

Dispute Resolution Branch

Mediation in Aboriginal and Torres Strait Islander communities

What is mediation?

Mediation is a way of settling disputes without having to go to court.

It is based on the idea that the best way to sort out a problem is for the people involved to get together and talk it through. Mediators are there to see that the discussion doesn't get bogged down and to make sure that everyone gets a fair hearing.

Dispute Resolution Centres have been established by the Queensland Government to provide all Queenslanders with a free, impartial mediation service.

Does mediation suit Aboriginal and Torres Strait Islander communities?

Yes. Unlike the legal and criminal justice system, mediation is in tune with the traditional ways of settling disputes in Aboriginal and Torres Strait Islander communities.

The adversarial approach used in Australia's law courts is contrary to traditional ways, and Aboriginal and Torres Strait Islander people tend to find it alien and unsympathetic.

Mediation, on the other hand, enables Aboriginal and Torres Strait Islander communities to keep community ownership of disputes, to use elements of customary law and practice, and to find solutions that are in keeping with cultural values.

Conflict in Aboriginal and Torres Strait Islander communities tends to affect all community members, so any resolution process is very complex and requires a creative and flexible approach. Because it includes everyone concerned, the mediation process can produce a result that is far more subtle and satisfying than any solution imposed from the outside. The effect on the community can be very empowering.

Do Aboriginal and Torres Strait Islander people use the mediation service?

Aboriginal and Torres Strait Islander people have shown a keen interest in mediation ever since the Dispute Resolution Centres were established.

The Dispute Resolution Branch, which administers the Dispute Resolution Centres and determines their policy direction, has been invited to a number of remote Aboriginal and Torres Strait Islander communities to help the community members resolve areas of conflict. On most of these occasions the mediators have succeeded in bringing disputing community members together to discuss their differences.

The branch works closely with communities to ensure that services are delivered in a culturally sensitive and appropriate manner.

Do Aboriginal and Torres Strait Islander people act as mediators?

Yes. A number of our community mediation panels include Aboriginal and Torres Strait Islander mediators.

The DRB has found that in some circumstances Aboriginal and Torres Strait Islander clients prefer the assistance of Indigenous mediators while in other cases they prefer mediators who are of another cultural background. Aboriginal and Torres Strait Islander clients are asked their preference regarding the cultural background of mediators and, where necessary, intake (pre-mediation interview) may also be conducted by an Aboriginal or Torres Strait Islander person.

Confidentiality, privilege and impartiality

The degree of confidentiality is decided by those involved in mediation. Mediation in Aboriginal and Torres Strait Islander communities often involves large groups of people, and the issues under discussion tend to be public in nature. Concepts such as confidentiality between parties may be perceived differently. However, mediators take an oath of secrecy. They promise that they will not discuss particular mediations publicly.

Furthermore, the process of mediation is 'privileged'. This means that nothing said during a mediation can be used in a court of law.

Can the agreement be enforced by a court?

Normally the agreement is not legally binding, but the people concerned can make their agreement enforceable if they choose to.

When the agreement is drawn up, they include a statement saying that they want the agreement to be legally binding. The necessary documents can then be drawn up by a solicitor. If solicitors are present at the mediation, they can draft the agreement in a legally binding form then and there.

Training

In addition to the mediation services provided to Aboriginal and Torres Strait Islander communities, the DRB has provided conflict management training to many Indigenous individuals, organisations and communities. For more information contact your local Dispute Resolution Centre.

For more information:

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