



Strong foundations for community based legal education in remote Aboriginal communities

*NAAJA's perspective on best practice for legal education
in remote Aboriginal communities*

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This document outlines key principles and steps for planning and running legal education projects in remote Aboriginal communities. It also provides examples and comments from NAAJA's experiences in running such a project in Lajamanu.

Abstract

High quality community based legal education initiatives in remote Aboriginal communities are most effective when developed with reference to principles of adult learning, traditional Aboriginal learning styles, bilingual education, and intercultural communication. Adherence to these principles can occur naturally and effectively through the implementation of a community development project. NAAJA advocates Participatory Action Research (PAR) as a specific community development approach that adheres to these important principles.

Aim

The aim of NAAJA's legal development projects is to work with Aboriginal communities to increase participants' confidence and ability to navigate and influence the mainstream legal system.

People also need access to, and desire to share power. They want to participate in the making of decisions that shape their well-being. They want freedom to articulate their views and perceive a right to receive and transmit information.¹

¹ Jayaweerna, 1989, quoted in Su Braden & Marjorie Mayo, 'Culture, community development and representation' *Community Development Journal*, (1999) 34(3), 191-204, 193.

Power refers to relationships with those who control resources such as land, labor, capital, and knowledge or those who have greater access to those resources than others. If community development is about building the capacity for social and economic change, the concept of power is essential.²

The challenge

Although legal education is often a task conducted by solicitors, it is first and foremost a learning process. Many solicitors are proficient public speakers with good analytical abilities and a keen knowledge of how the law works and effects people. However we are often in the dark when it comes to understanding the learning process, and how to best help people acquire new knowledge and skills. In the context of working in remote Aboriginal communities, the task is further complicated because the learning process must occur across world views, conceptual frameworks, languages and experiences. For many of us, our ideas about education will be derived from hours spent sitting in a classroom. The general experiences of teaching and education that each of us has had through schools and university, however, are not sufficient and may be unhelpful in providing us with a framework to develop cross-cultural legal education strategies.

The Language that teachers use reflects their upbringing and culture. Their conceptual knowledge has been developed in standard English as are the texts and curriculum. The delivery of information to children of different cultural and language backgrounds results in confusion, anxiety and misinterpretation and is often culturally biased.³

Cultural differences in socialization practices and styles of communicative interaction have important implications for classroom communication and learning.⁴

In any educational venture, and particularly in a cross-cultural context, what we want people to know and what people want to know can be two different things. The way we think people learn and the way they actually learn may not be the same. The reasons why we think someone wants to learn and the reasons they want to learn may also be completely different. Additionally, most educational initiatives will rely on a set of assumed knowledge and attitudes that may or may not exist. Information that is simply presented, or dumped, on an audience can have very little learning impact, or worse still, be misinterpreted and misapplied with significant negative consequences.

² Ronald Hustedde & Jack Ganowicz, 'The basics: what's essential about theory for community development practice?' *Journal of the Community Development Society*, ,(2002) 33(1), 1-19, 4.

³ Mark Williams, 'Aboriginal English', *The Nunga Code*, Mark Williams (ed), Education Department of South Australia, (1988).

⁴ Anne Lowell & Brian Devlin, 'Miscommunication between Aboriginal Students and their non-Aboriginal teachers in a bilingual school' in Stephen May (ed), *Indigenous community-based education*, Multilingual Matters, (1999)138.

Where do we look?

Fortunately, as solicitors attempting to undertake this task, we can rely on the vast body of work that already exists with regards to adult learning, Aboriginal learning, bilingual education and intercultural communication. This document briefly summarizes some of the key principles from these disciplines that are relevant to the task of community based legal education. It is not intended to be exhaustive.

Adult learning

1. Adults must have inner motivation to learn. They become ready to learn when they “experience a need to learn it in order to cope more satisfyingly with real-life tasks or problems.”⁵
2. Adults will only learn what they feel is useful. Information must be practical and able to be applied by the learner.⁶
3. Adults learn better through active participation.⁷ Learning should be skills oriented, rather than information oriented. Provide opportunities to practice new skills.
4. Adult learning focuses on problem solving. Start with the problem and work back to a realistic solution. Learning is not necessarily sequential or organized topically around subject material.⁸
5. Adult learners are not a blank slate. The way they receive and process new information is dependent on their unique prior experiences. New information that is contrary to previous experience is less likely to be accepted.⁹ Adult learners should be given time to reflect on and clarify new information.¹⁰
6. Adult learners must have control over their learning process. They must have input into what, when and how the learning occurs. Learning occurs best in a safe, often informal, setting. The learning process should be negotiated.^{11 12}

⁵ Malcolm Knowles, *The modern practice of adult education: from pedagogy to andragogy*, (Association Press: 1980) 44.

⁶ ‘Principles of Adult Learning’, *Canadian Literacy and Learning Network*,
<http://www.literacy.ca/?q=literacy/literacyprofessionals/principles>

⁷ Ibid.

⁸ Malcolm Knowles, ‘My farewell address...Andragogy – no panacea, no ideology’, *Training and Development Journal*, , (1980) 34(8) 48-50.

⁹ Jill Byrnes, ‘Aboriginal learning styles and adult education: is a synthesis possible?’ *Australian Journal of Adult and Community Education*, (1993) 33 (3) 158.

¹⁰ Ibid 158.

¹¹ John Boulemetis, ‘Characteristics of Adults as Learners are not Culturally Defined’, *Adult Learning*, (1999) 11(1) 2.

¹² Malcolm Knowles, *The modern practice of adult education: from pedagogy to andragogy*, (Association Press: 1980) 47.

