



**Living with Native Title, from the Bush to the Sea,
Coffs Harbour, NSW 2 – 4 June 2014.**

Open Space Forum:

11.00 - 12.30am and 1.30 - 3.00pm

June 3, 2014

**How Can We Work Better Together so
that Decisions are Meaningful and
Agreements Stick?**

Book of Proceedings & Participant Details

Prepared by Christiane Keller and Toni Bauman, AIATSIS



Brendan McKeague instructing Open Space participants. Photographer Bryce Gray, AIATSIS.

SPONSOR INTRODUCTION

Toni Bauman, Senior Research Fellow in Governance and Public Policy at AIATSIS opened proceedings, representing AIATSIS as the sponsor of the process. She noted such sponsorship as an important aspect of the process with the sponsor issuing an invitation to attend the process around a nominated focus question. This invitation was given in the conference booklet, as was the question, ‘How Can We Work Better Together so that Decisions are Meaningful and Agreements Stick?’

She noted that the session emerged from an embryonic community of practice formed out of the 2013 Native Title Conference in Alice Springs involving Austin Sweeney, Tony Kelly (Native Title Services Victoria), Michael Meegan (PLO Yamatji), Jayne Weepers (Central Land Council Policy Officer) and Sally Smith (Right People for Country in Victoria). She noted the importance of self-organising principles in engagement and consensus-building processes including third party facilitation in arriving at sustainable outcomes and the previous work of AIATSIS in the Indigenous Facilitation and Mediation Project and with the Federal Court of Australia in its case studies on dispute management, ‘Solid Work you Mob are Doing’.¹ She also noted her current research involving case studies of alternative decision-making and consensus-building processes including the Open Space process, transformative mediation and Scott Gorrings’ Engoori method.

She then introduced the facilitator, Brendan McKeague and handed over to him.

¹ Toni Bauman and Juanita Pope, *Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution and Conflict Management in Australia* (Melbourne: National Alternative Dispute Resolution Advisory Council, 2009), <http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/solid-work-you-mob-are-doing.pdf>.

EXPLANATION OF THE OPEN SPACE PROCESS

Brendan McKeague (BM) acknowledged the traditional owners of the country, noted the focus question, and explained the Open Space approach to the group. Some of the main aspects of which are listed below:

- The process must have a sponsor
- The sponsor invites participation in the Open Space process
- People are invited to consider their intentions for showing up at the meeting
- Commitment to writing a book of proceedings and circulating it for comments
- No pre-determined agenda; agenda is determined by participants. We have a lot of experience, knowledge, energy and skill in this circle to generate an agenda. What is your passion? What do you care about?
- All are invited but can choose to participate: Why did you say yes? What brought you here to this space rather than the other sessions offered? What are your intentions? Do you have nothing better to go to? You are the only person to know that. Nobody forced you to come here.
- Be not too fixated on time but rather concentrate on the relationships building through the process.

Instructions to proceed:

- Two breakout group sessions: Session 1 (from 11.20am -12.30pm) and Session 2 (from 1.30-2.15pm).
- Approx 2.30pm regrouping of all participants in the circle to discuss the process.
- If need be you can carry on beyond the lunch break or can continue their breakout session in the afternoon.
- Think about the topics you want to discuss. Who wants to discuss a topic? Discussion can be in the form of sharing ideas or recommendations. Participants who join the topics decide.
- Write on the paper provided your topic in one sentence maximum and add your name to it.
- Announce your topic, choose the time and location for your discussion and post it on the marketplace wall.
- It is your responsibility to come at the set time to the right location and host the discussion.

Open Space group participation approach:

- **The law of mobility:** we choose where we wish to be at any time of our lives. If your mind starts wandering take your body with it.
- **Butterfly and Bees:** some people are like butterflies and hover. Others are like bees and are controversial.
- **Billabong:** some people are like billabongs, they rest, recover and refresh their spirits. Find a quite space.
- **Be prepared to be surprised:** anything can happen in Open Space.

Open space works with 4 principles:

1. Whoever comes are the right people
2. Whatever happens is the only thing that would...
3. Whenever it starts is the right time
4. When it's over it's over...



Open Space facilitation workshop, National Native Title Conference June 2014. Photographer Bryce Gray, AIATSIS.

