

*Indigenous Facilitation  
and Mediation Project*

*Native Title Research Unit*

*The Australian Institute of Aboriginal and  
Torres Strait Islander Studies*

*Toni Bauman*


*IFaMP Final Seminar 11<sup>th</sup> July 2006*

# IFaMP overarching principles

- **Decision-making and dispute management processes are core business for all who work with Indigenous people**
- **Decisions and processes must be fully informed and owned for outcomes to be sustainable - prior and informed consent**
- **Processes must build on and develop existing Indigenous human capital and ways of doing things in an environment of mutual respect**
- **How business is done holds the key: a history of poor decision-making and dispute management processes has caused many problems over the last 30 years**
- **Capacity of governments and their employees is critical**
- **Conflict is natural; how it's managed is the issue**

# Three year program (workshops, reports, publications, practice papers, awareness raising)

- 2003-04 Pilot Facilitation Training Workshop South West Land and Sea Council and follow-up evaluation, Native Title Representative Bodies, Native Title Services and Land Councils workshops, CJsCs, CDOs and Governance conference, Jabiru.
- 2004-05 AIATSIS seminar series, Indigenous and non-Indigenous mediation and facilitation practitioners workshops, evaluation workshop
- 2005-2006 NTRBs pilot training, National approach, Training Resource Guide, Evaluation Tool kit, Participatory pilot ILUA (native title holders)



Pilot Facilitation Training Workshop  
South West Land and Sea Council  
and follow-up evaluation  
Perth, September 2003 and May  
2004



Asia Pacific Mediation Forum  
Singapore, 2003  
Minerals Council of Australia





# Native Title Representative Bodies (NTRBs) have a legislative responsibility under the *NTA*.

- Mediation and facilitation services provided by:
  - External consultants
  - National Native Title Tribunal members
  - NTRB staff (core business)

**NTRB Workshops to identify  
issues and training needs**



Gureng and Central Queensland  
Aboriginal Land Council Workshop  
Bundaberg, 2004









Yamatji Land and Sea Council  
Workshop  
Perth, 2004

and

North Queensland Land Council  
Workshop  
Cairns, 2004





# CEO / BOARD

- Knowledge of your industry, your requirements, financial position & processes / management / operations
- Comply with all legal requirements
- Implement CR policies
- Report to board in timely manner
- Supporting decisions of chair
- Endorse policy & procedures (S)
- Share compliance processes
- Handle internal grievance disputes
- Ask for decisions
- Corporate governance (S)
- Provide leadership & oversight direction (S + CR)
- Awareness of conflict of interest - act on same (S + CEO)
- Awareness of who to call in independent professional
- Clarity of roles & responsibilities & separation of powers (S)
- Communication with staff about compliance, business etc (S + CEO)
- Need to understand external factors affecting all or some & respond public or independent groups

# ROLES - DECISION MAKING / COMPLIANCE / PROTECT / FIELD OFFICERS

## LEGAL

- Knowledge of all activities & compliance law requirements
- Understanding most "red" flags
- Legal advice to CEO & Board
- They appropriate language
- Making which the board should not 2 laws, legal advice
- Manage external audit process
- Enforcement - 2008 changes eg employment of making (contract)
- To take the old people on company & they are contract based
- Did not have to give advance notice to take people's information such as
- Understanding personal aspects of making information
- Keep up to date with law
- Act on all the laws
- To probably require a lot of staff instructions
- So common sources of advice

## RESEARCH

- Conduct a full search of all records & documents from all sources
- Review compliance with 2008 policy requirements
- Review legal with legal policy
- Review internal policy & ensure compliance
- Review external policy
- Review conditions
- Review 2008 to include "positive"
- Review policies & ensure all documents including reports
- Make no present
- Review evidence
- Not to

## PROTECT / FIELD OFFICERS

- Review compliance with 2008 policy requirements
- Review legal with legal policy
- Review internal policy & ensure compliance
- Review external policy
- Review conditions
- Review 2008 to include "positive"
- Review policies & ensure all documents including reports
- Make no present
- Review evidence
- Not to













CEO workshop Adelaide Native  
Title Conference, 2004









NSW Community Justice Workshop  
NTRB Day  
Native Title Conference  
Adelaide, 2004