7. Adult learners must be respected.¹³ They should be allowed to contribute prior knowledge and experiences to the learning process, and this knowledge and experience should be seen as a building block for further learning.¹⁴
8. Negative concerns or stress, which may include learning in a foreign/dominant culture environment, will detract from the learning process. These concerns, which may not be related to the immediate learning process, need to be addressed to enable learning to occur.¹⁵

Traditional Aboriginal learning styles

1. Learning occurs through observation and imitation, rather than a question and answer format.^{16 17 18}
2. Learning occurs by doing in a real life situation, rather than in a contrived or artificial setting.^{19 20 21} Theoretical explanations that are disconnected from reality are ineffective teaching tools.²² Verbal 'teaching' is rarely the primary purpose of an activity. The activity, which is meaningful in its own right, is primary.²³
3. 'Listening' to the teacher is not necessarily demonstrated physically through actions such as looking at the teacher, making eye contact, remaining still or not speaking to others.²⁴
4. Learning is built around common themes of law, land, language, kinship, identity, ceremony and autonomy.^{25 26}
5. Skills or knowledge that threatens a person's sense of identity, culture, language or tradition is likely to be rejected, or there will be decreased motivation to learn. Learning that enhances and respects essential aspects of

¹³ Ibid 47, 86.

¹⁴ Ibid 50.

¹⁵ Jill Byrnes, 'Aboriginal learning styles and adult education: is a synthesis possible?' *Australian Journal of Adult and Community Education*, (1993) 33(3), 166.

¹⁶ Stephen Harris "Have you Manners" in Ruth Lipscombe (ed) *Living and Learning in an Aboriginal Community*, NT Department of Education, Darwin (1987) 87.

¹⁷ Byrnes, above n 15, 163.

¹⁸ Stephen Harris, *Culture and Learning: Tradition and education in north-east Arnhem Land*, Australian Institute of Aboriginal Studies, (1984) 77-79.

¹⁹ Margaret S Bain, *White Men are Liars*, Australian Society for Indigenous Languages (AuSIL) (2006) 13.

²⁰ Ibid.

²¹ Harris, above n 18, 88.

²² Bain, above n 19, 17.

²³ Harris, above n 18, 102.

²⁴ Anne Lowell & Brian Devlin, 'Miscommunication between Aboriginal Students and their non-Aboriginal teachers in a bilingual school' in Stephen May, (ed), *Indigenous community-based education, Multilingual Matters* (1999)152.

²⁵ Byrnes, above n 15, 160-161.

²⁶ WJ Pawu-Kurlpurlurnu, M Holmes & L Box, *Ngurra-kurlu: A way of working with Warlpiri people*, DKCRC Report 41. Desert Knowledge CRC, Alice Springs, (2008).

culture, language and identity is more likely to be valued and well received.²⁷
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6. The value of new knowledge is significantly determined by the person who holds and imparts the knowledge and the relationship between teacher/student.^{29 30} Knowledge should be given only by legitimate owners of the knowledge.^{31 32} Educational processes should be conducted in conjunction with, or with the approval of, relevant elders.³³

Bilingual education

1. A child's first language encapsulates all their life experiences and thought processes. The first language is a cohesive system that allows the child to function and accomplish all necessary meaningful tasks.³⁴
2. School should be an extension of the learning and communication environment that the child has already experienced at home. There should not be a sharp break between the language of early learning and the language of school.³⁵
3. The learner's first language is most effective as the language of initial instruction.³⁶
4. Good schooling requires successful two-way communication between the teacher and child.³⁷
5. The more complete and well-rounded a speaker's proficiency in their first language and culture, the better equipped they are to attain well-rounded proficiency in a second language.³⁸ An adult who has limited knowledge of their first language and culture is less likely to develop a healthy and well-rounded understanding of the world in a second language. Having no mature

²⁷Richard Trudgen, *Why Warriors Lie Down and Die*, Aboriginal Resource and Development Services (2000) 204-205.

²⁸Byrnes, above n 15, 159 – 161.

²⁹Bain, above n 19, 14.

³⁰Harris, above n 18, 96 -97.

³¹Trudgen, above n 27, 202 – 204.

³²Bain, above n 19, 14.

³³Trudgen, above n 27, 202-207.

³⁴Penny Tripcony, 'Englishes and literacies: Indigenous Australian contexts' Presentation to the ACTA/QATESOL Conference, Brisbane, 6 July 2000 www.atesol.org.au/esl/docs/tripcony.pdf.

³⁵Ibid.

³⁶Charles E Grimes, *Indigenous languages in education: what the research actually shows*. Darwin: Australian Society for Indigenous Languages (AuSIL), Darwin (2009) 5.

³⁷[Tripcony, above n 34.](#)

³⁸Jessica Ball, 'Enhancing learning of children from diverse language backgrounds: mother tongue-based bilingual or multilingual education in the early years', Paper commissioned for UNESCO (2011) 6.

linguistic or cultural framework for conflict resolution and problem solving in any language often results in frustration and antisocial behavior.³⁹

*The level of development of children's mother tongue is a strong predictor of their second language development*⁴⁰

Intercultural communication

1. A message that is not understood is useless. The communicator bears the responsibility for ensuring good communication and should not blame others when miscommunication occurs.
2. Communication should occur using terms and language most familiar to the audience.⁴¹

*A language incorporates the culture of its people, systems of social structures, law, religion, economics. A person thinks through their language, and in a way, is bounded by it. The words available to the speaker are only for concepts that are in the system and semantics of the culture of that language. New concepts that come into a language have to be explained, and a new word 'borrowed' or an old word given an extended meaning."*⁴²

*Reality is conceptualized differently by different communities. The phenomena of reality around us are 'bundled' together differently by different communities and labeled.*⁴³

3. Communication should occur with reference to the audience's worldview and conceptual framework.

*All cultural groups treat information that cannot be corroborated from within their cultural knowledge base as suspect. Therefore new knowledge must build on existing, culturally accepted truths and knowledge.*⁴⁴

³⁹ Grimes, above n 36, 4-5.