CONTACT DETAILS FOR PARTICIPANTS (Not all participants were present for the entirety of proceedings)

Name	Initials
Huia Woods-Smith	HW
Valerie Gutener Hale	VG
Trish Terry	TT
Tony Fitzgerald	TF
Cathy Kerr	CK
Diane Smith	DS
Michael Meegan	MM
Nicholas Duff	ND
Stephanie Green	SG
Michael Prince	MP
Helen Shurven	HS
Matt Jones	MJ
Lily O'Neill	LO
Jules Taylor	JT
Izabel Soliman	IS
Dianne Drake	DD
Jana Stewart	JS
Mick Harding	MH
Patrick Malone	PM
Tony Kelly	TK
Philippa Pryor	PP
Debra Pigram	DP
Rowan Foley	RF
Daniel Mills	DM
Cath Elderton	CE

Name	Initials
Russell Taylor	RT
Joann Schmider	JS
Emily Gerard	EG
Ian Irving	II
Julie Melbourne	JM
Richard Malone	RM
Angus Frith	AF

Sponsor and Facilitator

Name	Initials
Toni Bauman (Sponsor)	TB
Brendan McKeague (Facilitator)	BM
Angus Frith	AF

AIATSI staff

Name	Initials
Christiane Keller	CK
Christiane Keller	CK

TOPICS RAISED

SESSION	TOPIC TITLE	INITIATOR
1 A/2A	Indigenous governance	Huia Woods
1 B	Use of Open Space principles in collaborative conflict work around decision-making	Michael Meegan
1 C	Are decisions meaningful when participation is lacking?	Stephanie Green
1 D	Respect, reciprocity and recognition	Izabel Soliman
1 E	Decision-making by discussion & decision-making by referendum, Open Space versus 'bush ballot'	Tony Fitzgerald
2E/F	Applying Open Space methods to deciding decision-making process (s251(b))	Nick Duff and Tony Kelly
2 D	Equal resources for all sides	Mick Harding
2 C	Free prior and informed consent	Toni Bauman



Open Space participants posting their agenda topics on the Market Place. Photographer Bryce Gray, AIATSIS

Session 1A (11.30-12.30) and Session 2A/B (13.30-14.15)

This session continued from the morning session into the afternoon.

Topic Title	Indigenous governance	Code	1A/2A/B
Initiator	Huia Woods	Recorder	Huia Woods
Present	<p>Session 1: Philippa Pryor, Cathy Kerr, Trish Terry, Valerie Gutener Hale, Debra Pigram, Rowan Foley, Danielle Mills</p> <p>Session 2: Huia Woods, Philippa Pryor, Cathy Kerr, Valerie Gutener Hale, Cath Elderton, Phillip Williams, Michael Price, Diane Smith, Debra Pigram, Trish Terry, Russell Taylor</p>		

Participant comments:

- Corporate structures – do they fit with Indigenous concepts and structures? Are there other cultural models of governance that could work better?
- Maintain traditional law and custom and create a new model that fits the law of country not just the model of corporate governance. Traditional law and customs exist and the roles of the traditional law boss and elder under law and custom are significant. Law bosses can also be on an advisory council or board. The need to follow their own cultural governance; anthropological input can be helpful. If elders pull rank than that must be respected. Young people need to respect culture, but should participate in corporations for succession: they should be told if they are being disrespectful. Lawyers give recommendations, they are only advisors but people with their elders make the decision.
- Consider law bosses and respect culture in the PBC. Decisions affect the whole community, so avoid disrespect. Consult prior to establishing PBC, can change the constitution after legitimising with the group. Whole of community in consultation where everyone agrees. Follow customary law and culture and respect culture.
- Approaches:
 - One model is: 12 directors, six law bosses, six community members, chairperson is a law boss. When there are hard decisions the law bosses have a serious responsibility, so six directors must sit at each meeting. Six law bosses for big decisions. Young people can also vote. Law bosses not nominated - everyone agrees who they are. Community members are voted in by family (each family group representative). Another model involves everyone voting for everything with self-nomination from families. Law and custom says that younger ones must ask permission to speak from elders with nominations seconded by elders. Each claim group might have a representative, elected by the group.
 - In Victoria, cultural heritage management can be carried out by one family who can dominate rather than representatives of each family group.