# ISSUES ARISING FROM NTRB WORKSHOPS AND SOURCES OF CONFLICT

- Overarching dispute between two laws and the unfairness of an imposed legal system
- Time pressures (good and bad)
- Long standing hurt, trauma and sense of past injustices
- Native title as a platform

- Complexity of legal environment and misunderstandings
- Distribution of resources is unfair
  - information dissemination (keeping applicant representatives up to date)
  - prioritising claims around legal priorities
  - applicants keeping the native title group up to date
- Capacity of parties to enter into mediation (education, resources, representation) and ethical issues
- Negotiations in bad faith and fishing expeditions
- Cultural heritage



➤ talking to the right people

➤ real and perceived conflict of interest

➤ disputed connection materials and overlapping claims

➤ inadequate follow up and implementation

➤ adversarial lawyers; managing third parties - lawyers taking instructions from the wrong people and not listening to instructions

➤ staff planning and co-operation (pilot training)



- need for Indigenous local expertise for timely interventions (national network)
- difficulties in reconciling the role of elders into the process
- the need to avoid quick fix solutions at expense of long term resolution
- the right to say no
- lack of understanding of differences in range of processes and what to expect
- absence of national standards (complaint processes, CEOs)

# Recommendations (NTRB report)

- urgent need for locally based Indigenous mediators and facilitators to make timely interventions
- education packages and processes; communication skills (lawyers etc)
- policy guidelines
- process expert (real or perceived conflict of interest)
- applicant rules and responsibilities
- localised cross cultural training
- pilot induction processes
- nationally accredited training - vocational pathways



Community mediation centres  
and NTRBs workshop  
AIATSIS, October 2004

# Some Implications for mediation and facilitation practice

- **voluntariness and choice of mediator and facilitator**
- **conflict of interest real or perceived**
- **cultural sensitivity of the mediator and local knowledge**
- **co-mediation**
- **confidentiality**
- **mediator responsibilities**



New Humanities Conference  
Prato, Italy 2004  
Newmont Australia



- meaning of consensus
- identify underlying issues, parties and stakeholders, positions and interests
- account for differentiation and relationships within and across groups and for individual and collective, rights, interests, needs and responsibilities
- employ a range of mediations eg. family
- incorporate ways of ensuring that information is understood



# AIATSIS seminar series, Semester 1, 2005

- *Aboriginal Law and Native Title Mediation: the Spear Creek, Port Augusta Example* (Parry Agius)
- *Leading New Ways of Doing Business* (Kerrie Tim)
- *Indigenous panel – decision-making, conflict management and representation in native title* (Mick Dodson and Valerie Cooms)
- *Decision-making, Conflict Management and Representation in Native Title: A case study of the Kelabit Dispute Resolution in Sarawak, Malaysia* (Assoc. Prof. Ramy Bulan, Co-ordinator of the Centre For Legal Pluralism and Indigenous Law, Faculty of Law, University of Malaya)



EDDIE MABO  
1954-1992



*Native Title Mediation Practice: The Commonalities, the Challenges, the Contradictions A Survey of Native Title Mediators (Williams, 2005)*

- Range of processes under interest-based mediation and discrepancies in how people described it
- Misunderstandings about co-mediation
- Mediator responsibilities
  - Implementation
  - Preparation of parties
  - Mediator providing advice
  - Incorporation of experts into processes



Indigenous and non-Indigenous native title  
mediator and facilitator workshops  
Canberra, 2005

Feeding in results from survey and NTRB workshops



Indigenous mediators workshop  
Canberra, AIATSIS, February 2005







Non-Indigenous and Indigenous native title  
mediator and facilitator workshop  
Canberra, AIATSIS, March 2005





3. Do you see that Indigenous mediators as being extremely important in the resolution of native title issues, and, if so, would you support and lobby for the development of this?

Handwritten notes on sticky papers (yellow, green, pink) attached to the main question paper.

QUESTIONS FROM INDIGENOUS PRACTITIONER'S WORKSHOP TO THIS WORKSHOP

4. How are you able to assist all parties to come to an agreement, in the best interests of all, without breaching neutrality?

Handwritten notes on sticky papers (yellow, green) attached to the main question paper.

5. Do you think you have the ability to mediate effectively with Indigenous people? Skills, knowledge, experience, openness to learn?