⁴⁰ Cummins (2000), quoted in Charles E Grimes, *Indigenous languages in education: what the research actually shows* Australian Society for Indigenous Languages (AuSIL), Darwin (2009) 1.

⁴¹ Byrnes, above n 15, 167.

⁴² Marilyn McLellan, 'Communicating cross-culturally - 1', unpublished paper(2010).

⁴³ Mildred L. Larson, *Meaning-based translation: a guide to cross-language equivalence*, (University Press, 2nd ed: 1998) 56.

⁴⁴ Trudgen, above n 27, 208.

4. Use grammatical structures,⁴⁵ questioning styles,⁴⁶ illustration techniques, terminology, chronological patterns and discourse structures that are familiar to the audience.⁴⁷

*All communication is based on shared information. It may include shared language structures, culture, previous conversations, having read the same material, a common experience etc.*⁴⁸

5. Words do not have a single static meaning; rather they should be viewed as a 'bundle of meanings'. Different languages combine different bundles of meaning into words, and as a result there is rarely an exact one to one equivalence of words across languages.⁴⁹ Be aware of implicit meanings and connotations of words.
6. Identify and unpack key concepts and key terms that underpin the subject matter. Take time to develop a clear understanding of differences and similarities in interpretations of those key concepts before moving forward in the communication process.⁵⁰ Define new terminology before putting the audience in a situation where they are expected to use or understand that terminology.
7. Continuously test for accuracy of communication. Find appropriate ways for the hearers to feed back their understanding of your communication.^{51 52}
8. Pay attention to the environment and context of the communication. The relationship between the speakers and the situation in which communication occurs will affect the communication process.⁵³ Good communication is facilitated when both parties feel safe and in control of their environment. Any imbalances in power or knowledge can inhibit good communication.⁵⁴

*People tend to avoid communicating with persons whom they know or anticipate will not have adequate command of a language common to both parties to permit ease of communication. It is uncomfortable and embarrassing not to understand what a person is saying or not to have them understand you.*⁵⁵

⁴⁵ See for example 'Helpful Hints for cross-cultural communication in the Top End' © (2011) Australian Society for Indigenous Languages and the North Australian Aboriginal Justice Agency, for grammatical constructions to avoid.

⁴⁶ See for example Diana Eades 'You gotta know how to talk...: Information seeking in South-East Queensland Aboriginal Society', *Australian Journal of Linguistics* (1982) 2, 61 -82.

⁴⁷ See for example Margaret S Bain, *White Men are Liars*, Australian Society for Indigenous Languages (AuSIL)(2006).

⁴⁸ Larson, above n 43, 38.

⁴⁹ Ibid 55.

⁵⁰ Ibid 48.

⁵¹ Byrnes, above n 15, 167.

⁵² Larson, above n 43, 485.

⁵³ Ibid 37.

⁵⁴ Tracy Novinger, *Intercultural communication: a practical guide*, (University of Texas Press: 2001) 35.

⁵⁵ Ibid 49.

How do current 'community legal education' initiatives stack up?

It quickly becomes apparent that a majority of the traditional community legal education initiatives undertaken by legal services such as NAAJA fall short of the principles outlined above. Initiatives such as brochures, posters and DVDs, when used in isolation, will always have limited educational impact. They are a form of one-way communication, they are aimed at a general audience rather than being adaptive to a specific audience and need, and it is extremely difficult to show respect for and incorporate the audience's prior experiences and knowledge into general materials.

It is also difficult to demonstrate two-way learning or show that the teacher is a learner in these educational initiatives. The process of creating these types of materials rarely includes a thorough effort to understand and incorporate the conceptual understanding the audience has of the subject material. At worst these types of mediums can be a source of miscommunication because there is no ability to assess and correct the way the information is received and interpreted by the audience. It is difficult to ensure that these types of educational initiatives do not conflict with prior accepted truths, or to ensure that new information is delivered into a community in accordance with appropriate processes and people. For example, material that is specifically intended to give young people new information that is not known by elders could be seen as a threat to the community, as it erodes the deferential relationship that young people should normally have with their elders.

The cartoon character, flannel-graph, flipchart and poster mentality that prevails in Aboriginal education belittles Yolngu educational requirements and insults the people intellectually. No wonder it doesn't work.⁵⁶

Although classroom or presentation sessions can be significantly improved by incorporating the principles above, they will always fall short of truly realizing these principles. Most of the current community legal education initiatives can be described as one party [the legal service] predetermining what knowledge another party [the recipients, who may or may not be a specific target audience] needs to know, deciding how to package that knowledge and then delivering that knowledge to a group of recipients. These initiatives are 'knowledge transfer' activities, where the primary purpose of the materials or activity is to 'teach' the target audience.

Amongst other problems, this approach conflicts with the literature that argues that Aboriginal learning traditionally occurred during the process of engaging in a meaningful activity, rather than as an activity in and of itself. This style of 'teaching' also tends to occur in an artificial or contrived setting in which concepts or theories are taught to an audience for them to apply at a future time. A best practice model would avoid theoretical abstractions that are removed from the individuals' experiences and the learning would occur in the context of a real life event or

⁵⁶ Trudgen, above n 27, 208.

process. Thus, any initiative that follows a traditional Western teaching paradigm cannot claim to be following a best practice model of legal education in remote Aboriginal communities. Fortunately, many legal education initiatives can be easily improved by incorporating even just a few of the above principles.

