

Remediation

Discussion Paper

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Executive Summary

Businesses fear complex issues. They frame them in a risk context and attempt to avoid them or eliminate them when they arise. Ironically this approach increases the complexity of the issues and prevents businesses from addressing root causes and capitalising on emerging opportunities for growth and innovation.

Right now or in the near future, your grievance mechanism could identify

- modern slavery in your supply chain,
- systemic indigenous discrimination in your procurement processes,
- a supplier has drawn an unsustainable allocation from a waterway causing significant downstream environmental damage, or
- a supplier has caused permanent damage to the land of cultural first nations significance.

These are complex issues made more dynamic when we consider;

- Stakeholders are networked with competing grievances and interests.
- Stakeholders may be from different jurisdictions, countries and cultures.
- Traditional legal avenues may be limited in resolving all the issues or providing desired outcomes.
- The environment does not have a human voice to speak up for itself as a stakeholder.
- Competing interests and priorities, and
- High risk of conflict escalation.

These challenges often make negotiation, decision and agreement-making difficult.

What would you do?

Most of us would dread finding ourselves implicated in any of these scenarios. It's also likely that if we ever did, we would not have the skills or experience to navigate the path of best-practice remediation.

Unfortunately, parties often end up in the judicial system or managing conflicts on multiple fronts. This negatively costs time, money and reputations and rarely results in what's best for the victims or the most sustainable solutions.

The good news is that there is an established way forward. Professional dispute resolvers are skilled at remediating complex issues. Collaboration between professional dispute resolvers and issue subject matter experts is the best way to remediate complex social and environmental issues. Such an approach recognises that complex problems require multi-disciplinary perspectives to assist stakeholders to make wise and informed decisions.

Remedies are broad and can include truth-telling, apologies, repatriation, access to health services, legal services, employment, education, financial compensation and preventative future measures.

Remediation processes necessarily look beyond a simple agreement and instead assist parties in exploring how to 'make right' a given situation.

This paper is designed to help businesses understand and consider what an effective process might look like and how they may be able to engage in such a model.

At present, there is great interest and need for this process in the remediation of modern slavery. However, we also recognise that remediation may also be suitable to address other complex social, business and environmental issues.

Complex Issues

Modern Slavery

Slavery is not a historical issue. Modern slavery can take many different forms and refers to instances of human exploitation where the victim cannot refuse or leave because of threats, violence, deception, abuse of power or other forms of coercion.

The 2021 global estimates of modern slavery^[1] include people who are in either forced labour or forced marriage instances. Staggeringly, on any given day 49.6 million people are in modern slavery. Forced marriages take place in every region of the world. Nearly two-thirds of all forced marriages are in Asia and the Pacific. No region of the world is spared from forced labour, which is a concern regardless of a country's wealth. Forced labour touches virtually all parts of the private economy and in this sector predominantly victimises women. 3.3 million children are in situations of forced labour with over half in commercial sexual exploitation and others found in domestic work, agriculture, and manufacturing.

Initiatives to eradicate modern slavery are embedded in the United Nation's Sustainable Development Goals^[2] and have been legislated by the Australian Government^[3] and NSW Government^[4].

Stakeholder Types



Some of the key challenges in remediating modern slavery are:

- Every case is unique^[5].
- Process must ensure the safety and protection of people impacted.
- Process must be undertaken with the full knowledge and consent of people impacted.
- Businesses are focused on determining the extent of their involvement and their leverage impacting change.
- Reducing commercial harm distracts businesses from the aim of eliminating harm to people.
- It's easier to cease a business relationship than use it to leverage prevention and mitigation of future harm.
- Ceasing a business relationship will likely leave modern slavery victims in a more vulnerable position to be exploited again or worse.
- It is not clear who is responsible for the cost and resourcing of remediation activities.

[1] Global Estimates of Modern Slavery(2022)https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_854733.pdf
[2] United Nation's Sustainable Development Goals <https://sdgs.un.org/>
[3] Modern Slavery Act 2018 <https://www.legislation.gov.au/Details/C2018A00153>
[4] Modern Slavery Act 2018 No 30 <https://legislation.nsw.gov.au/view/html/inforce/current/act-2018-030>
[5] VOICES: Narratives by Survivors of Modern Slavery <http://www.antislavery.ac.uk/>

Colonisation

History is riddled with the rise and fall of empires, the most notable for Australian and New Zealand peoples is the three-century-long colonisation by the British Empire.