Handwritten notes on sticky papers (yellow) attached to the main question paper.

6. What is your relation/approach/formula for reducing the high level of intra- and inter-tribal disputes in the native title context?

Handwritten notes on sticky papers (yellow, green, pink) attached to the main question paper.

7. Do you feel that mediation is a heartfelt skill?

Handwritten notes on sticky papers (yellow) attached to the main question paper.









# Peace-making, peace-keeping and peace-building

- defining the approach (mediation can hold negative connotations as 'done' to people; don't box it - written word becomes the truth)
- mediation is only one strategy
- identify, build on and tailor processes to existing local decision-making and conflict management processes
- reinforce power of local peacemakers, recognise and support
- holistic approach involving all sectors of the community and longer time frame
- deal with the past and allow for expressions of remorse and apologies
- living in harmony (sort out troubles between selves first before external engagement)



Third Party Involvement in  
Agreement-Making and Participatory  
Community Development Workshop,  
AIATSIS, Canberra, 2005



National approach Indigenous  
facilitators and mediators workshop  
Canberra, AIATSIS, October 2005









# **• National network of Indigenous Facilitators and mediators**

**(existing email network and issues paper)**

- support and co-ordinate trained, mentored, accredited and specialised regionally based networks of Indigenous facilitators, mediators and negotiators**
- long term evaluation protocols and standards**
- vocational pathways and nationally accredited training (eg cjc's)**
- non-Indigenous practitioners (co-mediation model)**

# Need for Case Studies

- Food and Agricultural Organisation Conflict Management survey
- IFaMP survey of mediators in native title
- Federal Court/NADRAC scoping study



# Negotiating Indigenous rights and interests amongst Indigenous native title holders, 2005

- **regional matrix of differentiated Indigenous rights and interests through detailed anthropological mapping**
- **negotiate decision-making and conflict management processes up front - no negotiation if the limits of the deal are already set - assumption that the status quo will be preserved.**
  - across the whole of a 'tribal' group's country so that there is a regional formula.
  - vested interests prohibit the principled negotiation of such a framework to which all must adhere if attempts made along the way
  - may be no arbiter of tradition.



# IFaMP participatory pilot facilitation/mediation case study, 2006

## Methodological issues

- mediator/facilitator
- anthropologist
- researcher
- community member/friend
- local knowledge
- perceived or real conflict of interest

















# Sample Techniques

- **mapping on butcher's paper**
  - **small group work**
  - **closed questions**