- In New Zealand there is a two-tier governance system. Senior men and women make hard decisions. Traditionally respect bosses and kinship is respected.
- Co-management committees running national parks: traditional owners, government people and PBC.
- Independent directors: Government people are often unwelcome on Indigenous corporations; some models have two independents and five members with the PBC holding the land. Independent director can be useful for professional advice and important for good governance. They bring additional capacity on board. Not full decision makers only advisory. Separate land holding by the PBC and corporate business. Traditional structures represented. One model is six directors and two independent advisors. Young people perhaps two can be on the business arm as well as on the PBC. On the business side - each director is an independent person, not answerable to family or elders.
- Family structure supports what should happen on country: everyone wants to represent their family.
- Cultural management: holistic view of land applied in planning; coastal management plan
- Governance business is like a shire:
 - There is a need for a communications officer and a communications strategy: does the community understand why decisions are made, though there will always be some people who are unhappy. The communications strategy needs to consider the use of media to promote knowledge and understanding and how to communicate with members. The broader community is also involved and there is a need for connection and collaboration with other roles in the community, i.e. youth committee, housing.
 - Information can go some way to alleviating conflict, as can policies and plans.
 - There are a number of conflict issues related to corporate business including:
 - who owns what in the PBC;
 - the need for collaboration with/between boards, stakeholders, and land councils;
 - third parties not respecting the board and 'picking off' individuals; and
 - individual intentions. Are the people united? Is the family trying to fight the process and dominate proceedings?
 - Meetings take up much time for directors. Some go for five to six hours; others have sub-committees for particular business. Some have as many as 30 meetings in two months. Meetings need to be carefully spaced apart.
- There is a need for three day governance training and ongoing support and capacity building for the board to:
 - understand legal complexities;
 - build relationships amongst board members and getting to know each other; and
 - self-audit for capabilities.

- The management of funding can be an issue and there can be questions as to whether government intervention and enforcement is required, by ORIC. For example, there can be disagreements about the legitimacy of members spending funds. This is not just an Indigenous issue and government interference (imposing regulations) does not usually improve outcomes.
 - Victorian PBCs/corporations don't hold funds, these are held by NTSV under Victorian settlement and future acts processes. Traditional owners prefer to have a say in what to do with funds.



Huia Woods leading the discussion on Indigenous governance. Photographer Bryce Gray, AIATSIS

- Role of governments:
 - provide more resources and develop capacities;
 - assist to rebuild;
 - step back when necessary: enable capacity governance not assert control, allowing people to build themselves;
 - create an enabling environment for groups to develop themselves by providing resources for groups to build capacity on the ground;
 - not to make more rules and improve existing ones;
 - understand that one size does not fit everybody;

- fund negotiations;
- allow PBC to do what its members want and not have to do what government should be doing;
- fulfil its own responsibilities;
- enable groups to create an environment to support and build an economic base; and
- provide basic standards of living – this is not a PBC responsibility.
- Plans have to be owned, for example, a Yawuru plan not a government plan; corporation has to have capacity to negotiate efficiency, good legal advice, identify its priorities, the needs of its members and the aims of the organisation.
- NTRBs and PBCs:
 - issues of control;
 - NTRBs are statutory authorities but not enough resourcing;
 - NTRBs might undertake policy advocacy around funding; and
 - PBCs are part of the legal governance structure now and here to stay.
- Need for national PBC advocacy body:
 - already a peak body for PBCs in Victoria
 - Indigenous programs directed at funding for PBCs
 - how to generate resources including for long term planning?
 - NSW government money programs are independent of native title
 - advocate for a safety net for PBCs. They are regulated and have legislative duties: there is a need for base level resourcing and faster
 - issues and expectations are not met by resources
 - assist PBCs in developing business models and economic bases.

ACTION PLAN

Title **Indigenous governance**

Initiator **Huia Woods**

Recorder **Huia Woods**

Present **Huia Woods, Philippa Pryor, Cathy Kerr, Valerie Gutener Hale, Cath Elderton, Phillip Williams, Michael Price, Diane Smith, Debra Pigram, Trish Terry, Russell Taylor**

WHAT WE WILL DO...