Beginning in the 17th century, Great Britain invaded and colonised and renamed lands across the Americas, Africa, Asia and the Pacific, including Australia and New Zealand. By the end of the 19th century, the British Empire included almost one-quarter of the world's land and more than one-quarter of the global population.

The colonisation process included practices like

- causing the death of native people,
- enslavement of native people,
- removal of native people's way of life,
- imposition of the colonial way of life on native populations,
- land acquisition without free, prior and informed consent, and
- resources extraction without free, prior and informed consent.

Many of the grievances arisen during colonisation, now centuries old, have not been remediated. The trauma of historical practices passes through generations, as do the effects of the failure to remediate issues from the past.

Stakeholders in modern-day remediation of this complex issue may

- distrust colonial justice processes,
- have perceptions of power being negative or destructive,
- have experienced intergenerational trauma,
- have been impacted by compounding economic disadvantage,
- Have mental health issues,
- be directly descended from a party of the historical grievance, or
- have no link to the historical grievance and a modern link (for example, current land holdings).

For the descendants of those who benefited from colonisation, modern-day restitution of property and land is likely to generate new trauma for current occupants and custodians.

For example, museums would lose significant revenue-generating assets if colonial artifacts were repatriated to indigenous communities, and the wealth of royal families would be reduced if gemstones were repatriated.

Some of the key challenges in remediating colonisation are:

- Every case is unique.
- There are centuries of time between some activities and the remediation proceedings.
- Wide ranging power imbalance between stakeholders.
- The remediation process may be enduring as issues emerge during the process. For example the first step may be entirely deviated to acknowledgement and truth telling and step two may be a 'reckoning' or 'healing'.

Stakeholder Types



Discrimination

Human rights are codified in international treaties, conventions or covenants. International human rights treaties provide an agreed set of human rights standards and establish mechanisms to monitor how a treaty is implemented. By ratifying a treaty, a country voluntarily accepts legal obligations under international law. Governments can also support declarations as non-legally binding documents.^[1]

Some of these relevant to the topic of discrimination are:

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Convention on the Rights of Persons with Disabilities (CRPD) and the optional Protocol to the Convention on the Rights of Persons with Disabilities establishing.
- United Nations Declaration on the Rights of Indigenous Persons.

However, even with these international agreements, legislated protections and remedies can vary between countries. Within a country, discrimination protections and legislated remedies can also vary.

One universal element is the limited remedy options available through traditional judicial processes.

In Australia, it is unlawful to discriminate based on several protected attributes, including age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life, including education and employment.^[2]

Some of the challenges in addressing these issues include:

- Vastly different stakeholder interests
- Access to legal representation and information
- Disparate power dynamics
- Trauma and disadvantage

Typical resolution methods through the courts will often determine an outcome but often leave parties feeling a sense of 'injustice'. The question remains - how do we make this situation better?

[1] <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system>

[2] <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law>

Climate Change

"It is unequivocal that human influence has warmed the atmosphere, ocean and land since pre-industrial times... The likely range of total human-caused global surface temperature increase from 1850–1900 to 2010–2019 is 0.8°C to 1.3°C... Human-induced greenhouse gas forcing is the main driver of the observed changes in hot and cold extremes"^[1]

Ever since the industrial revolution in the 1800s, we have been increasingly pumping gases into the atmosphere, causing the earth to heat up faster than at any other time in the planet's history. Anything we burn gives off these gases, carbon dioxide in the main, whether for electricity generation, space heating, vehicle fuels, industrial processes, deforestation, composting or animal farming.

Earth has been much hotter in the past, but the current rate of change is unprecedented. Moreover, global warming is happening in people's lifetimes rather than geological timescales. The consequence is melting polar ice caps, rising sea levels, and more frequent and extreme weather events.

The Intergovernmental Panel on Climate Change (IPCC) is the United Nations body for assessing the science related to climate change. The IPCC has said we should restrict any global temperature rises to no more than 1.5°C overall to avoid the worst effects. Reaching this is a truly global challenge.

As we increasingly see the negative impact of natural disasters and climate change, there is growing recognition that resolving the impacts requires a particular skill set and process.