## Case Study pilot findings (cont'd)

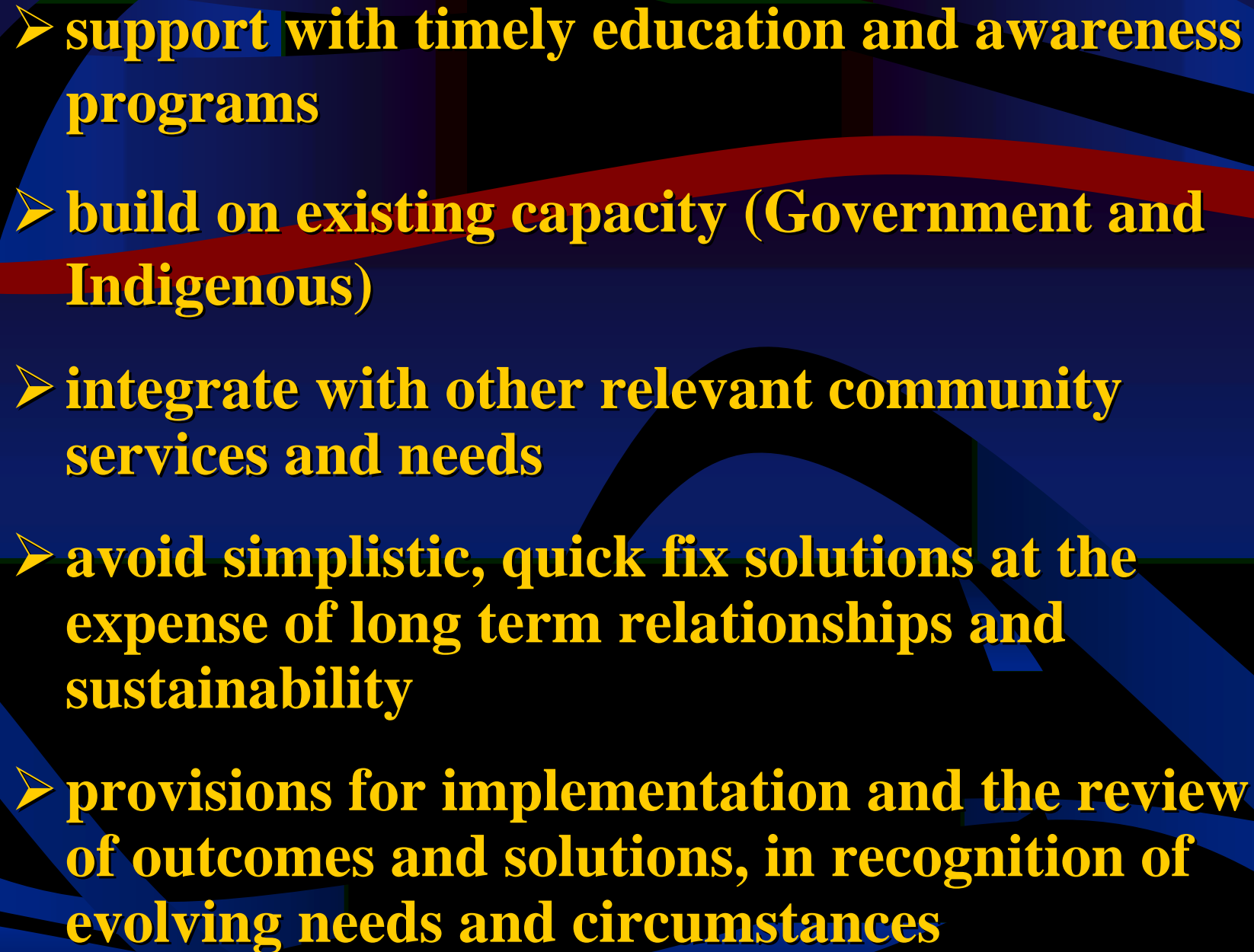
- **collective and individual Indigenous rights**
- **contingencies where Indigenous parties cannot agree amongst themselves - may decide to involve the interventions of third party/ies**
- **ignore and trivialise difficult people at your peril**
- **focus on relationship building**
- **interests and needs of those who may feel excluded from the process**
- **capacity of the group to implement agreements depends on its governance structures**