One cannot expect positive results from an educational or political action programme which fails to respect the particular view of the world held by the people. Such a programme constitutes cultural invasion, good intentions notwithstanding.⁵⁷

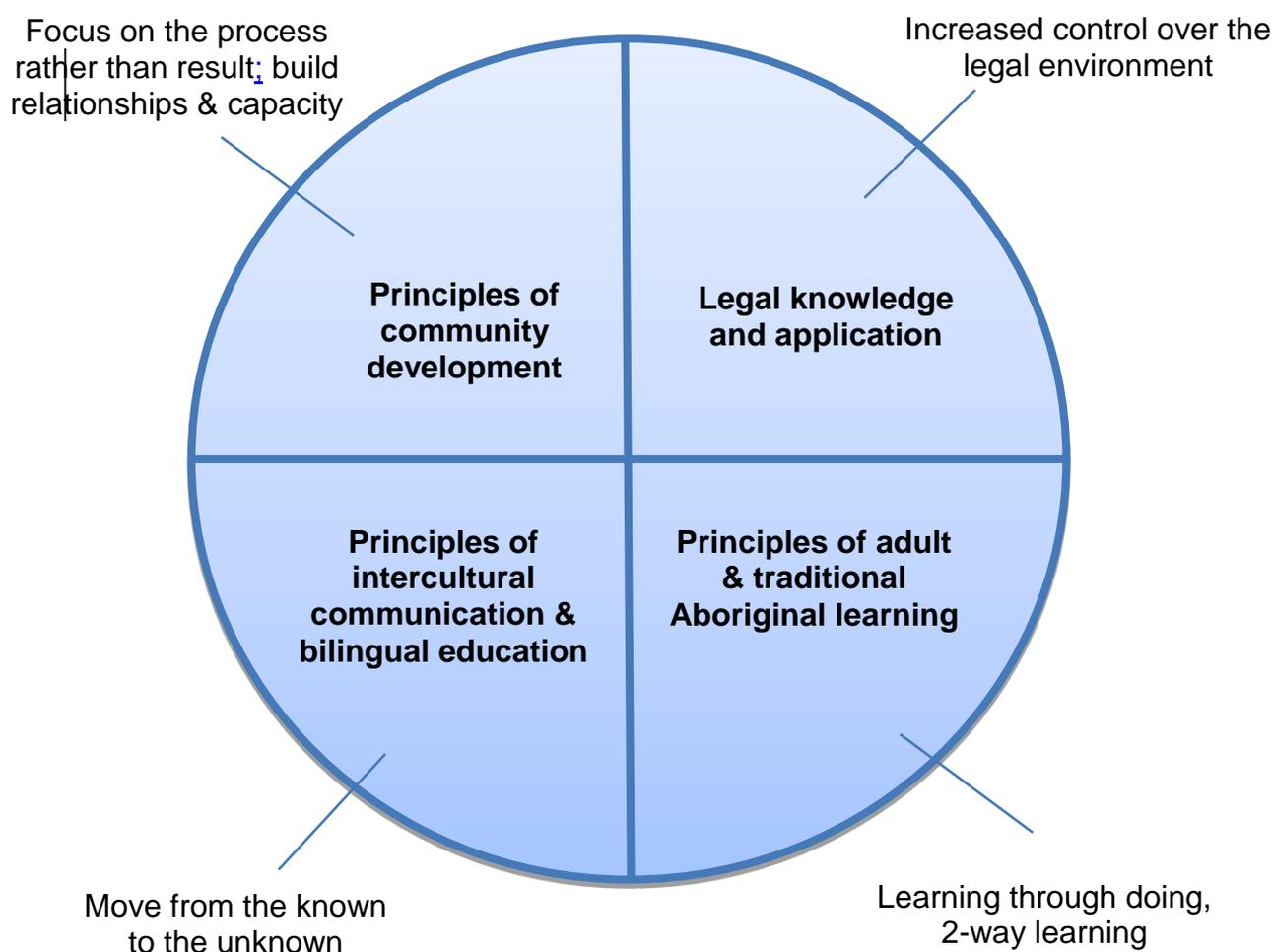
How do we implement these principles?

Principles of adult learning, Aboriginal learning, bilingual learning and intercultural communication can be naturally and effectively achieved through participation in a community development project. Not only will genuine participation in a community development project best facilitate the learning process, there is a real possibility of improving access to justice and building capacity and social capital for the participant group, which is ultimately the end goal of legal education. In addition to this, there is the benefit that any project that has the potential to tackle the felt needs of a community is inherently exciting and stimulating for everyone involved.

Strong foundations for legal education in remote Aboriginal communities

This diagram depicts the key disciplines that should underpin good legal education initiatives in remote Aboriginal communities. It distils the over-riding principle from each of these disciplines, providing framework for these initiatives.

⁵⁷ Paulo Freire, *Pedagogy of the oppressed*, (Penguin Books:1972) 68.



The NAAJA approach is in essence a Participatory Action Research (PAR) project that is informed by the principles of adult learning, Aboriginal and bilingual learning and intercultural communication. PAR is a specific community development model that is particularly useful for working with minority communities that are disempowered and excluded from decision making processes.⁵⁸ PAR is also a particularly appropriate form of research/learning to be conducted with Aboriginal communities because it strongly accords with the AIATSIS guidelines for ethical research in Australian Indigenous communities.⁵⁹

*Action research is enquiry with people, rather than research on people.*⁶⁰

In the context of a project working with Aboriginal men in Yarrabah, PAR was defined as;

⁵⁸ Su Braden and Marjorie Mayo, 'Culture, community development and representation' *Community Development Journal*, (1999) 34 (3) 191-204, 196.

⁵⁹ 'Guidelines for Ethical Research', Australian Institute of Aboriginal and Torres Strait Islander Studies, <http://www.aiatsis.gov.au/research/ethical.html>

⁶⁰ Altrichter, Kemmis, McTaggart & Zuber-Skerritt, 'The concept of action research' *The Learning Organisation*, (2002) 9(3) 125-131, 130.

