


# Welcome

*With deep respect I acknowledge the Ngunnawal people whose ancestors and the laws they handed down sustained lives, relationships & wellbeing. Thank you for your hospitality in making it possible for me to speak here today.*



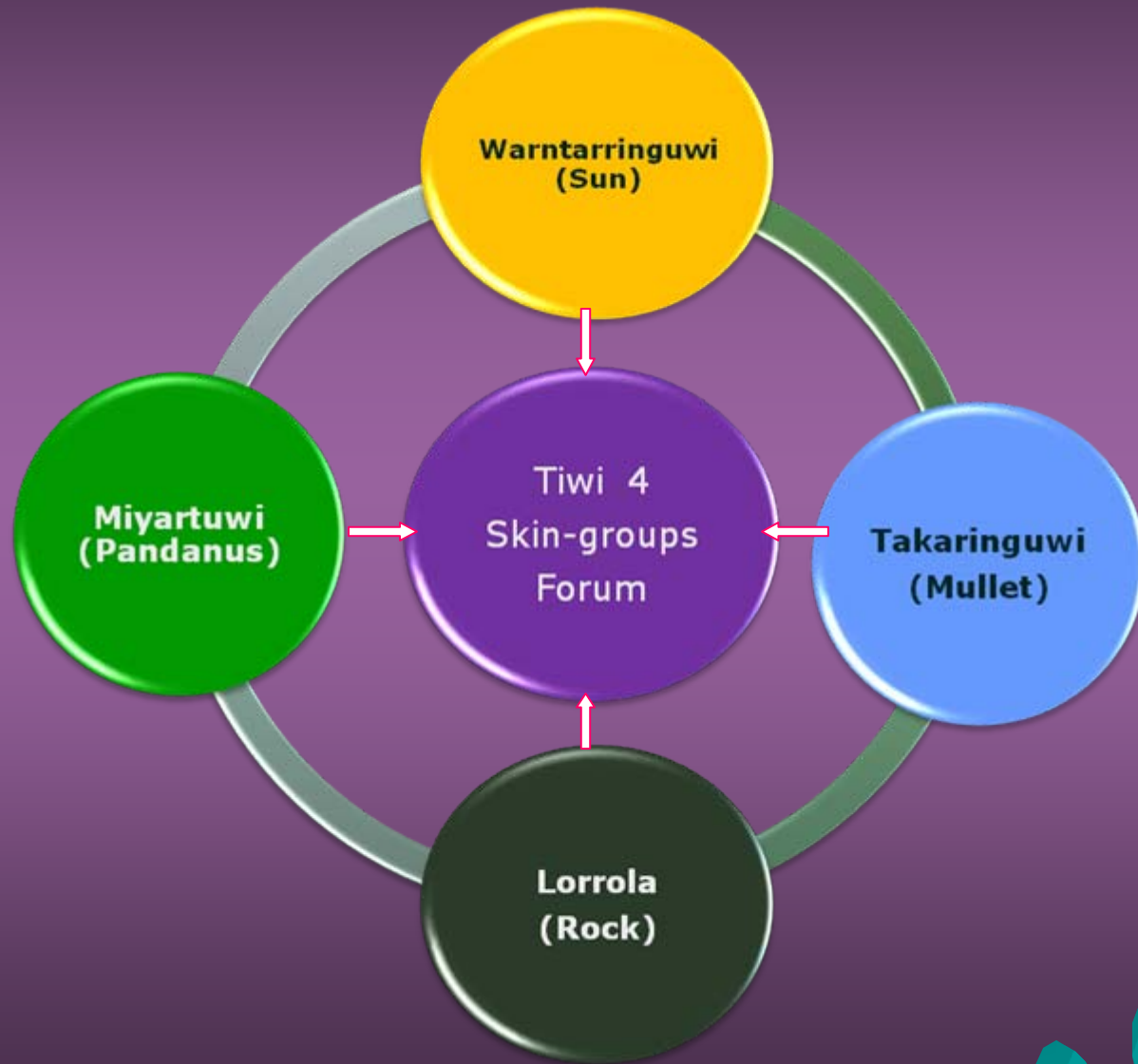
# Creating environments to support culturally effective dispute resolution practice

Helen Bishop

2009



# Tiwi Skin Group Structure



# The Tiwi Story

- ◆ Traditional & contemporary concern in timely, responsive and meaningful problem solving, conflict resolution and culturally sound practice.