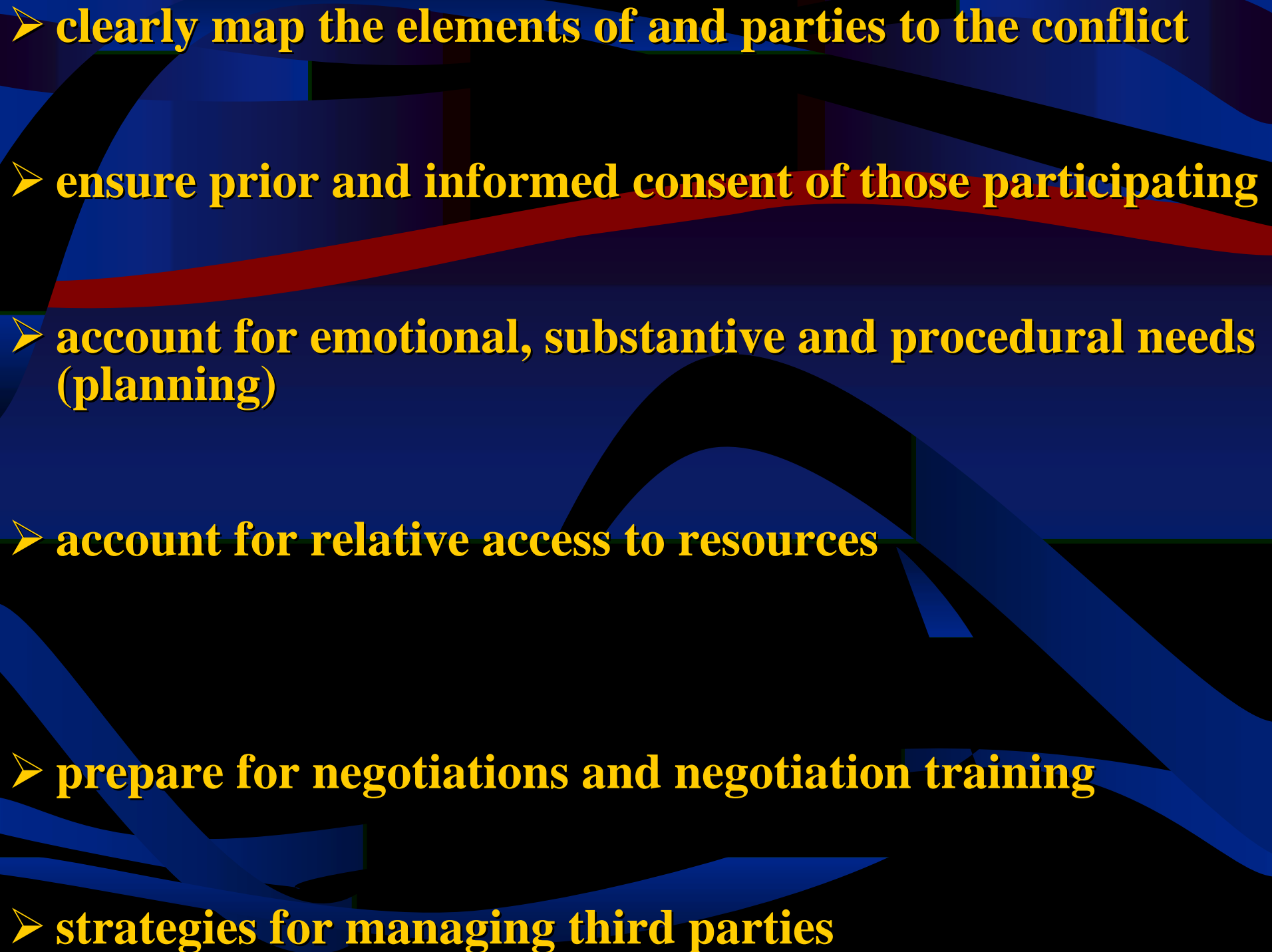


# Additional IFaMP best practice research findings and Principles

- **no one size fits all and no quick fix solutions**
- **skills lie in tailoring processes to reflect local ideas, decision-making processes and incorporate local expertise**
- **need for arms length process experts (co-mediation)**
- **agreement-making to be built up to ensuring commitment and willingness**
- **negotiate processes from the bottom up**



- 
- **support with timely education and awareness programs**
  - **build on existing capacity (Government and Indigenous)**
  - **integrate with other relevant community services and needs**
  - **avoid simplistic, quick fix solutions at the expense of long term relationships and sustainability**
  - **provisions for implementation and the review of outcomes and solutions, in recognition of evolving needs and circumstances**

- 
- **clearly map the elements of and parties to the conflict**
  - **ensure prior and informed consent of those participating**
  - **account for emotional, substantive and procedural needs (planning)**
  - **account for relative access to resources**
  - **prepare for negotiations and negotiation training**
  - **strategies for managing third parties**



1. Evaluation workshop,  
Canberra, AIATSIS, October 2004

2. Evaluation Toolkit: training and  
service delivery in decision-making  
and dispute management processes in  
native title workshop

Canberra, AIATSIS, May, 2005

## *Evaluation Toolkit: Training and Service Delivery in Decision-Making and Dispute Management Processes in Native Title*

- funding from the National Native Title Tribunal
- required expertise
- consulting firm Social Compass
- built around NTRB needs and native title but relevant to all agreement-making and decision-making processes
- stand alone services (consultants and NNTT), NTRB staff
- 3 parts: indicators and measures, tools and how to
- workshop participants: National Native Title Tribunal, Federal Court of Australia, Native Title Representative Bodies (Queensland South Native Title Services and Yamatji Land and Sea Council)
- trialing





# Other Major Research Resources

- Web site
- Bibliography: Culture, Conflict Management and Native Title



# Major implementation requirements

- Nationally accredited training - range of pilots - core skills and different contexts - VET sector
- Whole of government pilots including all native title stakeholders
- Ongoing research including international examples and case studies
- NTRBs and applicants roles and responsibilities
- Development of national network of fully accredited, supported and mentored Indigenous facilitators, mediators and negotiators – expansion and consolidation of email network and matching
- Continued raising of awareness
- Clearing house – best practice
- National standards and common evaluation procedures in the Indigenous context