*a process that allows ordinary people acting as researchers to explore priority issues affecting their day to day lives, recognize their own resources, produce knowledge and take action to improve their situation, often in solidarity with external supporters.*⁶¹

PAR is designed as a cyclical process of reflection, planning, action and observation, in which there is a degree of overlap between various stages of the project.⁶² The same is true for the methodology developed for NAAJA's legal development projects. Anyone desiring to engage in similar projects should familiarize themselves with the steps and principles of PAR.

One of the benefits of PAR is that it is not necessary, and is in fact undesirable, to predetermine the goals or outcome of the project. This important feature enlivens many of the principles discussed at the start of this paper. The participants determine which actions they want to take and which goals they want to achieve. This then precipitates a process where the participants negotiate what they want to learn and how they want to learn. This provides strong internal motivation and commitment to learn and act. Because of the cyclical nature of PAR, participants retain control of the process as each step is a collective negotiation where people's strengths and views are respected and incorporated.

*Action research is participative in that those involved contribute equally to the enquiry, and collaborative in that the researcher is not an expert doing research from an external perspective, but a partner working with and for those affected by the problem.*⁶³

*[PAR] seeks to change the social and personal dynamics of the research situation to enhance the lives of all who participate. It emphasis participation by people who are knowledgeable about the area of enquiry affected by it, and wish to use a research process to take action about an issue. It is a two-way education process between communities and researchers, and PAR can be used as a pathway to empower people to take action about issues.*⁶⁴

Key features of PAR

1. Collaborative – the 'recipients' design research and implement actions^{65 66}

⁶¹ Tsey, Patterson, Whiteside, Baird and Baird, *Indigenous Men taking their rightful place in society? A preliminary Analysis of a Participatory Action Research process with Yarrabah Men's Health Group*, Australian Journal of Rural Health (2002) 10, 278-284

⁶² Taylor, Wilkinson, Cheers, *Working with communities in health and human services*, (Oxford University Press, Melbourne: 2008) 246.

⁶³ Altrichter, Kemmis, McTaggart & Zuber-Skerritt, 'The concept of action research' The Learning Organisation, (2002) 9(3) 125-131.

⁶⁴ Taylor et al, above n 62, 248.

⁶⁵ Altrichter, above n 63, 130.

⁶⁶ Israel, Schulz, Parker and Becker, 'Review of Community-Based Research: Assessing Partnership Approaches to Improve Public Health', *Annu. Rev. Public Health*(1998) 19:173-202, 177-179.

2. Respect - acknowledge other types of expertise and the right of others to have alternative views and perspectives.⁶⁷
3. Reciprocity – the facilitator is also a learner and shares themselves during the process.^{68 69}
4. Emergent – the endpoint is not predetermined; the ‘right’ answers are not pre-empted.⁷⁰
5. Learning occurs naturally through the experiential process of reflection and action.⁷¹
6. Research (learning) is producing knowledge for action. Action is for the benefit of the participants.^{72 73}
7. Work in cycles – it is not a linear process; this allows for constant reflection and correction.⁷⁴

It can be seen from this brief outline that the PAR process harmonizes nicely with the principles outlined for adult learning, Aboriginal learning, bilingual education and intercultural communication. Engaging in a well executed PAR project is a method that allows the facilitator to adhere to these principles even if the facilitator is not overly familiar or conversant with these principles.

Time and Logistical Commitments

Engaging in intensive legal development projects necessarily involves a high degree of organizational commitment in terms of time and resources and requires a commitment to a long-term ongoing partnership with a community. In general terms, NAAJA’s legal education solicitors set aside 1 week out of 6 dedicated to travelling to and being in each community where a project of this nature is being run. Due to the relational nature of these projects, it is generally better to spend several days at a time (or longer) in the community as opposed to a fly-in fly-out approach. Visits to the community should be consistent, however flexibility should be retained to make sure visits to the community happen at appropriate and optimal times, and to allow staff to respond to requests to visit the community for special events.

The intensive nature of these projects necessarily means that other organizational interests will not be able to be pursued. Discussions and questions will inevitably be

⁶⁷ Taylor et al, above n 62, 247-248.

⁶⁸ Ibid.

⁶⁹ Israel, Schulz, Parker and Becker, ‘Review of Community-Based Research: Assessing Partnership Approaches to Improve Public Health’, *Annu. Rev. Public Health*, (1998) 19:173-202, 179.

⁷⁰ Taylor et al, above n 62, 247-248.

⁷¹ Bob Dick, ‘Action Learning’ *Action Learning*, *Action Research Association* © 1995-2000, www.alara.net.au/aral/actionlearning

⁷² Taylor et al, above n 62, 247-248.

⁷³ Israel et al, above n 66, 179.

⁷⁴ Dick, above n 71.

raised about too much time being spent on select communities or groups. One response to these concerns is that legal education should value quality over quantity. All resources are limited, and particularly when working cross-culturally, the preference should be to invest in fewer initiatives that can be developed to a higher quality that ensure genuine communication and learning processes, as opposed to spreading time and resources too thinly. The question can be legitimately raised as to what value is gained by conducting legal education initiatives that fail to adhere to the principles of adult learning, Aboriginal learning, bilingual education and intercultural communication?

