



# From Conflict to Cooperation

Transformations and challenges in the engagement  
between the Australian minerals industry and  
Australian Indigenous peoples

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PROF. MARCIA LANGTON



A PUBLIC POLICY ANALYSIS PRODUCED FOR  
THE MINERALS COUNCIL OF AUSTRALIA

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MINERALS COUNCIL OF AUSTRALIA  
February 2015

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The Minerals Council of Australia represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable economic and social development.

The views expressed in this publication are those of the author. This publication is part of an overall program of the MCA, as endorsed by its Board of Directors, but does not necessarily reflect the views of individual members of the Board.

***This publication contains photographs related to Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander readers are advised photographs in this publication may contain images of deceased persons which may cause sadness or distress.***

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ALAN JAMES

NEWMONT

Hard Yokes

Source: Newmont Asia Pacific

# Executive summary

The engagement between the minerals industry and Indigenous Australians has been characterised by remarkable change in the last two decades.

Instead of constant conflict in every encounter, there is now a widespread approach of sophisticated face-to-face engagement that fosters discussion rather than argument. This has resulted in the adoption of good practices in negotiation and agreement-making between parties.

This relationship has been positively transformed by more than 20 years of reform in the rights of Indigenous Australians and innovative engagement on the part of the minerals industry. The hard-won transformation from one of acrimonious conflict to mutually beneficial agreement-making has produced substantial Indigenous employment and enterprise outcomes.

A number of agreements have been developed in the minerals industry without contesting native title. Agreements cover issues such as access to land and resources, infrastructure, environmental management, tourism and cultural heritage, facilitating business and service delivery, accelerating positive

outcomes in employment, skills, training, income levels, education standards, health and other social and economic indicators.

These negotiated settlements can provide resolution to issues not envisaged by the *Native Title Act 1993* (Cth) (NTA), such as wealth creation, sustainable development post project and transitioning from welfare dependency to economic participation.

The positive approach by minerals companies toward their relationships with Indigenous communities has fostered respect for Aboriginal culture and history and delivered tangible socio-economic impacts. This has driven increased economic participation for Indigenous people, and growing procurement of goods and services from Indigenous businesses and joint ventures. For example, up to 150 Aboriginal businesses have been established in the mining supply chain in the Pilbara with combined turnover in excess of hundreds of millions of dollars.

Tangible economic outcomes for Aboriginal people and communities are being delivered, particularly to those neighbouring mining operations in remote and regional Australia. Benefits to native title groups and Indigenous communities include support for cultural maintenance, higher incomes as a result of employment and economic activity, skills development and capital accumulation.

Research shows that the minerals industry is the largest employer as a proportion of all Indigenous employment in mining provinces, while in other areas it ranges from low to high proportions of all Indigenous employment<sup>1</sup> including the government subsidised work-for-the-dole scheme (formerly the Community Development Employment Project<sup>2</sup> (CDEP)).

Importantly, Indigenous employment growth has been steadily increasing since the mid-1990s, and the percentage of Indigenous men and women employed in mining more than doubled between 2006 and 2011. The increase in participation of non-remote Aboriginal people can be associated with Fly-in Fly-out (FIFO) supporting labour mobility.

The shift to collaboration over the past four decades through agreement-making has proven that the social licence for the

minerals industry to operate in cooperation with Aboriginal communities is achievable. The benefit of agreements lies in their ability to link many elements such as Indigenous decision-making and expression of local aspirations to overcome levels of disadvantage. Agreement-making encourages environmental protection and participation in economic development while providing a legal framework for the negotiation of different interests.

Twenty years after the Mabo decision and the rejection of the doctrine of *terra nullius*, this legacy is profound. The use of agreement-making has forged a new approach to Indigenous affairs. Nevertheless, there are weaknesses in this statutory system of agreement-making which could be further strengthened by government policy reform.

Despite sustained improvements in economic participation for Indigenous communities, high levels of disadvantage remain a troubling concern (even among those located near mining projects). Given the unprecedented prospects offered by the minerals industry to remote and regional Indigenous people, it is vital to understand enduring constraints on Indigenous economic participation and the resulting impacts on 'poverty in the midst of plenty'.