# Acknowledgements and thanks

- Office of Indigenous Policy Co-ordination (native title area and shared responsibility group for the workshop)
- National Native Title Tribunal
- Minerals Council of Australia and Newmont Australia (Toni's travel)
- Project Reference Group
- Community mediation centres
- Workshop participants
- Chair AIATSIS Professor Mick Dodson
- Principal AIATSIS Steve Larkin
- Dr Lisa Strelein (NTRU)
- Dr Luke Taylor, Dr Peter Veth and Dr Patrick Sullivan (AIATSIS Research)
- IFaMP: Annalisa Koeman, Rhiân Williams, Rebecca Morphy, Sophia Close, Catherine Pledge, Dr Sally Brockwell, Jess Clements, Lynley Wallis, Carrie Robson, Sarah Blake, Katherine Sabo, Stephanie Garling

# Contact Details

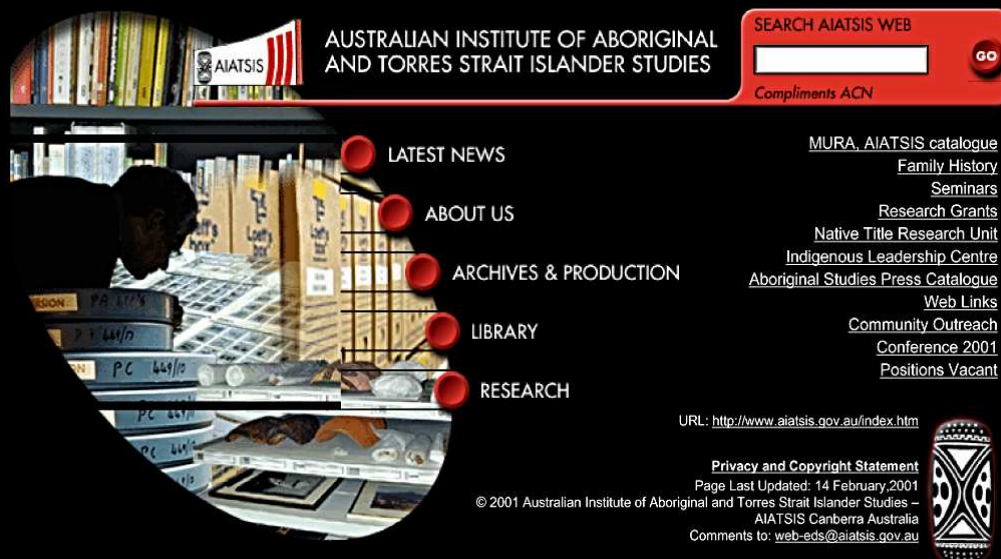
Contact Toni Bauman

Indigenous Facilitation and  
Mediation Project (IFaMP)

Native Title Research Unit

Australian Institute of  
Aboriginal and Torres  
Strait Islander Studies

Acton Peninsula, next to the  
National Museum,  
Canberra, ACT



AUSTRALIAN INSTITUTE OF ABORIGINAL  
AND TORRES STRAIT ISLANDER STUDIES

SEARCH AIATSIS WEB  
  
GO

Compliments ACN

LATEST NEWS

ABOUT US

ARCHIVES & PRODUCTION

LIBRARY

RESEARCH

MURA, AIATSIS catalogue  
Family History  
Seminars  
Research Grants  
Native Title Research Unit  
Indigenous Leadership Centre  
Aboriginal Studies Press Catalogue  
Web Links  
Community Outreach  
Conference 2001  
Positions Vacant

URL: <http://www.aiatsis.gov.au/index.htm>

Privacy and Copyright Statement  
Page Last Updated: 14 February 2001  
© 2001 Australian Institute of Aboriginal and Torres Strait Islander Studies –  
AIATSIS Canberra Australia  
Comments to: [web-eds@aiatsis.gov.au](mailto:web-eds@aiatsis.gov.au)

Tel +61 2 6246 1195; Fax +61 26249 7714

e-mail [Toni.Bauman@aiatsis.gov.au](mailto:Toni.Bauman@aiatsis.gov.au)

<http://ntru.aiatsis.gov.au/ifamp>