Action 1: copy the 10 pages of notes from group 1A/2A/B

Action 2: to swap emails to continue conversation

(Note there was a third action reported for this group to have the notes distributed to the relevant government. This raised a process issue since it impacted on all participants but was not confirmed by them all because the process was truncated as a demonstration. At the conference, actions were suggested within the group discussion but no (formal) decisions on these actions were taken by the group or by the broader group of participants which was also implicated. In the Open Space process 'proper', should anyone wish to pursue this action, they would invite others to join them in working out the appropriate way forward on their action. This may be an individual or small group collaboration speaking for themselves or with endorsement from their organisations.)

WHO ELSE WILL WE INVOLVE?

Christiane Keller

IMMEDIATE NEXT STEPS....

Members to complete email addresses

Session 1B (11.30-12.30)

Topic Title	Use of Open Space principles in collaborative conflict work around decision-making	Code	1B
Initiator	Michael Meegan	Recorder	Michael Meegan
Present	Joanne Schmider, Emily Gerrard, Ian Irving, Cath Elderton, Mick Harding, Julie Melbourne, Jona Stewart, Dianne Drake		

Notes

By way of introduction, Michael Meegan told the story of using self-organising and emergent principles for five overlapping claims in the Geraldton region.

Participant comments:

- Resources to be ongoing to enable groups to keep making good decisions.
- Use of facilitator – ‘ongoing’ – external facilitator.
- Shift of responsibility in Open Space is to the group.
- Not equal power – how is that managed in Open Space?
- What do traditional people need to feel confident in order to participate in Open Space process?
- Find out why people don’t want to participate.
- Work in a developmental way.
- Need institutions to support work in a developmental way.
- Training in negotiation and facilitation required.
- Understand internal drivers that impede process.
- Facilitated process should be built into PBCs.
- Chairperson, treasurer, and other similar positions can make unequal power.
- Facilitator and decision-making processes need to take account of unequal positions and power in boards.



Michael Meegan leading discussion on the use of Open Space principles. Photographer Bryce Gray.

Session 1C (11.30-12.30)

Topic Title	Are decisions meaningful when participation is lacking	Code	1C
Initiator	Stephanie Green	Recorder	Stephanie Green
Present	Rowan Foley, Kathryn		

Participant comments:

- Time and resources are an issue.
- People and groups have the right to make mistakes.
- If trust in the decision-making is there, decisions will be ok.
- 'Collective' versus individual.
- Might be the best decision on the day.
- It's a marathon!
- Lawyers want decisions in short time frames and this isn't always realistic.
- Most people are trying to do the right thing.

Session 1D (11.30-12.30)

Topic Title	Respect, reciprocity and recognition	Code	1D
Initiator	Izabel Soliman	Recorder	Not recorded
Present	No participants elected to discuss this topic		

Session 1E (11.30-12.30)

Topic Title	Open space vs bush ballotts	Code	1 E
Initiator	Tony Fitzgerald	Recorder	Tony Fitzgerald
Present	Tony Kelly, Jules Taylor, SS, AY, AP, Stephanie Green, Phillip Williams, Cathy Kerr, JW, Nick Duff, Richard Malone		

Notes -

Tony Fitzgerald introduced the topic where he asked how to decide whether decision-making by discussion or decision-making by referendum is more useful?

Participant comments:

- There is a need for time for people to talk in meaningful ways.
- Resource limits forces undesirable demands, like doing what we normally don't like doing (meetings in town instead of on country).
- Small pockets of information are very hard for people to take in (make information more permanently available (newsletters, web pages).
- Lots of fishing!
- Lots of conversations held before meetings in smaller groups, talk in more detail.
- Getting information back is as important as getting information out.
- Agendas for participants may differ from agendas for meeting.
- Agreed and adopted decision-making process, choosing the decision-making process that will be most favourable to the outcomes you want.
- The exercise of power.