Disparity between Indigenous communities exists and the isolation of some regions in conjunction with little service delivery demands focus. A major proportion of agreements are made with communities where government investment is lacking. Policy reform is needed to ensure that government programs which deliver goods, environmental or personal services include explicit Indigenous employment goals.

Where Indigenous parties engage in negotiation, the capacity for Indigenous leadership and entrepreneurship is enhanced. As a result, governments, the private sector and non-government organisations (NGOs) collectively recognise that efforts should be focused on the school-age population. It is critical the next generation's education and employability is addressed to avoid a worsening of disadvantage in some areas.

Furthermore, new legal frameworks are required for the effective negotiation and governance of agreements in Indigenous communities. As part of this, capacity-building and transparency (setting aside commercial in confidence aspects) are key to systematic change.

The management and distribution of benefits would be better supported by a new structure — the Indigenous

Communities Development Corporation model — proposed by the National Native Title Council (NNTC) and the Minerals Council of Australia (MCA). Further, the regulation of third party agents and the registration of Section 31 Agreements<sup>3</sup> are crucial to providing greater consistency for the delivery of revenues to beneficiaries.

Without change, the gains made since the introduction of the NTA are at risk. Moreover, the incumbent policy issues are complicated and difficult. They require expertise in policy formulation and legal reform, as well as a comprehensive knowledge of the history and features of existing accords between the minerals industry and Indigenous peoples in Australia.

Further research into the successes forged by the minerals industry in partnership with Indigenous communities would be of particular benefit to characterising the labour force engaged in mining, and identifying factors that have led to business development in the mining supply chain. It is now a priority to manage the achievements accomplished, address existing barriers and facilitate new opportunities to sustain Indigenous economic development.



SECTION

01

# Introduction



■ Jake Smith completed an Indigenous Traineeship with Mount Isa Mines in 2012, and works within the business as a storeperson for the supply department.

In 2012, Jake was nominated for the Kinetic Training Awards in the Trainee of the Year category and also the NAIDOC Awards in the *NAIDOC Trainee / Apprentice of the Year* category.

Source: *Glencore*

## Introduction

**The collaborative engagement between the minerals industry and Aboriginal peoples is a well-established feature of Australia's 21st century resources sector.**

This much-improved relationship with Indigenous communities has emerged alongside the growth of mining operations, largely as a result of hundreds of associated land access agreements under the *Native Title Act 1993* (Cth) (NTA). These agreements have generated beneficial impacts for Indigenous peoples, including direct financial benefits and remarkable increases in Indigenous employment and enterprise activity.

Though this was not always the case, the hard-won transformation of this relationship from one of acrimonious conflict to mutually-beneficial agreement-making will continue to produce substantial Indigenous employment and enterprise outcomes. Importantly, these outcomes could be strengthened further by reformed government policies, including the adoption of the proposal for a new corporate model (the Indigenous Community Development Corporation (ICDC) approach), that better support Indigenous engagement in the economy.

Without change, the gains made

since the introduction of the NTA are at risk. Moreover, the incumbent policy issues are complicated and difficult. They require expertise in policy formulation and legal reform, as well as a comprehensive knowledge of the history and features of existing accords between the minerals industry and Indigenous peoples in Australia.

The NNTC, MCA and academics have worked through some of these difficult policy issues over the past decade. Their findings should be taken into consideration when formulating policy reforms to support the sustainable management and delivery of benefits for Indigenous peoples through land access agreements. To this end, I will therefore address three key issues:

- Good practice in agreement making under the NTA and other legislation
- The management and distribution of benefits from agreements to Indigenous communities and people
- Removing the obstacles to increased Indigenous economic participation.



SECTION

02

**20 years of reform  
in engagement and  
socio-economic  
progress**



Source: Newmont Asia Pacific



## 20 years of reform in engagement and socio-economic progress

Few Australians working in the minerals industry today, especially those involved in Indigenous or community relations, would remember the acrimonious relationships between Aboriginal and industry representatives that characterised a number of highly contentious mining projects between the mid-1960s and the mid-1990s.