The remediation of these matters requires a process that can address issues such as:

- Crisis & Emergency Response
- Responding to trauma and repeated impacts of trauma
- Coordination of multiple stakeholders
- Highly emotional stakeholders with lots to lose
- Capacity to self-regulate emotional impacts and crisis
- Health and Mental well-being issues
- Financial and employment issues
- Community Infrastructure
- Environmental Damage and or recovery

We also recognise that responding to climate change issues requires both a proactive and reactive model. Each with different functions but similar underlying principles.

Traditional judicial resolution options may not provide the flexibility to remediate climate change issues. For example:

- Is there a party that represents future human generations?
- Is there a party that represents non-human species?
- Is there a party that represents biodiversity?
- Can current generations be remediated for the actions of past generations that caused global warming resulting in damaging extreme weather events today?
- Can one company negatively impacted by sea level rise seek remediation from another company that continues to emit CO₂e emissions when a reasonable person would know it is contributing to global warming?
- Should countries that have gained economic strength through practices that emitted CO₂e be required to reverse their impact?
- Should countries seeking to gain economic strength through practices that emitted CO₂e be allowed to if they intended to offset their impact in the future?

When stakeholders are busy prioritising their issues the task of conflict management, the reduction of risk and remediation is often undervalued. However, there is growing recognition that establishing these processes early greatly increases the likelihood of effective recovery.

[1] <https://www.ipcc.ch/report/ar6/wg1/>

Renewable Energy

With a growing shift both domestically and internationally towards sustainable energy production, there is also an increasing recognition that the negotiation of Land Use Agreements with Native Title Holders and or land owners can be fraught with conflict risks. ^[1] These agreements require the coordination of multiple stakeholders from states, global companies, highly funded interest groups, land owners and native title holders.

Consequently, the disputes that can arise from these issues include contracts, land access agreements, community interests, and even jurisdictional and profit-sharing complexities.

Internationally there is a growing specialisation of dispute resolvers focusing on wind farm and or solar panel industry disputes. Much like previously identified complex issues, negotiating land (or sea) use agreements require the coordination of multiple stakeholders. The complex legal environment requires that parties have conducted appropriate community engagement and have provided ample opportunity for informed decision-making.

Within the dispute resolution industry, we are also seeing increasing work between states and professionals to design standard processes for the remediation of these types of issues. Mediators Beyond Borders International and members of Accord Network 3.0 are examples of professionals conducting process design.

Here in Australia, the increased construction of solar and wind farms often occurs on land impacted by Native Title status. In these cases, developers must negotiate within a legal context of Native Title.

“For instance, when companies are seeking to conduct activities where it may impact native title, “The Native Title Act allows native title groups and other interested parties to voluntarily enter agreements known as Indigenous Land Use Agreements (ILUAs). ILUAs can cover both future acts (e.g. exploration or mining activity) and non-future acts (e.g. use and access agreements that regulate co-existing rights). When registered, ILUAs bind all parties and all native title holders to the terms of the agreement.”

In remote parts of Western Australia, mining and energy companies are increasingly seeking ILUAs to enable the development of solar and wind farms as part of their future resource investments.

Currently, these negotiations are mostly reliant on individual consultants or companies driving process, with often competing interests and varying degrees of quality assurance.

These complex issues straddle both the proactive and reactive aspects of remediation processes with processes needing to consider;

- Complex case management requirements,
- Confidentiality,
- Timing and economic viability concerns,
- Multi-jurisdiction frameworks,
- Cross-cultural or cross-border issues,
- Access to justice concerns,
- Environment and cultural implications,
- High conflict risks, and
- Sustainability and reputational opportunities.

Interestingly, by addressing these issues practitioners are also able to better reduce the risk of conflict on negotiation processes and enhance the potential for quality decision making. All of which means that agreements are more likely to be durable and sustainable.

[1] <https://www.austrade.gov.au/land-tenure/native-title/indigenous-land-use-agreements>

Resolution

Alternative Dispute Resolution

Dispute resolution is the manner or process in which you resolve disagreements, disputes, or conflict. Alternative Dispute Resolution (ADR) is a general term for dispute resolution processes where an independent person (sometimes referred to as an ADR practitioner) helps to sort out the issues between the people in dispute. ^[1]

When a conflict occurs, and parties are unable to resolve it themselves, there are a variety of options for resolution. Typically, this looks like going to court. However, both domestically and internationally, there is recognition that alternative processes such as mediation, conciliation and arbitration may provide more viable options for agreement-making.