Session 2C (13.30-14.15)

Topic Title	Free prior and informed consent	Code	2 C
Initiator	Toni Bauman	Recorder	Toni Bauman
Present	Tony Fitzgerald, Richard Malone, Patrick Malone, Michael Meegan, Angus Frith, Michael Prince		

Participant comments

- Timeframes in authorisation processes could make it difficult to use Open Space.
- Cultural mapping – no definition – who is allowed to do it? This needs agreement within the organisation. What's their terms of reference? Means of planning?
- 'Walkers' in Patrick's country are cultural heritage field officers, identifying camps etc. – mitigation to mining.
- Queensland mining gives access to country.
- Gangulu Corporation has significant GPS capabilities. They can upload data back to the office. Previous arrangements were a 'corporate breakfast'. Gangulu contract to mining company, and provide – copies to the mob, process provides surety of contract outcomes, admin fee of 20%.
- Duty of NTRB to organise consultation.
- \$5000 for families to organise own family group meetings, who appoint three representatives to the AGM. Constitutions can give opportunities to stack the board. We tend to ask questions that give us the answers we want, but don't have. It's possible to do things differently.
- There is a general nervousness about giving people responsibility for money. It's a pity we lack confidence and trust in groups.
- Currently sitting fees are often paid to applicants who rarely provide feedback to families.
- Elderly applicant, director, alternate director.
- There is a need to develop strong media strategies particularly using social media such as – Facebook and Twitter. This is also a practical way of directors providing feedback to members. This could also work well in remote areas for younger people, when the elders will gain information from them.

Session 2D (13.30-14.15)

Topic Title	Equal resources for all sides	Code	2 D
Initiator	Mick Harding	Recorder	Mick Harding
Present	Mick Harding, Christiane Keller		

Participant comments

- In my experience good outcomes are generated by equal resources on all sides of a particular issue.
- Capacity building should not just be talked about in reports or at the conclusion of negotiations. Resources should be invested at the beginning in a planned way so that people can build their own capacity with the ongoing responsibility for whatever outcomes these have produced.

Session 2E (13.30-14.15)

Topic Title	Use of Open Space for native title groups to make decision about how it will make native title decisions	Code	2 E
Initiator	Tony Kelly, Nick Duff	Recorder	Tony Kelly
Present	Tony Kelly, Nick Duff, Jana Stewart, Stephanie Green, JNL		

Participant comments

- How to create an environment where positive, consensus type decision-making processes come to the fore as opposed to conflictual processes.
- Issue of lateral violence is preventing free participation.
- Declaration of intention in Open Space is very important, as is independent facilitation, allowing native title lawyers to declare intent as an equal.
- Follow up is important.
- The language of Open Space can be off putting.
- Asking people to do something at the beginning when they're not expecting it is a bit exposing, can make participants feel vulnerable.
- How does Open Space lead to a decision?

FINAL CIRCLE DISCUSSION

Participants regrouped into the circle following session two of the breakout groups.

Brendan McKeague reiterated a number of the aspects of the Open Space process from the morning. He noted the following:

- a blank agenda
- nobody pre-empted the issues
- you learned here what you needed to know
- what we call an open market place is the agenda put on the wall by participants
- eight topics were posted
- received two reports at this point
- others to follow

A. Actions Plans and points of note from the breakout groups

Brendan noted the opportunity to do some action planning and invited participants to think about what actions had emerged for participants personally, noting that this required no other authority or permission.

He then invited people to regroup in their breakout groups to nominate actions which may have arisen in their group, distributed the action plan template, and asked groups that if they were to do this, to declare it and choose a space to work for 5-10 minutes.

Only one group led by Huia Woods on the topic of Indigenous governance (1A, 2A/B) spoke in the circle towards the development of an action plan (see action plan following Sessions 1A and 2B topic notes above).

B. Final comments from the circle

Brendan asked whether participants had any particular comments they wished to make from the breakout groups. Comments were as follows:

- Open space is a good process and needs to keep happening.
- External facilitator is useful.
- There is a need to build appropriate processes around decision making to help people to make good decisions.
- Maintenance of process is very important.
- Access to facilitators needs to be built into the process to keep and maintain group integrity.
- Use of social media, is it useful for FPIC?
 - in a community of 300 of which 1250 are kids significant numbers walk on top of the hill to get their messages
 - developing Application to deal with disputes that are happening in social media

Brendan commented that the usual Open Space process would invite all participants to make final comments to each other, noting that the sponsor would speak last. However, in this instance, the sponsor had requested some reflection on the process.

Comments and discussion appear below.