# The Tiwi Story

- ◆ Traditional & contemporary practice in co-operative problem solving with the 4 Skin Groups Forum. Tiwi participate by :
  - Communicating appropriately,
  - Cultural obligations and observances,
  - Social protocols such as kinship structures,
  - using ceremony,
  - concerning themselves with community wellbeing and longevity.

# Statistics

- ◆ The Australian Bureau of Statistics report Indigenous people are chronically over-represented in; the criminal justice system, obscene & preventable morbidity, gross poverty, over-crowded housing conditions, persistent unemployment, inadequate educations (poor literacy and numeracy), and deprived of economic independence.

# Alternative Dispute Resolution Co-operative Problem Solving

- ◆ The themes to be discussed concern;
  - 1). Natural Justice,
  - 2). Alternative Dispute Resolution
  - 3). Culturally Effective Communication.
  - 4). Policy Framework
  - 5). Moving Forward,

# NTER as a Case Study

- ◆ The Northern Territory Emergency Response is used as a case study to demonstrate Aboriginal people's fundamental human right to be protected from the tyranny of government.
- ◆ The Case Study demonstrates denial of Aboriginal peoples right to be adequately informed, represented, consulted and included in the discussions and decisions that will ultimately
  - affect lives,
  - those of our children,
  - our communities, and in due course
  - our futures.

# Imposing Solutions

- ◆ All the inquiries and reports undertaken to improve Indigenous lives have failed to meet the intention of their aim: *to improve Indigenous people's lives through the solutions Government's create and impose.*

# Designing Solutions

Solutions need to match the needs of the interested parties or communities. Effective ways to create realistic solutions means deliberately involving individuals and communities to support them in working on the problem for themselves.

# Natural Justice

Natural justice means then that it is necessary to advantage Indigenous people with procedurally fair environments to advance adequate;

participation,  
representation/voice,  
choice, and  
effective involvement in solving problems, and  
decision making practices.

# Alternative Dispute Resolution


ADR is not about;

- Competition,
- Avoidance,
- Compromise/Bargaining

or

- Arbitration.

# Alternative Dispute Resolution

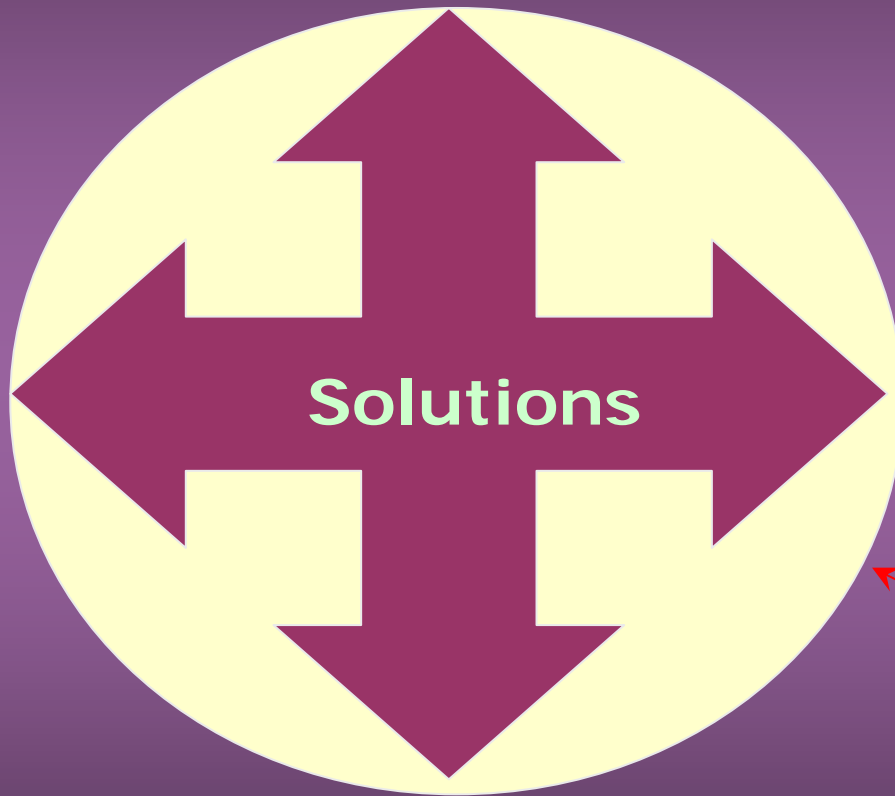
- ◆ In conflict resolution we distinguish between positions and interests.
  - ◆ Conflict resolution requires us to both understand our own interests and to listen to those of the other.
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# Alternative Dispute Resolution