Key features of the NAAJA approach

1. **Learning through doing:** the best form of learning, especially for adult learners and Aboriginal learners, comes through doing something meaningful and learning along the way. The process of taking action and overcoming obstacles will raise the real and underlying questions that participants have, but may not have been able to verbalize out of context. The process of working together creates the trust needed for people to ask important questions. Focus on the process rather than the result, acknowledging that genuine learning outcomes will often be unforeseen byproducts arising from the process of working together.
2. **Two-way learning:** Respect must be shown for traditional authority and knowledge, and acknowledgement must be given that other participants have their own expertise. Project facilitators must equally be students of local legal and cultural systems. Engaging in two way learning puts into practice the important principle that learning occurs by moving from what is known to what is unknown as it allows Western legal concepts to be compared or contrasted to well understood traditional concepts of law, justice and dispute resolution. Two-way learning generally involves facilitators learning from elders and community leaders. This means that new information and skills from the 'whitefella' side can be disseminated to communities through those elders and community leaders, ensuring that learning occurs in culturally appropriate and effective ways. Two-way learning also allows the facilitators to take the initiative in creating a learning environment by modeling learning behavior and being willing to make mistakes and show ignorance. Lastly, two-way learning allows the facilitators to feed lessons learned from participant communities back to the legal service, with the aim of increasing understanding of that community and generating better models of service delivery in those communities.

In one community NAAJA facilitators had a lengthy discussion with a senior leader about the local history of the community and ongoing issues. During this discussion the community leader recalled an incident in which he was wrongly arrested and taken to the police station. At the police station he was asked to do an interview, and was released without charge soon afterwards. This story led to a discussion about police interviews, evidence and the right to silence. At the end of the conversation the community leader said words to the effect of 'this is really important information. Our young people really need

to know this. I'm going to young man's ceremony this afternoon, and when I go there I'm going to tell all the young men about this.'

The learning that was to occur for the young men of that community accorded well with principles of Aboriginal learning; the information was coming from an appropriate elder, it was being delivered in the local language, it was being delivered in a manner that was designed to build up and protect the community, and it was delivered in the context of a genuine learning environment.

3. **Increased relationships:** social capital is generally used to describe the quantity and quality of relationships of a particular community.⁷⁵ Projects should seek to increase the quality of relationships amongst participants, generating mutual support and encouragement to achieve common goals; and to increase the relationships the participants have with outside individuals and organizations who can act as resources or advocates for the group. In simple terms, a group with a high level of social capital will be able to act in a cohesive and constructive manner to identify problems, goals, and solutions, and will have the ability to access the right people to help in addressing that issue.
4. **Increased capacity to act:** although the term capacity building is over-used, ultimately the focus of a project must be on developing an increased ability, confidence and willingness of the participants to actively shape a more desirable and satisfying environment for themselves. The focus should not be on the number of materials distributed, or session or meetings held. It goes without saying that greater production or distribution of materials and events doesn't necessarily result in increased learning outcomes or tangible benefits for the community. Projects and learning should be skills and action based with immediate application in ways that will benefit participants or the community. If it is necessary to conduct education sessions, think in terms of 'training' rather than 'education'.
5. **Increased control over the legal environment** -. A lack of individual and group control over the physical, social or political environment is widely recognized as contributing to negative health, social and criminal justice outcomes.⁷⁶ A group's lack of control over their environment also erodes their ability to engage in problem solving. Thus the broader aim of a project is to create avenues for Aboriginal communities to participate in and gain influence and control over the legal process that affect them as individuals and a community. Creating this sense of control will have other positive flow on effects. Symptoms such as disharmony, dysfunction or high levels of stress may be effectively addressed through increasing individual and group sense of control over their environment.
6. **Strength based** – every community or group of people will have a wealth of experience and talent available. Particularly when working in the context of Aboriginal communities there can be a tendency to focus on problems and what

⁷⁵ Simon Szreter & Michael Woolcock, 'Health by association? Social capital, social theory, and the political economy of public health', *International Journal of Epidemiology* (2004) 33, 650-667, 650.

⁷⁶ Ibid 651.

isn't working. A strength based approach will celebrate what is working and seek to build on the pre-existing strengths. Each community will therefore be starting from a different point as they will have a unique set of strengths.

Factors to consider in identifying a participant group

1. Invitation by community or individuals
2. Strong pre-existing relationships
3. Clearly identifiable felt needs
4. A sense of readiness to act
5. Availability of key people – is the participant group flooded with other commitments or inundated with other service providers?
6. Logistical issues – travel time and ability to visit the community regularly.
7. Community cohesiveness – is there a single language or people group, or a fractured community?
8. Existing strengths and resources – language, culture, ceremony, strong eldership, school, education, other organisations to partner with.

Key steps to starting and implementing a project

1. **Relationship building** – Any project must be built on a relationship of trust and local community members must feel that they are genuinely heard. In order to do this, you must give yourself time to listen and avoid having an agenda that you need to meet.

In Lajamanu we had almost no agenda for the first three to four months of our engagement with the community. The primary purpose was to spend as much time talking with elders and hearing from them about the history of the community, previous interactions with government services and their concerns about the current state of the community. It was clear that formal meetings, apart from being time consuming to organize, were not the appropriate venue for building trust and relationships. After asking around we were able to determine that senior men and women spent much of the late afternoon and early evening (from about 5-7pm) at certain areas within the community. We sought permission to join them at those times on a casual basis, making sure to take into account gender issues. We would spend nearly every afternoon of our time in Lajamanu at these places, on occasion bringing food and drinks to share. When appropriate we would engage in discussions about law and justice related issues, keeping the discussions at an informal level. On occasion the Lajamanu participants would want to have a more

formal meeting to discuss these topics. These meetings, however, still occurred at the ceremonial grounds and were conducted primarily in Warlpiri.

Part of the rapport building process included learning about Warlpiri law and history, being given 'skin names', being taught about art and getting to know people and their families.

