

Notes

- ¹ More than 60 per cent of minerals operations in Australia neighbour Aboriginal communities. The majority of mining activity and neighbouring Indigenous communities are located across regional and remote Australia. [Leading Practice for Sustainable Development Program for the Mining Industry, *Working with Indigenous communities*, Department of Industry, Innovation and Science, Canberra, October 2007.]
- ² The establishment of approx. 2,000 land use agreements over the past two decades between Indigenous peoples and the mining industry (99 per cent of which involved no legal contest of rights) has provided unprecedented economic potential for Indigenous regional and remote communities. [T Bauman and L Glick (Eds), *The limits of change: Mabo and native title 20 years on*, AIATSIS Research Publications, Canberra, June 2012.]
- ³ The mining industry contributes substantially to community development across regions. Companies surveyed by KPMG Banarra invested \$2.2 billion in procuring Indigenous business services in 2012 alone compared to \$6.1 million in Commonwealth spend on Indigenous procurement out of a total annual \$39 million procurement budget. A BCA survey found that the Australian mining industry was the largest private sector employer of Indigenous Australians in 2014. [Banarra, *The value of community contributions in the Australian community*, MCA, Canberra, September 2013; Business Council of Australia, *BCA 2014 Indigenous engagement survey report*, BCA, Melbourne, December 2014; Australian Bureau of Statistics, *Australian social trends – catalogue no 4102.0*, ABS, Canberra, May 2014.]
- ⁴ The total value of native title-related payments in 2011-12 alone was \$3 billion, which includes land access related payments, mining royalty equivalents, heritage payments, and impact benefit agreement payments. Payments made under native title agreements constitute a foundation for the long-term investment of monies to help maximise the potential for sustainable, intergenerational benefits to Indigenous communities. It is therefore critical to ensure the underlying framework of policies and social and physical infrastructure to support Indigenous economic development exists. Evidence in 2013 suggested that \$3 to \$5 billion was held in trusts from agreement-making with Indigenous communities owning up to \$40 billion in assets. [M Langton, *Boyer lectures 2012: The quiet revolution*, Harper Collins, Sydney, March 2013; S Rose, 'Indigenous groups' assets opportunity for wealth advisers', *Australian Financial Review*, June 2013.]
- ⁵ For more information: Minerals Council of Australia, *Position statement – The implementation of free, prior and informed consent in Australia*, MCA, Canberra, April 2014 <www.minerals.org.au>.
- ⁶ As a result of an unprecedented rate of native title claims since 2011, between 200 to 250 PBCs could be in existence over the next few years (from approx. 130 PBCs currently). [M Gooda (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Address, 2015 National Native Title Conference*, June 16-18 2015, Sheraton Mirage, Port Douglas QLD; M Gooda (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Social justice and native title report 2015*, Human Rights Commission, Canberra, October 2015.]
- ⁷ The ICDC as an improved trust structure model was recommended in 2013 by the Taxation of Native Title and Traditional Owner Benefits and Governance Working Group. The Commonwealth-appointed Working Group was established in 2012 to consider tax treatments and arrangements for the holding, managing and distributing of land-related payments; and to identify options to strengthen governance and promote sustainability. For more information: Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, *Report to government*, Treasury, June 2012; M Langton, *From conflict to cooperation*, MCA, Canberra, February 2015.
- ⁸ For more information: Minerals Council of Australia, *The whole story: Mining's contribution to the Australian community*, MCA, Canberra, November 2015 <www.minerals.org.au>; Minerals Council of Australia, *Commonwealth – MCA MoU on Indigenous employment and enterprise development (2005-2015)*, MCA, Canberra, June 2015 <www.minerals.org.au>.

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MINERALS COUNCIL OF AUSTRALIA COMMUNIQUÉ

Indigenous Economic Development

The minerals sector's approach to working with Indigenous communities is founded in mutual respect and recognises the rights and interests of Aboriginal and Torres Strait Islander peoples in relation to the lands and waters to which there is a special connection.

The Minerals Council of Australia (MCA) is the peak industry association representing exploration, mining and minerals processing companies in Australia. MCA members account for more than 90 per cent of minerals production and exports annually.