## Positional Bargaining

- Starts with potential solutions or alternatives.
- Parties exchange offers & counter offers until they reach a solution which falls within their bargaining range.

# Positional Bargaining



Solutions generated using this approach are limited by boundaries imposed on its range.

**Boundary**

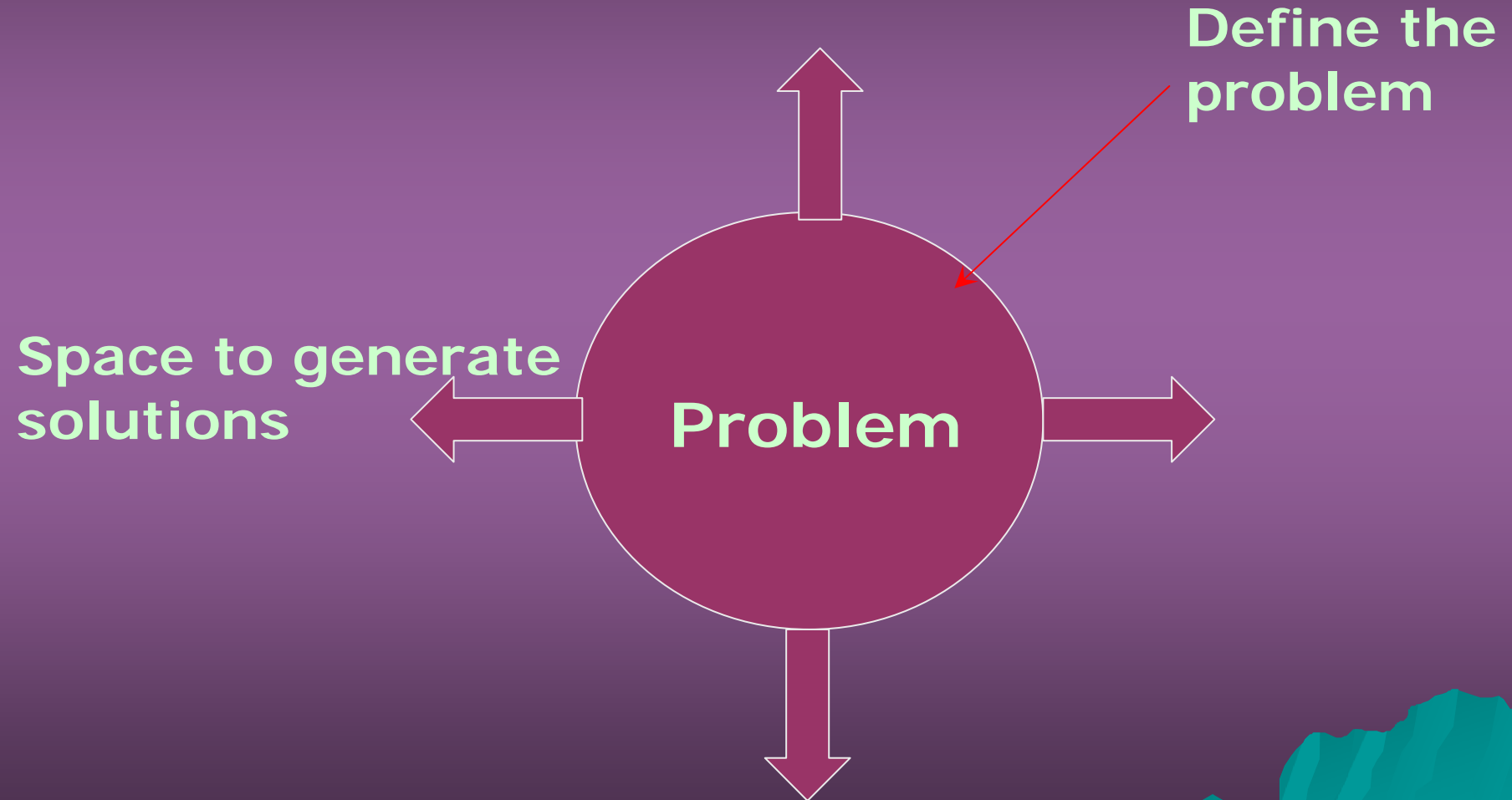
# Alternative Dispute Resolution

## Interest based negotiation

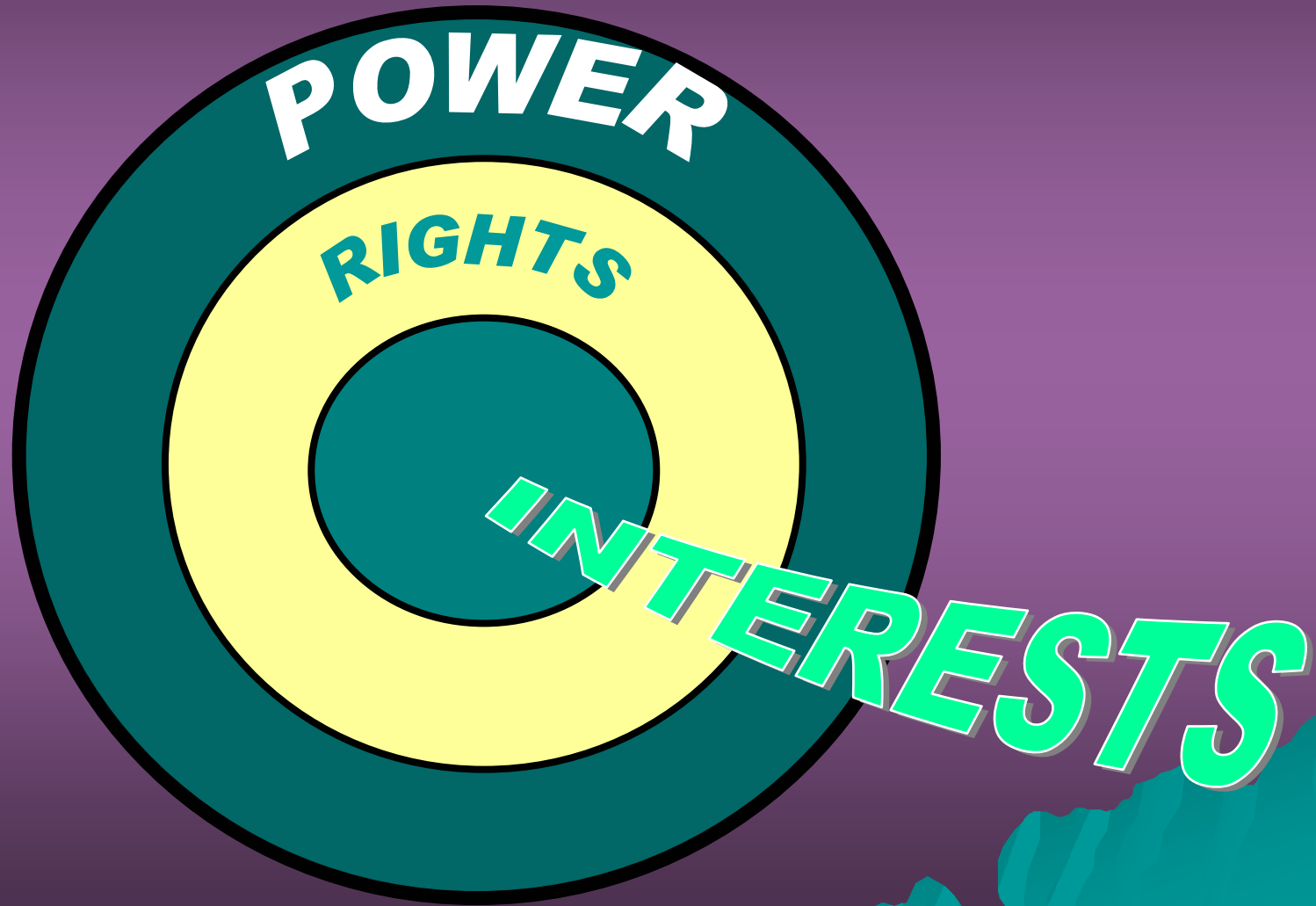
Starts with parties exploring the problem:

- ◆ Parties educate each other about their needs & go onto
- ◆ work jointly and diligently to solve the problem on how to meet those needs.