The National Alternative Dispute Resolution Advisory Council (NADRAC) identified key principles for effective dispute resolution as being:

- Accept that conflict is normal and can create positive opportunities
- Adopt a win-win approach
- Encourage mutual ownership and understanding of the issue
- Be hard on the issue and soft on the person
- Appreciate individual differences – respect and empower others
- Look for and emphasize common goals & shared values

There are three main types of ADR; facilitative, advisory and determinative. What varies is the potential right of appeal, who makes the decision, your ability to impact outcomes and the enforceability of the agreement.

Facilitative

This process is where a dispute resolution practitioner assists the parties to a dispute to identify the disputed issues, develop options, consider alternatives and try to reach an agreement about some issues or the whole dispute.

Advisory Processes

This process is where a dispute resolution practitioner considers and appraises the dispute and provides advice as to the facts of the dispute, the law, and, in some cases, possible or desirable outcomes and how these may be achieved. Parties have less capacity to influence outcomes and are not able to appeal decisions.

Determinative

This process is where a dispute resolution practitioner evaluates the dispute (which may include the hearing of formal evidence from the parties) and decides.

Mediation

Mediation is widely recognised in Australia as a legitimate and often preferred model for dispute resolution, both within the judicial space and within high-profile corporate environments. The reasons for this include:

- Impartiality - the facilitator is a neutral third party
- High quality of the industry with national accreditation, quality assurance and complaint mechanisms
- Consistency of basic principles of the process
- Time and cost benefits
- Adaptability of the process for complex environments and cultural or jurisdictional issues
- Formal or informal process
- Confidentiality
- Capacity for binding agreements
- Reputational and multi-disciplinary collaborations

With the recent ratification of the UN Singapore Convention on Mediation, the international corporate dispute resolution space has fully embraced mediation as a legitimate way to manage and resolve complex cross-border disputes.

A mediation model often enables better multi-party collaboration enabling sustainable solutions. With bodies such as The World Bank and UN encouraging mediation as a preferred model of dispute resolution, there is growing acceptance of this model as a means to reach an agreement, resolution and or transformation of conflict.

Whilst mediation has traditionally been a voluntary process, judicial systems are increasingly requiring parties to attempt to negotiate in 'good faith' before cases preceding to a magistrate/judge. This usually occurs as part of a mediation process either within the courts or outside.

Mediation Model

4 PROBLEM SOLVING

Options
Evaluate & Negotiate
Agreement

1 PREPARATION

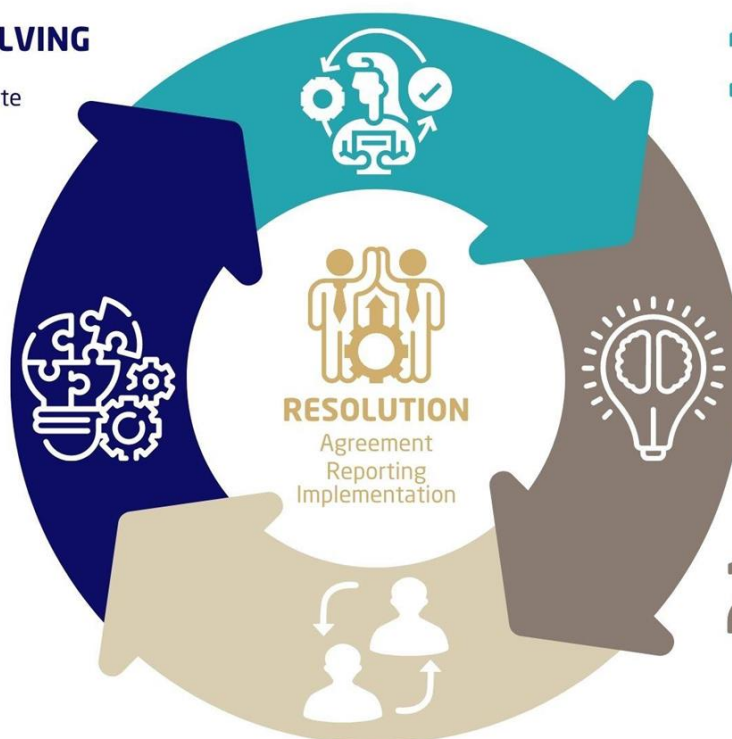
Intake & Assessment
Pre-mediation

3 SHIFT

Private Sessions
Check In
Preparing to
Problem Solve

2 UNDERSTANDING

Opening Statements
Agenda
Exploration



Restorative Justice

Restorative justice is “a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”. [1]

Restorative justice represents a departure from traditional criminal justice as aims to repair harm to victims rather than punish offenders. It is relevant to this discussion in particular due to its focus on the ‘victim’ and making things right.