We found that a major topic raised consistently was the government 'stopping us from using traditional law' and the ongoing implications that it had for preventing elders from exercising legitimate authority within their community. Along similar lines was the long list of changed policies implemented by various governments, which seemed to have the impact of excluding people from real decision making within their community. We asked clarifying questions but refrained from offering 'solutions' or making judgments about the participant's view of history or government policy. These discussions occurred repeatedly over a period of 4-5 months, and at times it felt like, from our perspective, we would never move beyond hearing about the pain and frustration. We continued to listen and talk however, and without us having to force the issue, the topics of conversation naturally shifted (after 4-5 months) to possible solutions and ways to deal with the problems that had been identified. It was almost as though the participants needed to know that we felt and understood their frustration and pain before they were willing to start looking at solutions and actions.

2. **Knowledge mapping** – before planning any educational initiatives or group actions it is important to develop a clear picture of what the community knows about Whitefella law, what they don't know, what they think they know, and how they feel about the subject. If you plan actions before knowledge mapping you will pre-determine outcomes and are likely to only listen to the material that is relevant to the actions you have already planned.

We developed a knowledge mapping question sheet that contained probing questions designed to evoke responses about people's perceptions of and experience with the Whitefella legal system. We didn't physically use this document in our discussions with participants and we almost always reworded questions to make them appropriate to the context. Having thought of questions in advance however allowed us to be more systematic and methodical in our knowledge mapping, and we were able to refer back to it to ensure we were covering all the necessary areas of discussion. A copy of this document is attached.

3. **Introduce ideas and topics for discussion** - without asking for decisions to be made.

At some of the more 'formal' meetings we would introduce ideas – such as the law and justice group – or possible actions that the group could take. We refrained, however, from asking people to make decisions about these issues. One of the common complaints raised about government actions was the way they would ask people to make quick decisions and force things along without allowing for the proper discussions to take place. We found consistently that by offering up ideas without asking for decisions, the group would come back at a subsequent discussion ready to take action on an idea introduced at a previous time.

4. **Identify felt needs** – any development project that aims to be sustainable and participatory in nature must stem from the felt needs of the community. It is the felt needs that provide the motivation to learn and to take action. Identifying felt needs arises naturally out of a relationship building and knowledge mapping process. It is important to always cross-check information across multiples sources to ensure that the views you are getting are not just one person's perspective.

Through the process in Lajamanu, we were able to identify 2 clear felt needs; the loss of authority of the eldership, and the disengagement of children and young people from tradition and culture, both of these were seen as contributing to unwanted or criminal behavior. There was a strong need to find a way of elders regaining authority and reengaging with young people for the purpose of intervening to increase community harmony and safety.

5. **Develop a sense of group identity and unity** – by this stage it is important to solidify the discussions that have taken place. Common experiences have been shared and clear needs have been identified. Creating a sense of identity as a group focuses to further actions and motivates people to strive for change. It is important that the 'group' not be closed or exclusive however. This step can be a crucial part of the community seeing that something 'real' is happening. If possible, link the group identity with pre-existing structures within the community.

In Lajamanu, a sense of identity and unity was enhanced by designing and using a logo for the Law and Justice Group, (which was used as letterhead to send official letters to government departments and deliver pre-sentencing submissions to the courts), having formal meetings between the group and other stakeholders (police, Government Business Manager, Magistrate), getting group shirts made up, (which could be used when assisting the court or conducting dispute resolution), and attending conferences and training together (Law and Justice conference in Darwin, Mawul Rom in Galiwin'ku and mediation training). The group also discussed some ground rules about how they should interact with themselves and the necessity of unity and impartiality. By matching the sense of group identity with the felt needs of the community, there was a strong motivation to act and a sense that meaningful change could be accomplished.

6. **Reflection (PAR step 1)** – this involves a more specific and probing discussion of a specific issue with the group. Reflection is an important step in developing potential actions as often deep reflection as part of a group will bring people to articulate or confront problems that have been ignored and clearly identifying the causes of problems makes them seem surmountable.

As an example of more specific reflection, through meetings with the magistrate and internal discussions, the Law and Justice Group identified that there were two common types of offending that were repeatedly coming to the courts; the driving offences of drink driving and drive disqualified and family violence stemming from alcohol use. The group then set out to plan specific actions they could take with people charged with these offences or at risk of breaking the law in these areas.

An 'incidental' learning outcome of this process was that the group became more familiar with the difference between drive unlicensed and drive disqualified, the associated penalties and the steps necessary to obtain licenses. There was also learning around the legal definitions of the concept of 'assault'.

7. **Plan (PAR step 2)** – decide on specific steps the group, or individuals within the group will take.

The group decided that in relation to driving offences, it was important that family members of disqualified drivers were aware of the serious consequences of driving disqualified (usually imprisonment), so that families could help prevent disqualified people from driving, and also so that family members did not put pressure on disqualified drivers to drive. The group also wanted to discuss with families alternative drivers that disqualified drivers could contact if they urgently needed transport.

In relation to family tensions, the group decided that it was necessary to be proactively engaged in mediation and dispute resolution, so that problems could be resolved when they were small, before they became larger. The group developed the idea that they wanted to 'treat the cause, not the symptom'. This approach was contrasted with the mainstream legal institutions (police, courts and corrections), which they viewed as reacting to symptoms.

8. **Action (PAR step 3)** – do it.

Certain members of the group were to approach appropriate families to follow through on the plan during the three month break between court sittings.

In relation to family tensions, a number of the group travelled to Alice Springs and Darwin to attend formal mediation training.

9. **Observe (PAR step 4)** – what worked, what didn't, how difficult was it, how did other stakeholders react, are there other people who should be included in the next round of planning and action?

After 3 months, the group observed that they had difficulty in carrying out the plan in relation to drive disqualified out because they did not have enough specific information about who was disqualified, and when people would be allowed to drive again. This meant that in some instances even members of the group were asking disqualified people to drive because they were not aware of the disqualification. The group decided that if they were going to follow through on the plan they would need specific information about disqualified drivers in their community.