# Interest Based Negotiation



# Methods to Resolving Conflict




# Alternative Dispute Resolution

- ◆ Alternative dispute resolution (ADR) is an alternative way to solve problems or resolve disputes, we achieve this through direct communication between parties.
  - ◆ The purpose of interest based negotiation is to advance integrative solutions and these solutions are ones that meet the needs of all of the parties.
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# Legal / Social Frameworks

Are the processes of arbitration and adjudication as used in the case of the NTER:  
Enriching relationships,  
Respecting culture and human relationships,  
Supporting participation to solve problems,  
Involving Aboriginal people in shaping their own solutions?



# Alternative Dispute Resolution

ADR places great importance on:  
improving or enriching relationships,  
communication,  
people co-operating to solve problems,  
designing & owning solutions.

As Aboriginal people place great importance on relationships then it naturally follows that ADR is a far more suitable way to overcome problems other than through arbitration or adjudication.


# Tiwi Skin Group Structure



# Culturally Effective Communication


- ◆ Nourish kinship relationships,
- ◆ Establish rapport & build genuine trust,
- ◆ Incorporate cultural communication pathways, such as drawing on Elder's cultural knowledge,
- ◆ Integrate local practice, for example Tiwi Skin Group mediation processes and people,

Everyone brings with them the capacity to support peaceful and respectful problem solving.



# Culturally Effective Communication

## ◆ Mainstream Mediators or Facilitators


- Appreciate other world views,
  - Create spaces for talking and listening,
  - Use metaphors or examples to assimilate meaning,
  - Nurture safe environments,
  - Assist parties to plan and design a culturally safe mediation process,
  - Check parties satisfaction with culturally safe process.
  - Support parties speaking with each other.
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# Policy Frameworks

Improving National governance structures to create opportunities for effective:

- ◆ Access to timely ADR services,
- ◆ Records and integrates local processes,
- ◆ Build pictures of culturally safe ADR practices and environments,
- ◆ Translate process to inform culturally effective Grievance Resolution policy,
- ◆ Create communication pathways/protocols & best participatory practice,

# Policy Frameworks

- ◆ Develop cross cultural capacity across sectors of ADR,
  - ◆ Build training to match educational need,
  - ◆ Offer applicable professional training,
  - ◆ Establish grievance resolution as a first resort.
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# Policy Frameworks

- ◆ Attempts to uphold:
  - Effective participation,
  - Creative agreement making,
  - Co-operation,
  - Choice,
  - Natural Justice frameworks,
  - Support and enrich relationships,
  - Establishes ethical service,
  - Minimize civic distrust
  - Employs cultural strengths.

# Moving Forward

- ◆ National infrastructure for Indigenous Dispute Management to:

Design education & awareness of ADR,

Skill & train people, ✓

Design & deliver training, ✓

Shape & influence policy, and

# Moving Forward

Provide services to Aboriginal people that:

- Assist communities good governance practice, ✓
- Shapes a range of training initiatives, ✓
- Records process and procedure,
- Recognizes local initiatives, ✓
- Accredits ADR training and skilling, ✓
- Supports whole-of-government community facilitation approaches.

# Conclusion

*Indigenous people require access to culturally attuned and impartial dispute resolution services, culturally aligning facilitative ADR service to engage Indigenous facilitators and assist manage and smooth the progress of discussions on issues we need to solve for ourselves.*

# Acknowledgements

- ◆ *Ngunnawal people*
- ◆ *Terisita Puruntatameri –Tiwi Skin Group Forum*
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*Warwick Soden,*  
*Louise Anderson,*  
*Juanita Pope,*
- ◆ *Professor's Laurence Boulle, Tania Sourdin and Di Bretherton,*
- ◆ *The North Australian Aboriginal Justice Agency,*



Solid work you mob are doing  
Case Studies in Indigenous Disaster Resilience & Shelter Management in Australia

COMMUNITY CARE