Common forms of restorative justice in Australian criminal justice systems are victim-offender mediation and circle sentencing. However this model is also used outside the justice system within schools and as diversionary interventions.

Circle sentencing is an alternative sentencing option, with the full sentencing power of a traditional court, for offenders that meet a specific set of conditions. In practice, this typically involves the presiding magistrate working with victims, respected members of the community and the offender’s family to determine the appropriate sentence. One of the key differences from traditional sentencing is that it can effectively support victims and reduce offender recidivism [2].

Restorative Justice as a model is often used in a cross-cultural context due to its flexible capacity to incorporate traditional law, culture and processes. In particular, circle sentencing often incorporates First Nation Elders in the decision-making process.

Transformative Resolution

Transformative dispute resolution focuses on the people, not the problem. It is based on the values of empowerment and recognition and aims to ‘transform’ how parties interact, perceive and approach conflict.

“.....the help parties most want, in all types of conflict, involves helping them end the vicious circle of disempowerment, disrespect and demonization, alienation from both self and other. Because without ending or changing that cycle, the parties cannot move beyond the negative interaction that has entrapped them and cannot escape its crippling effects.” [3]

In the remediation space, there is likely tension between both the immediate problems and how participants might transform situations and become more ‘empowered’. Thus whilst there are contributions from this field that will enhance remediation, there are also competing dynamics that will likely require a more practical focus on any process.

[1] Larsen, J. (2014) Restorative justice in the Australian criminal justice system (<https://www.aic.gov.au/sites/default/files/2020-05/rpp127.pdf>)

[2] Yeong, S. and Moore, E., (2020). Circle Sentencing, incarceration and recidivism (Crime and Justice Bulletin No. 226). (<https://www.bocsar.nsw.gov.au/Publications/CJB/2020-Report-Circle-Sentencing-incarceration-and-recidivism-CJB226.pdf>)

[3] Robert A. Baruch Bush and Sally Ganong Pope, Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation, 3 Pepp. Disp. Resol. L.J. Iss. 1 (2002)

Remediation



Remediation v Mediation

Remediation is the process used to facilitate the resolution or response to the breach of legal obligations. It is an act or process used to address or fix the problem.^[1] From a general philosophical perspective, remediation connotes elements of making things better, social justice and sustainability principles that focus on transforming a problem into a workable long-term solution.

At the heart of remediation is the question of 'what does resolution, justice and making amends look like' to the victim, the company, the law, and others?

It is this multiparty perspective, that can make reaching on outcome challenging. And whilst numerous papers talk about internal actions and legal determinations relating to remediation, there is very little literature on the process of remediation itself.

Remediation, as distinct from mediation, offers a slightly different lens through which to consider dispute resolution and incorporates elements of 'truth telling, restorative justice and healing'.

However, what that process looks like remains unclear. At present it remains ad hoc and often facilitated by the companies themselves.

By starting with the premise that remediation is the "process of improving or correcting a situation"^[2] this paper proposes an exploration of what that process may look like according to best practices already in use.

This process is distinguished from mediation in the level of complexity and the focus on 'improving or correcting the situation. To that extent, it incorporates elements of restorative justice and transformative dispute resolution models.

By considering what might be the fundamental and universal elements that inform how we approach this business of remediation in complex situations, we are better able to identify core principles.

Such indicators may include the following:

- Independently managed without bias
- Ability to accommodate multi-party interests
- Not jurisdictional based
- Legal legitimacy and enforceability
- Capacity to manage the tension between Victim needs and corporate realities
- Victim support scaffolding
- Structured organisationally for consistency
- Confidentiality and information and technology security
- Quality assurance – what a good job looks like
- Complaints mechanisms
- Structured, clear, consistent process
- Adaptive to culture and people's needs
- Role for all stakeholders to network into dispute remediation
- Power issues fairly addressed

These issues require implementing a case management model that administers the process from referral to resolution. This would likely include the provision of panels of process experts, investigative functions and or complex case coordination.