In relation to mediator training, it was felt that it was important to have a large number of mediators trained so that it was always possible for to use a mediator who was in the correct relationship with the concerned parties. It was not possible to have one or two mediators to deal with all issues that arose.

10. **Go back to step 6 and repeat the cycle**—refer to articles about the PAR methodology for more details about the cyclical nature of the project.

The group met with local police to discuss ways of providing a list of disqualified drivers to the group, and systems for finding out more details about disqualification periods. As a result of the meeting, police and NAAJA are working on ways of providing publicly available information on disqualified drivers to the group.

Arrangements were made to conduct mediator training in Lajamanu so that a larger number of people could attend the training. This training has not yet occurred.

Conclusion

Initiatives that allow remote Aboriginal communities in the Territory to bridge the gap between traditional legal structures and processes and the mainstream legal system are desperately needed. Misunderstanding and mistrust of the mainstream legal system are contributing factors leading to exclusion from decision making processes that occur in the legal system. Exclusion from this system means that the mainstream system continues to be something that happens *to* remote Aboriginal communities, rather than something that happens *with* and *for* these communities.

Educational processes that bridge this gap and allow communities to influence and participate in the legal processes that affect their lives are increasingly viewed as a necessary component of legal work with remote Aboriginal communities.

Unfortunately, many of these initiatives seem to have had limited effect, and they take the shape of knowledge 'dumping' stemming from a traditional Western concept of teaching.

These educational activities ignore the vast body of work that exists with relation to adult learning, traditional Aboriginal learning styles, bilingual education and intercultural communication. There is a high level of overlap between each of these fields, and in terms of legal education, many of the principles can be distilled into these ideas;

1. Move from what is known to what it unknown
2. Two-way learning
3. Learning through doing
4. Focus on the process rather than result
5. Build relationships and a capacity to act
6. Create tangible increases in control over the (legal) environment

NAAJA advocates the use of PAR as a specific community development model that is well-suited for community-based legal education in remote Aboriginal communities. A well-implemented PAR project will allow the facilitator to naturally and intuitively adhere to many of the principles outlined at the start of this paper.

Strong foundations for community based legal education in remote Aboriginal communities
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Ultimately, projects that adhere to these well-established principles will be far more effective as a learning process and also in meaningfully increasing access to justice in remote Aboriginal communities.

Appendix 1

Possible aims or activities in a legal education PAR project

These aims or activities are suggestions that can be used to stimulate thinking in a legal development project;

- Development of local alternative sentencing options.
 - i.e. use of homelands or outstations, participation in ceremony, mentoring with elders, work with rangers or art centres.
 - Need to also develop pathways/referrals for lawyers, courts and police to utilize alternative sentencing options.
- Increased use of community courts
 - Similar to the previous point – deliver training to community court panel members and advocate for increased use of community courts.
 - Training will be practical and focused around helping elders better articulate and persuade the magistrate of their views.
- Two way legal education in schools
 - Develop and design a curriculum at the local school to be delivered in conjunction with local community members. Part of the education process can be designed to increase students' respect and understanding of the role of elders and traditional authority structures.
- Development of bail options
 - To provide key contacts and options for police when determining whether to grant someone bail. Increased links between police and community, and increased options for bail will increase the likelihood of local offenders being granted bail rather than being remanded in custody. In many instances this increases the possibility of local dispute resolution.
- Visits to country
 - Elders to supervise visits to country by school students, youth at risk, repeat offenders or another target group. Visits are designed to provide an opportunity for mentoring by elders & discussion of issues that lead to offending or disharmony. Increased connection by youths/offenders to land and culture also aims to reduce likelihood of offending or recidivism by fostering a sense of identity and self respect.
- Community meetings to resolve community conflicts/tensions

- Discuss what informal processes exist for conflict resolution. Are there ways to increase the capacity of elders to resolve disputes?
- May involve mediation training for elders.
- Develop pathways for other service providers to refer matters for dispute resolution. Find ways of allowing courts and the criminal justice system to acknowledge and incorporate dispute resolution undertaken by elders.
- Joint production of legal education materials with participants, utilizing local languages, art, ceremony and stories.
- Increased co-operation and trust between community safety stakeholders;
 - Police, night patrol, legal service, magistrate, diversion programs and community elders.
- Cross-cultural training or induction by elders to be provided to new police or other relevant service providers.
- Agreements to be signed between stakeholders, such as police, and elders establishing protocols on how to act in the community.

Appendix 2

Date:



North Australian Aboriginal Justice Agency

Legal Education, Training & Projects

Questions for participants – knowledge mapping about the Australian Legal System

Community:	Languages:
Number of people:	Education/employment:
Age group:	Setting:
<ol style="list-style-type: none"> 1. Which law is more important to people in this community, traditional law or Whitefella law? Why? 2. Which law is better, traditional law or Whitefella law? Why? 3. How do young people learn about traditional law? How do young people learn about Whitefella law? 4. How have you learnt about Whitefella law? 5. Who knows more about Whitefella laws, the old people or the young people? 6. Can you tell me how Whitefella laws are made? 7. What things are unfair about the Whitefella law? 	

10. What Whitefella laws are good laws, and what laws are bad laws?
11. Who are the most important people in this community? Why?
12. Are some laws more important than other laws? Which laws are more important?
13. Is there anyone in this community who does not have to obey the law? Who?
14. Can you tell me a story about someone who does not have to obey the law?
15. Should everyone have to obey the same laws, or should there be different laws for different people?
 - a. Children v adults
 - b. Government v citizens
 - c. Police v community
 - d. Community leaders v ordinary people
16. What is a 'court'? Can you have court anywhere? What things happen at court? Do you have court in your traditional law?
17. What types of punishment should be given to people who break the law?
18. Does the Whitefella law give punishments that are fair? Why or why not?

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