The introduction of the Mabo decision and the NTA in the early 1990s catalysed parts of the minerals industry to depart from their adversarial positions and respond to this new legal regime with a willingness to work with Indigenous people. This relationship has been positively transformed by more than 20 years of reform in the rights of Indigenous Australians and innovative engagement on the part of the minerals industry. Instead of constant conflict in every encounter, there is now a widespread approach of sophisticated face-to-face engagement that fosters discussion rather than argument and good practices in negotiation and agreement-making between parties.

The positive approach by some minerals companies toward their relationships with Indigenous communities has fostered respect for

Aboriginal culture and history and delivered tangible socio-economic impacts. This has driven increased economic participation for Indigenous people, and growing procurement of goods and services from Indigenous businesses and joint ventures.

Hundreds of agreements have been negotiated,<sup>4</sup> providing for secure land access for project rights,<sup>5</sup> employment opportunities for Indigenous people,<sup>6</sup> Aboriginal cultural heritage protection, and regimes for the management of natural resources.<sup>7</sup> A notable consequence of these agreements has been the significant increases in private-sector Indigenous employment over the past decade, particularly in the minerals industry.

The minerals industry has become a major source of employment for Indigenous communities. It is an

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*Instead of constant conflict in every encounter, there is now a widespread approach of sophisticated face-to-face engagement that fosters discussion rather than argument and good practices in negotiation and agreement-making between parties.*

”

alternative to the welfare transfers upon which many remote and regional communities depend. With sixty per cent of Australia's mineral operations neighbouring Indigenous communities,<sup>8</sup> the benefits to Indigenous people through life-of-operation cooperation agreements are important for their long-term economic wellbeing.

While the minerals industry is the largest employer of Indigenous people, high Indigenous employment rates are found in the health and allied industries. Commonwealth government employment of Indigenous people lags far behind at 2.2 per cent.<sup>9</sup> The Forrest Review found that:

The employment gap, outside of the strong contribution made by the mining industry, is a private sector gap. The very low incidence of private sector employment for first Australians in remote and very remote areas by the non-mining industry is stark. In contrast, for other Australians the private sector employment rate is higher in remote areas than it is in regional areas or the major cities. In very remote areas the proportion of first Australians aged 15 to 64 who had a private sector job in 2011 was less than 19 per cent.<sup>10</sup>

A study of the Indigenous workforce undertaken at the Australian National University (ANU) reported in 2014 the continuing growth of Indigenous employment in the private sector,<sup>11</sup>



Source: Newmont Asia Pacific

especially the mining industry. Mining employment was shown to be the most important component of Indigenous employment in locations close to mines, such as in the Pilbara and central Queensland.

There has been a large increase in Indigenous employment in the private sector since the mid-1990s. The study found that Australian Bureau of Statistics (ABS) data showed an overall increase in Indigenous employment since the Global Financial Crisis, including increases for both younger and older workers, those from remote and non-

remote areas, and males and females. These increases in employment among the Indigenous population have been greater than non-Indigenous population employment growth.<sup>12</sup> This means that the 'gap' in levels of disadvantage of Indigenous Australians as compared with other Australians is closing.

These results were unexpected. Previous studies had excluded non-CDEP employment, resulting in misleading conclusions about employment growth and the effectiveness of government policy. While the commitment

of several large minerals companies to Indigenous employment was the primary contributing factor, other contributing factors included:

- Strong macro-economic conditions
- Changes to the characteristics of the Indigenous population (such as increasing education, decreasing arrests among males and decreasing populations in remote areas)
- Changes to the income support system rules designed to encourage paid employment
- An increasing emphasis in Indigenous labour market policies on unsubsidised employment
- Wage subsidies.

Although, growth in employment in the minerals industry accounts for a small portion of the overall Indigenous workforce in Australia due to its relative size, it is a significant source of employment for Indigenous communities for regions in Queensland, South Australia and Western Australia.