Due to the complex nature of the issues where remediation may be utilised, it is important to consider how we might integrate the following eight elements into a seamless process.

1. Collecting information through channels such as grievance mechanisms
2. Obtaining victim consent for escalation
3. Safeguarding victims
4. Referral to appropriate authorities or experts
5. Corrective actions in workplaces/supply chains
6. Material support and rehabilitation
7. Compensation and/or restitution
8. Preventing the situation from reoccurring by changing and improving systems.

Outsourcing of the remediation process to an independent body will enhance quality assurance and accountability whilst also prioritising the impact on the victim. Such a body must carefully stipulate delegation and establish productive working relationships with multiple stakeholders. Whilst such a body may not hold either the authority or responsibility to action all aspects of the eight elements of remediation, they may potentially be able to monitor, report and hold parties to account.

[1] https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

[2] Cambridge, 2022

<https://www.aic.gov.au/sites/default/files/2020-05/rpp127.pdf>

https://www.beyondintractability.org/essay/transformative_mediation

Challenges and Risks

As for any process, it is important to consider process risks that may impact potential solutions.

Victim Support

At the heart of this process is an ethical and legal responsibility to address the needs of the victim. This will likely mean very different things for each situation with several advocacy bodies prioritising support. Any remediation process will necessarily require comprehensive risk management modelling to ensure risks are appropriately addressed.

Power Imbalance

There are significant risks relating to perception and realities of power imbalances. Practitioners will need to be trained to manage these and the process itself will require establishing systemic support mechanisms to monitor and report on potential risks to any participant to process.

Competing Interests

The complex nature of these issues mean that we can't always fix problems, sometimes we will need to manage tensions. This is particularly true when we consider the economic interests of major companies and the individuals at the end of the supply chain.

Process Integrity

With the lack of a standard process, the national mediation standards provide a minimum standard from which to quality can be measured. It also provides consistent international standards of legitimacy.

Professional Standards

Ensuring there is a fair, consistent and legitimate professional response to what is a growing challenge within the sustainability arena can be challenging if remediation remains unmonitored. The benefit of linking the model with an already existing professional body means that we are not needing to replicate practices.

In practice

Practitioners

Remediation facilitators will require a similar skill set to those of a standard mediator, which are highlighted within the National Accreditation Scheme through the Mediator Standards Board ^[1].

The skills and knowledge they have developed include an:

- Understanding of the role of process/structure
- Training on how to conduct the process
- Power and safety
- Procedural fairness and impartiality
- Ethical conduct, ethics and professionalism
- Confidentiality
- Understanding of conflict
- Understanding of communication, decision-making and negotiation
- Wide skill set whose core focus is on facilitating difficult negotiations.

We recognise that many competent facilitators are likely already participating in remediation on an ad hoc basis. These professionals likely bring subject matter expertise, probably have facilitation experience and have likely been consultants in their respective industries for many years.

The National Mediation framework, however, requires that professionals undertake continuing professional development, there are practice standards and complaints mechanisms, and they are required to have appropriate professional insurance. There is also the capacity of international accreditation to recognise a capacity to operate outside of the Australian jurisdiction. Thus ensuring a higher level of accountability and quality assurance.

Remediation, by its complex nature, will require more from practitioners and potentially becomes its own specialisation. Some of the additional competencies include but are not limited to:

- Understanding of the context, for example, modern slavery.
- Understanding of complex multi-party disputes
- Understanding of how to manage high conflict
- Strategic Conflict Management insights
- Cross-cultural competencies

An External Provider

For many individual practitioners, the administration complexities of remediation will make it difficult for them to case manage competing multiparty interests. Yet by utilizing internal personnel, companies potentially risk bias or competing interests to drive actions. This means the supply chain, companies and victims could potentially miss opportunities for innovative and long-lasting solutions to these complex problems.

The benefits of using an external service provider for remediation provide opportunities to address many of these risks.

An external service provider will be able to:

- Independently facilitate processes.
- Source and monitor quality providers.
- Compile and share industry lessons and precedents.
- Generate potential pooling of resources, case lessons and funding.
- Monitor trends and developments both within the context area (e.g. modern slavery) and also remediation more broadly.
- Administer an independent complaint and grievance process.
- Conduct independent investigations free from perceptions of bias.
- Invest in education and prevention resources developed through case management.

