibly reintegrating an offender back into their community.

Since the CJC prison program has been operating in 2009 25 offenders have taken part in this conferencing program and only 1 has recorded a reconviction. (Current June 2011).

Designing Ponki Mediations at Berrimah

Figure 8 CJC Mediation Training November 2009

All mediators have an ethical duty to the profession to create a safe and welcoming place for parties to voluntarily voice, listen and negotiate facilitated by trusted, impartial practitioners.



Parties attend mediations with the understanding that all matters discussed in mediation (unless mandatory reporting provisions apply) are confidential. Whilst the author conceded it is extremely difficult to keep all matters discussed in mediation strictly confidential in a community setting; mediators do have a positive responsibility to encourage parties to walk away with 'one story' at the end of the mediation so the parties can share an outcome with the wider community in order to mitigate gossips, jealousy, misinformation and rumours that often are the cause further conflict.

The Ponki approach for designing the mediations in the Tiwi Is draws on the strength and influential status of the senior men and women within the

⁹ Department of Justice Annual Report 2008-9 p27
http://www.nt.gov.au/justice/documents/depart/annualreports/doj_200809_annual_report.pdf

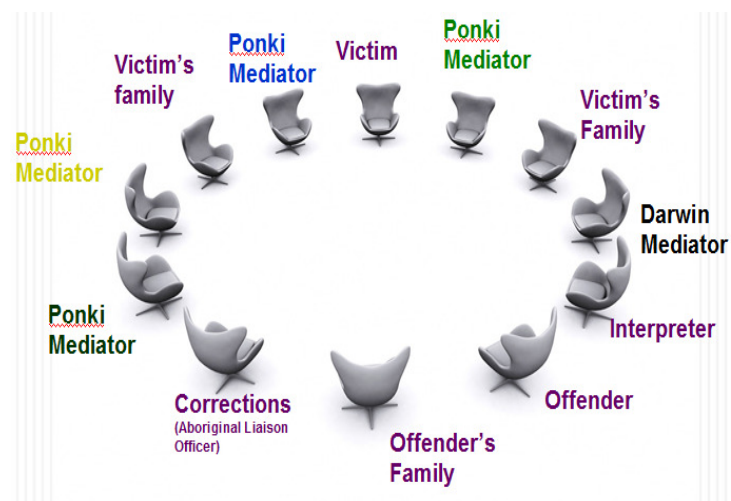
families, and gently placing the onus of 'peace making' on them as patriarchs and matriarchs of their families.

Accordingly, the older generation set the pace for negotiations and guide the younger generations to follow their lead—tinged with obligation—to make peace and restore mutual understandings and kinship connection.

As with all Tiwi Mediations representatives from all four skin groups are represented at the mediation and families are all encouraged to walk away with one story to take back to Tiwi Is. The Tiwi Mediators also adopt "Ponki" as a way of describing the process that represents "welcome" and "finish" in Tiwi language and incorporate traditional healing ceremonies in their ancestral land as part of the healing ceremony to seal the agreement by welcoming the offender and the people harmed back into the safety of the community and any talk or thought of revenge can be nullified.

Figure 9 Ponki Mediations at Berrimah Prison

The mediations in Berrimah conducted in language supported by Ponki mediators working together with Darwin-based mediators. There are no reports made to parole board and no representations are made to parties that the offender will get any discounts by partaking in the mediation process.



The common misconception of offering a western victim offender mediation is that only the victim and the offender attend such mediations and only a limited number find out the outcome. This in affect creates a weak agreement and almost impossible to enforce at the community level, thus creating more gossips; fuelling anger and possibly lead to more conflict.

However the Ponki model provides a solid way of ensuring that all skin representatives know what the outcome was at the end of the mediation and every one can share the one story and ensure good will promises made at mediation can be properly enforced back in the community.

As the mediation is conducted in language the Darwin based co-mediator assists in summarising the one story and ensures that

The Ponki mediators currently carry the majority of Correctional Centre Conferencing files and are preparing several years in advance for the

mediations to occur before release and are actively resolving conflict at the community level loyal to the Skin group structure.

This structure of mediation has gained National¹⁰ and Territory wide interest from Aboriginal Communities and practitioners¹¹ as a solid alternative to violent, unsanctioned; alcohol fuelled violent revenge whilst maintaining traditional strength to the elders in the community.

Figure 10 Tiwi Burial Poles



Conflict of Interest?

Given the relatively small population the likelihood of Ponki being related to one of the parties on the Tiwi is high. The ethical challenge was to ensure that conflict of interest could not potentially place the Ponki in a position where the impartiality may be put at risk or disqualified be sought by the families of victim or the offender.

To resolve this risk of disqualification, the Ponki incorporate their Skin group structure as part of the mediation design, which ensures a mediator from each skin group is always represented in every mediation so that not one person can influence the outcome of the mediation.

The Darwin Based CJC co-mediators role is to effectively reconfirm with all parties and the Ponki at the beginning of the mediation that no one feels unsafe from power imbalance or bias and where required provide logistical assistance and permits for families to attend in Berrimah.