In another study by the Centre for Aboriginal Economic Policy Research, Gray and others found that the extent to which the Indigenous workforce has a similar composition in industry of employment as that for other Australians has increased.<sup>13</sup> The major findings were:

- The percentage of Indigenous males and females employed in mining more than doubled in remote areas between 2006 and 2011
- An increase in non-remote areas could be associated with the greater utilisation of FIFO workers
- While this is still a small portion of the overall Indigenous workforce in Australia, the minerals industry is a significant portion of Indigenous employment in particular regions
- Indigenous involvement in mining increased substantially as a percentage of all Indigenous employment and is now closer to the percentage of mining employment for overall Australian employment
- There have been other benefits to Indigenous families and communities as a result of the multiplier effects that ‘major mines have on employment in other industries such as construction, transport and hospitality in the areas in which they are located’.<sup>14</sup>

Major mines generate employment opportunities in associated industries in the areas in which they operate. In addition to construction, transport, and hospitality, other industries such as facilities management, agriculture and land management, provide Indigenous communities with business opportunities and services.<sup>15</sup>

Contracting opportunities for Indigenous businesses have grown rapidly. Up to 150 Aboriginal contracting companies are operating in the Pilbara at present, with a combined annual turnover in the hundreds of millions of dollars. There are owner-operated small enterprises and joint ventures involving Aboriginal Corporations, as well as large contracting corporations and project management firms. Rio Tinto Iron Ore and Fortescue Metals Group each reported that their expenditure on Indigenous contracting services exceeded \$1 billion in the 2011 period.

The employment opportunities provided by contractors that service the mining and energy sector are significant. However, there are insufficient data about this contribution. These opportunities vary across the mining regions. A report to the Queensland Resources Council concluded that:

Only a small number of companies reported involvement in supply chain initiatives aimed at creating Indigenous employment (that is, arrangements with Indigenous-run companies or requirements for contractors and suppliers to address specific Indigenous employment and training objectives). Most companies that responded to the survey acknowledged that there were unrealised opportunities in this area.<sup>16</sup>

Less is known about business development in contrast to Indigenous research as little research has been conducted. The need for research on Indigenous business development in the mining industry is of high priority. Australian governments could do more to encourage Indigenous business development, because this 'will lead to more jobs for first Australians. Indigenous majority-owned businesses are about 100 times more likely to employ first Australians than other businesses.'<sup>17</sup>

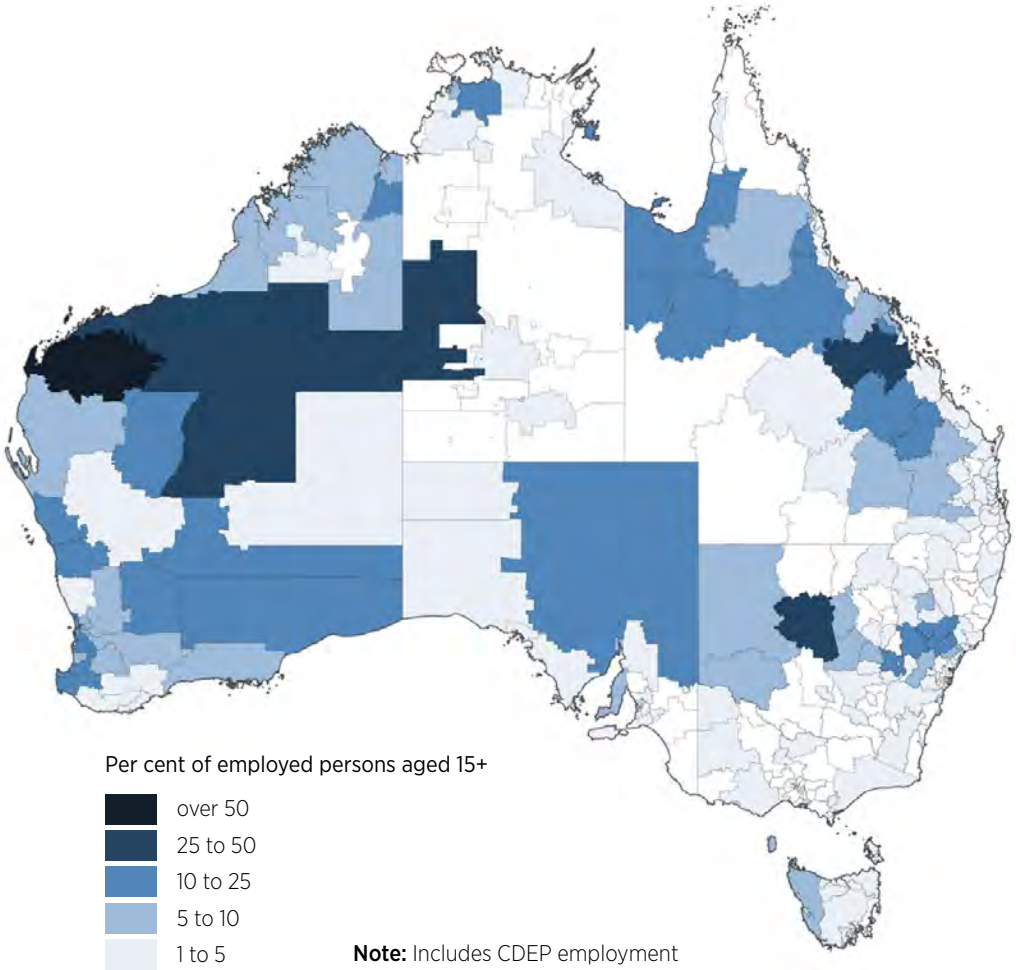
The Forrest Review recommended the 'Commonwealth should support the growth of Indigenous businesses and first Australian commercial enterprises with its \$39 billion annual purchasing of goods and services.'<sup>18</sup> The report referred to measures in the United States and Canada to encourage Indigenous business growth, including the following:

