

CASE STUDY 2: CORPORATE

BACKGROUND + CONTEXT

This case refers to a recent criminal case in the Australian NSW Land and Environment Court. It pertains to damage to designated Aboriginal land and destruction of aboriginal artifacts by a prominent mining company.

There were multiple stakeholders involved including the mining company in question, the Aboriginal group who possessed the land under the National Parks and Wildlife Act, the surrounding community, and various government agencies. Because of this, the case and all of its developments were closely followed by the local newspapers.

In an unprecedented move, the presiding Judge decided to offer use of a restorative justice conference prior to sentencing. Both parties agreed.

THE PROACTIVE RESPONSE

ProActive was invited to conduct a **TJA Conference** (TJAC). The conference itself took only six hours but in preparation, over 30 people were spoken to and interviewed regarding the matter, to shed light on every potential perspective and get the full story from both sides.

TJAC is an opportunity to turn conflict into cooperation in a setting with complex relationships and deep seeded conflict. It calls the parties involved to clarify what has occurred, understand why things have occurred the way they have, to appreciate the consequences of everybody's actions, and finally, to develop a plan to learn from what has happened, and ensure that similar mistakes are not repeated. The process culminates in the execution of a TJAC Agreement; a signed comprehensive document that includes both the sentiments of participants as well as specific actions to keep things moving forward. Because the agreement incorporates both personal and organizational commitments, the participants are satisfied by a deeper form of justice.

The conference was held in a safe neutral setting in a very structured manner. In this particular case, the discussion was at times difficult but always respectful, and touched on topics that were both professional and personal. The parties discussed many important issues including the history of the mine, the connection of traditional owners to the land, the methods used to survey for artifacts, family connections, and shared acquaintances.



By the end of the conference, a conference agreement was signed by both parties with a number of actions detailed.

THE RESULT

Since the conference took place, the signed agreement has been adhered to in many ways, not the least of which are quarterly meetings of the two groups, the beginnings of a process to have the area in question comprehensively surveyed, and the integration of indigenous employment opportunities at the mine.

In the words of the ProActive facilitator, after having spoken to the representative for the Aboriginal group:

"[The Aboriginal Group head] is extremely positive about what has been achieved so far and is optimistic about the relationship."

Perhaps the most impressive result of this conference is that despite being fined by the court, the defendant was still in favour of the outcome of the conference.

Not only did this process end in a positive business relationship, on a personal level, the two key players developed a friendship external to the situation. This helped with proceedings and also continued by choice after both parties began to integrate the steps outlined in the TJAC Agreement.

This case can, and should, be used as a template for future relations between Aboriginal or First Nations communities and the companies who deal with them. In regards to any land use or natural resource decisions, there are certain sensitivities involved and the reparatory actions presented here should be exemplified by others.

PROACTIVE PRODUCTS USED IN THIS CASE

TJA Conferencing is a robust group process used to address workplace conflict and allows affected individuals to confront their difficulties and develop a plan to overcome them. TJA Conferencing is not mediation, it is a structured three-stage process designed to turn conflict into cooperation.