- What I am taking away? If there was a new PBC deciding on its rule book, this process could be very useful. After today I would start this process differently. In another case where I needed to fix an administrative glitch in a super short timeframe, e.g. for a recent decision on carbon farming, I wouldn't use this [Open Space] process.
- Useful to spend more time but the means of governance exceeds resources.
- P: In a native title context, as a native title lawyer we want an authorised agreement or not. Would we be the sponsor or do we get somebody else to be the sponsor? The native title lawyer? The sponsor already has an agenda.

BM: If you have an agenda that is driving the decision making process, then you would not be the sponsor. You could be the sponsor of the Open Space process but you would not be the facilitator of the process.

P: So everybody considers their intentions and nominates their topics, we have break outs and come back together but how do we get to the decision making process?

BM: People could have their book of proceedings the next day. They could read it for 20 minutes before the next meeting and then have a discussion. Another method for prioritising issues is to hand out coloured dots to participants to vote on the priorities for particular issues. They could link other issues to these priorities. It requires a reference point how you would have made the decision before the Open Space meeting. This needs to be part of the transparency. E.g. In some meetings I conducted the Board or the directors said clearly upfront; 'we are the ones responsible for the decision for our future. We will make the decision on Friday. But first we will have an Open Space meeting on Thursday to get everybody's information and priorities. We the directors will make the decision the next day'. That's just one model. If you are seeking a consensus decision making model you could still sit in this circle longer, until the group itself has a chief consensus and a decision is made.

- I have concerns about a joint management committee I provide services to. The committee decided to have revolving chairs and every meeting starts with 20 minutes silence until the committee has decided on a chair. What I have come away with is that I want to learn more. I think an Open Space would help also with procedural processes.
- I love talking about this stuff. As a young person I love to help elders out and also show younger people that they can be involved. We are still struggling with all these problems in NSW and Victoria.
- It's important that the community is with us and doesn't get lost. As a director we need a good process with the staff we are working with. We'd like to achieve more but this needs to be within cultural ways. If we worked together in a real way of decision making it can make a real difference. I like the idea of people showing what their intentions are and what they want to get out of it. This makes sense to me.
- The process allows people who may otherwise be overwhelmed to have a space.

- I was fearful at the start about taking responsibility and making decisions. If I'd known this would be required, I wouldn't have come to this Open Space exercise. But having been involved it has been very useful.
- I see great potential for Open Space within rep bodies as it links in with Indigenous ways of talking and discussing issues. If rep bodies have to ascertain wishes and interests and Open Space is used as a routine way of operating, then this gets the informed part of informant consent happening. Maybe the consent part happens then in a more informed way.
- I am thinking of Open Space as a vehicle for shared learning. Rep bodies and PBCs are breaking ground. Nobody is doing your work anywhere else. This process can create a space for shared learning for PBCs around the country. I think Aurora could assist with this.
- Open Space seems to be stretching time. The time spend in discussions shortens the time needed for the decisions making at a later date. There is no single method that covers everything but rather a multitude of method that link into the total process of native title work. What I haven't understood yet how is Open Space dealing with full on conflict? I am keen to learn more about the conflict transformation process within Open Space. The law of two feet, to walk away from the conflict applies.
- We are usually producing huge suites of information to people and then expect outcomes. Listen more, talk less!
- The process puts people on an even footing and gives more value for people. It would have been useful to do more ground work in explaining the process beforehand. I was a bit afraid because I didn't know where it was going. If you are a highly structured person and like to know where you are going, then maybe this process is not for you.
- I have learned to trust Open Space as a participant and facilitator over ten plus years. It is not a resolution for everyone or every context. It has many of the same limitations as any workshop event, it needs support also for the actions afterwards. On the decision making point I think there are some useful complementary circle processes like traditional circles talking stick type processes. It's a very useful process in a movement out of Holland there is a movement called 'Sociocracy'. It is about organisational design around circles and uses a thing called consent decision making rather than consensus decision making.

Brendan McKeague:

- The process is useful in creating partnerships. Leadership emerges from anywhere in the group and it can deal with contentious and conflicting issues. People create their own participation safety.

Toni Bauman

- Toni Bauman as representative of AIATSIS reconfirmed her undertaking made in her sponsor's introduction to the facilitation in the morning to circulate the book of proceedings to all participants for comment. She also noted the emerging small community of practice and that information about process could be provided to participants around other events and issues as well through the email addresses obtained in the session.