An external provider will also be in a position to compartmentalise information throughout the case management process - this may encourage reporting, will better support victims and will reduce risks that may arise from the handling of sensitive commercial-in-confidence information.

[1] www.msb.org

Remediation of Modern Slavery

“Where an occurrence of modern slavery has been identified – whether through due diligence, monitoring processes or otherwise – it is necessary to explore how to remedy the situation. Remedy can take a variety of different forms, including apologies, restitution, rehabilitation, financial and non-financial compensation as well as actions that aim to prevent harm, for example, injunctions or guarantees of non-repetition or non- retribution” (Ergon Associates & C Berman).

With increasing complexities associated with the modern supply chain, companies are having to navigate difficult remediation decisions with sometimes limited capacity to influence change.

Balancing the economic realities of business, a commitment to fair and just people impacts and reputational risks, there is a strong incentive for a quick, clean and easy outcome.

Whilst victims can be left cut off or outside of decision-making when the process fails to address root causes.

Added to the mix is the influence of advocate groups, causes and trends and community expectations, stakeholder engagement can get messy fast.

A well-structured remediation process can help to mitigate these risks and competing agendas and increases collaborative practices for more effective problem-solving.

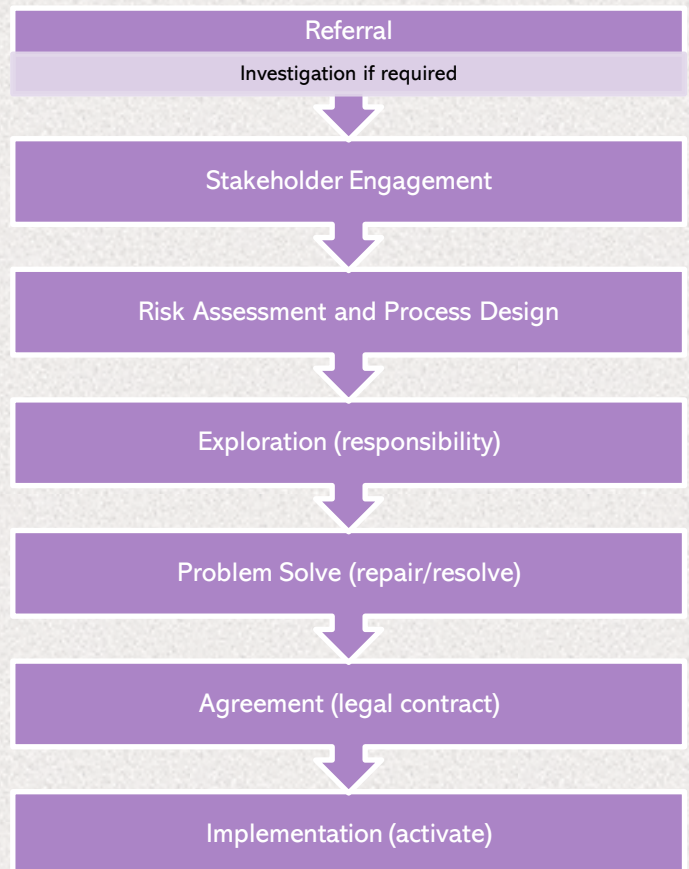
A comprehensive case management model for remediation enables and defines the stages from:

- Detection & Investigation
- Remediation Process
- Sustainability Transformation

Each of these stages will need careful handling of sensitive and complex information. Confidentiality and security measures will need to be established to ensure trust in the system itself.

Whether individually or organisationally provided, a quality remediation process should transparently address mechanisms such as:

- Case Management
- Practitioner Selection
- Quality Assurance and Complaints Mechanisms
- Process Monitoring and Implementation
- Reporting and Review
- Education



Authors

Hayley Jarick



Hayley is experienced in governance, strategic management, marketing, membership, adult learning, advocacy, financial analytics, sales and customer service in manufacturing, residential and commercial building, heavy construction, professional services, dispute resolution and international trade; for-profit and for-purpose; big and small; paid and voluntary. Myers and Briggs call her an ENFP. Other Personality Types gurus call her a Driver. Herrmann calls her an Experimental thinker

Hayley was the General Manager Australia of the Resolution Institute^[1], responsible for managing all Australian operations, including membership, accreditations, events, training, communications, partnerships and nominations (appointing professionals in a panel to a dispute).