At the end of the mediation the Darwin Based mediator reconfirms the one story that parties and each Ponki are allowed to share back in the community

¹⁰ 10th National Mediation Conference 2010

<http://www.mediationconference.com.au/>; 4th National ADR Research Forum
<http://www.nadrac.gov.au/>

¹¹ CJC facilitates "WELCOME" a NT Indigenous Mediators networking forum where ideas of mediation practices are shared between practitioners.

and reminds everyone that as mediators we are all obligated to keep the rest of the discussion that happened must remain confidential.

In the Tiwi Is ceremonies may be adopted as the final stage of the mediation process and provide a solid level of community endorsement respect and strength in the mediated agreement and an opportunity to restore fractured relationships to be restored and to mark the 'end point' of a dispute. For a ceremony to be convened all skin groups representatives must be agree on the ceremony date, location, purpose and type and the right persons attend from each skin group.

Conclusion

Mediation provides an opportunity to encourage accountability and to provide an opportunity for healing for people affected by crime by involving the offender facing the impact of his/her actions thus understanding the causes and effects of behaviour on the victim and the wider community of care and to realise what steps must be taken to become acceptable again for the community.

In designing mediations in Tiwi Is CJC facilitate mediations with the broad understanding that cultural issues are inseparable from other issues affecting Tiwi people's lives, including historical and contemporary issues. The culturally enhanced Ponki mediation process provides a safe forum that strengthens the western mediation process with Tiwi cultural strengths.

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

For the participants who have completed mediation at Berrimah Correctional Centre recidivism rate has reduced from almost 45% to 4% As a testament of the Ponki commitment to maintain harmony on the Island The Ponki now has carriage of most of the prison mediation through the CJC.

The work of the Ponki mediators continues to thrive and has recently received National recognition with recent media coverage.¹² Most significantly, this practice has been cross pollinated as Ponki mediators travel to other Territory communities to share their story with other CJC trained Indigenous mediators. At the time of writing training programs are being developed in Tenant Creek, Alice Springs and Lajamanu.

¹² Ponki mediation - The Law Report – Damian Carrick 19 July 2011
<www.abc.net.au/rn/lawreport/stories/2011/3271906.htm>

Appendix A**References**

Braithwaite, J (1996). *Restorative Justice and a Better Future*. Paper presented at Dorothy J Killam Memorial Lecture, Dalhousie University, 17 October, 1996.

Braithwaite, J & Mugford, S (1994). *Conditions of Successful Reintegration Ceremonies*. The British Journal of Criminology, Vol. 4, pp.139-172.

Christie, N (1977). *Conflicts as Property*. The British Journal of Criminology, Vol. 17, No. 1, pp 1-15.

Clarke, Stevens H & Campbell, Frances A (1998). *Can intervention early prevent crime later? The abecedarian project compared with other programs*. Early Childhood Research Quarterly, Vol. 13, No. 2, pp. 31–343.

Cunningham, T (2007). *Pre-court diversion in the Northern Territory: impact on juvenile reoffending*. Trends and Issues in crime and criminal justice, No.339. Australian Institute of Criminology.
<http://www.aic.gov.au/documents/7/A/A/%7B7AA18C68-AADD-4C54-9F4E-EB5AC911B91B%7Dtandi339.pdf>

McLaren, K (2000). *Tough is Not Enough – Getting Smart about Youth Crime*. Ministry of Youth Affairs, New Zealand. <http://origin-www.unicef.org/tdad/nzwhatworksmclaren%281%29.pdf>

Marshall, T & Merry, S (1990). *Crime and Accountability: Victim/Offender Mediation in Practice*. United Kingdom.

Solid Work You Mob Are Doing. Case studies in Indigenous Dispute Resolution & Conflict. Management in Australia. Federal Court of Australia www.fedcourt.gov.au/pdfsrtfs_s/solid_work_report.pdf

United Nations (1985). *Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*. Resolution 40/33.
<http://www2.ohchr.org/english/law/beijingrules.htm>

United Nations (1989). *Convention on the Rights of the Child*. Resolution 44/25. <http://www2.ohchr.org/english/law/crc.htm>

United Nations Commission on Crime Prevention and Criminal Justice (2002). *Thematic discussion on reform of the criminal justice system: achieving effectiveness and equity; United Nations standards and norms in crime prevention and criminal justice*. pp. 26-35.

<http://daccessdds.un.org/doc/UNDOC/GEN/V02/542/81/PDF/V0254281.pdf?OpenElement>

United Nations (2006). *Handbook on Restorative Justice Programmes, Criminal Justice Handbook Series*. United Nations Office on Drugs and Crime, Vienna. http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf

Wachtel Ted *Conference Facilitator's Script*. From Conferencing Handbook: The New Real Justice Training Manual. Piper's Press. 1999

Youth Justice Conferencing Queensland Restorative Justice in Practice 2010, Department of Community Services Queensland
<http://www.communityservices.qld.gov.au/youth/youth-justice/documents/word/yjc-framework-manual.doc>

Appendix B	References
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Correctional Centre Conferencing Flowchart