Aboriginal and Torres Strait Islander peoples are the first peoples of this nation and much of the land on which the industry operates is covered by native title, or state and territory Aboriginal land rights and/or heritage legislation.¹

The sector engages with local communities as key stakeholders, acknowledging traditional and cultural connections.² The sector believes that the communities it works closely with should materially benefit from associated mining activity.³

The MCA supports measures that facilitate agreed beneficial outcomes with Indigenous communities and Traditional Owners.⁴ The following 12 long-standing principles have been highlighted to inform public and private sector policies, programs and partnerships.

Indigenous Economic Development



Legislation

1 Recognition

Aboriginal and Torres Strait Island peoples are the first peoples of this nation and much of the land on which the industry operates is within native title, or state and territory Aboriginal land rights and/or heritage legislation. The minerals sector acknowledges the relationship of Aboriginal and Torres Strait Islander peoples to traditional lands and waters in which there is a special connection, thereby fostering respect for continuing cultures, languages and heritage.

2 Free, prior and informed consent

The minerals sector supports the application of FPIC in Australia, central to which are four core principles:⁵

- A. It applies to land connected to Indigenous peoples in recognising their rights, interests and special connections to lands and waters where mining development involving significant impacts on those people may occur
- B. The emphasis of companies in applying the concept of FPIC should be on the implementation of genuine engagement to seek to achieve consent in the form of land use agreements
- C. Mineral ownership is vested in the Crown and accordingly the state reserves the final right of veto
- D. The *Native Title Act 1993* and the *Aboriginal Land Rights (Northern Territory) Act 1976* effectively provide the Australian Government's requirements for implementing FPIC and these laws (and any other similar state based laws) establish a framework in the Australian context to determine the circumstances when agreement should be sought, from whom, and the process to be used.

3 Legislative efficiency and stability

A variety of legislation impacts Indigenous economic development including native title, state and territory Aboriginal land rights and cultural heritage. The minerals sector supports improvements to policy, regulation and legislation that enhance efficiency, stability and economic opportunity without diminishing rights.

Governance

4 Native title services

Native title representative bodies and service providers play an essential role in native title claims and community development. It is critical these bodies are adequately resourced to deliver services, particularly where they assist communities to transition to self-governance arrangements for the management of native title and land-related benefits.

5 Prescribed Bodies Corporate

The expansion of native title claims has led to an increasing number of community trusts/ corporations (such as PBCs) being established to manage native title and land-related benefits.⁶ Communities often require supplementary support to implement such complex community entities. The minerals sector supports government funding for services to assist PBC development.

6 Indigenous Community Development Corporation

Many of the existing legal entities have legal or structural shortcomings which limit the ability of Indigenous communities to maximise the long-term benefits of native title and other compensation payments. The minerals sector recommends the adoption of a modern hybrid trust structure that communities could choose to establish – the ICDC (a PBC entity). The ICDC model would allow communities to invest their land related benefits in both charitable purposes and enterprise opportunities. It could also direct funding to supplementary administration needs such as staff upskilling and governance development for self-sustainability.⁷

Economic development

7 Indigenous business procurement

The minerals sector supports procurement policies that encourage Indigenous enterprises to be competitive in supply chains across sectors. As part of this, collaborative approaches and partnerships are critical to facilitating the development and engagement of local, small and emerging Indigenous businesses.

8 Indigenous employment and training

The minerals sector supports private and public sector strategies dedicated to Indigenous employment but also include gender diversity and cultural awareness, as well as ongoing professional development, retention and mentoring to facilitate long-term career advancement across sectors.

9 Community employment services

For optimal outcomes, it is essential government employment services for communities are accessible across regional and remote Australia and programs are designed to deliver demand-driven skills development. The minerals sector supports policies that are responsive to business trends, linked to job opportunities and work with local community needs.

Wealth creation

10 Sharing practice

Dialogue, engagement and partnerships between Indigenous communities, governments, not-for-profits and the private sector improve growth opportunities in regional and remote Australia. The minerals sector supports multi-stakeholder collaboration that leverages expertise and resources for economic development.⁸

11 Community infrastructure

Government investment in essential infrastructure underpins local economies. The delivery of services to regional and remote Indigenous communities and their assets is critical to unlocking economic development and enterprise opportunities.

12 Access to capital

The minerals sector supports an investment environment that provides and facilitates access to competitive commercial and home loan packages for Indigenous communities and individuals. It would enable communities to better leverage assets to realise immediate and long-term economic and social dividends.