Qualifications

Master of Business Administration MBA (Executive), Australian Graduate School of Management @ UNSW Business School.

Bachelor of Commerce (double major: International Business, Legal Studies)

Current appointments

Supply Chain Sustainability School Limited - Company Secretary and CEO {supplychainschool.org.au}

ResponsibleSteel – Director, Chair Standards Assurance and Claims Committee and Member Finance Audit and Risk Committee.

Property Council of Australia – Member Modern Slavery Working Group and Member of Circular Economy Working Group

Planet Ark – Chair of the Australian Circular Economy Hub Procurement Working Group

WWF - Materials & Embodied Carbon Leaders Alliance (MECLA) Member Project Control Group (PCG) and Chair of two working groups; 5a steel and 3/4 knowledge sharing/common language.

Beaumont People - Leadership Mentor with the LEAD Mentoring and Professional Development Program.

Scouts NSW –Scout Leader “Ikki”, Kingsford Smith Joey Unit

www.linkedin.com/in/hayleyjarick/

Sarah Blake



Sarah brings over 26 years of professional experience delivering conflict & leadership intervention, education & mediation services across Australia & internationally. Her experience with complex high conflict situations enables her to bring strategic calm to complex decision-making during conflict and crisis.

Sarah has designed and delivered bespoke corporate training, university courses and nationally accredited workshops in some of the most complex situations across remote Australia and into the Pacific. She has delivered talks multiple countries and is a regular contributor in the media on all things conflict. She is an Ambassador for Think Network and Mediate Guru. Some of her clients include World Bank, BHP, Australian Federal Police, Defence Force, Land Councils and National, State and local governments.

Career highlights include Londonderry TEDx Presenter 2021, Number 1 Bestselling Author, Northern Territory Government's Petroleum Regulation Mediator Panel 2021, and Federal Court of Australia's Native Title Panel.

Sarah M Blake Pty Ltd {smblake.com} and Sarah Blake, the mediator, are supporters of and signatories to the World Mediators Alliance on Climate Change (WoMACC) Green Pledge committed to minimising the environmental impact of each mediation in which I/we are involved in the ways outlined in the Pledge, including avoiding unnecessary travel and using electronic technology wherever possible.

Qualifications and Accreditations

Masters of Indigenous Knowledge, Mawul Rom, Cross-Cultural Peace Making & Leadership, Charles Darwin University

Master of Strategic Affairs, ANU

Resolution Institute^[1] Member (Director 2018-2019)

Accredited Mediator, International Mediation Institute

Accredited Mediator, National Mediation Standards

Awards

Rockingham Kwinana Chamber of Commerce Solo Business of the Year 2021

ENE International Business Innovator of the Year 2019

Young Mediator of the Year Australian Dispute Resolution Centre 2016

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[1] Resolution Institute is the largest dispute resolution membership organisation across Australia and New Zealand. They train, accredit, and manage directories of mediators, conciliators, expert determiners, adjudicators, arbitrators, restorative justice practitioners and other dispute resolution professionals.

Feedback

Your feedback on this Discussion Paper is welcomed and encouraged.

We have posed some questions to guide your submission and also welcome general comments.

Submit your feedback by Friday 9 December 2022 at www.supplychainschool.org.au/remediation

Modern Slavery

- 1) What is your current remediation plan?
- 2) What do you think this issue will cost you?

Reconciliation

- 3) What is your current remediation plan?
- 4) What do you think this issue will cost you?

Discrimination

- 5) What is your current remediation plan?
- 6) What do you think this issue will cost you?

Climate Change

- 7) What is your current remediation plan?
- 8) What do you think this issue will cost you?

Renewable Energy

- 9) What is your current remediation plan?
- 10) What do you think this issue will cost you?

Resolution

- 11) How did this paper impact your knowledge of resolution processes?
- 12) What skills should remediating professionals have?
- 13) In the absence of a government scheme, how should businesses collaborate to establish a program for remediating issues like modern slavery?
- 14) Which organisations should be included in this process and what role do those organisations play?
- 15) Which individuals should be included in this process and what role will those people play?

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