Other countries such as the United States and Canada have used government procurement to stimulate their minority or aboriginal business sectors for decades. The US Government has a procurement target of 23 per cent of all procurement from small business, with a sub-target of 5 per cent from disadvantaged small businesses (which includes minority-owned businesses).

A similar policy applies in Canada, where Aboriginal businesses are

Figure 1

**Indigenous employment in the minerals industry, 2011**



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*The minerals industry has become a major source of employment for Indigenous communities.*

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growing at five times the rate of other businesses thanks to government procurement policies. The NANA Corporation, for example, is owned by Aboriginal people in Alaska and has grown from small beginnings to a turnover of more than \$1 billion. The company is competitive without government subsidy. Its success is based on government procurement alone through the US Government's Aboriginal exemption policies.<sup>19</sup>

An understanding of these issues relating to the high levels of engagement of Indigenous people in the minerals industry is not widely grasped by the Australian public. This is largely a result of the poor representation of Aboriginal people in the media and metropolitan environmentalist campaigns. Aboriginal people continue to be portrayed as marginalised victims of history with no agency to influence matters or make responsible decisions. Leaders within the minerals industry and the Indigenous sector have a far better understanding of the issues and this has been critical to the development of positive relations and better results in Indigenous economic participation.<sup>20</sup>

The shift to collaboration over the past four decades through agreement-making and the NTA has demonstrated that the 'social licence' for the minerals industry

to operate in or near Aboriginal communities is achievable.<sup>21</sup>

The MCA has defined the concept of a social licence to operate as 'an unwritten social contract': it is about 'operating in a manner that is attuned to community expectations and which acknowledges that businesses have a shared responsibility with government, and more broadly society, to help facilitate the development of strong and sustainable communities.'<sup>22</sup>

Although pockets of resistance toward this collaborative approach still exist, only a few companies and Aboriginal groups persist with megaphone debates in the media. Rarely do these disputes result in better outcomes for either party.

With fewer assured growth rates in the demand for minerals from our international trading partners, and the effects of mine closures, delayed expansions, and the ore-price variation that can follow, the priority now will be to manage our achievements to sustain Indigenous economic development, as well as progress policy reform further to address barriers and facilitate new opportunities.





SECTION

03

# **The achievements of agreement-making**

# Argyle Participation Ag

## 10 Year Anniversary



- The Argyle Participation Agreement remains one of the most comprehensive agreements ever made in Australia between a resource company and Traditional Owners. It symbolises an unprecedented action in the history of mining companies in engaging Indigenous communities.

Source: *Rio Tinto*

## SECTION 3

# The achievements of agreement-making

The transformative capacity of agreement-making is evident in the collaboration between Indigenous parties and minerals companies in Australia that has extended the engagement beyond the legal requirements for land access for projects.

Many of the benefits are found, not only in the details of specific provisions in agreements, but also in the ways in which the agreement-making processes are contributing to the social and economic fabric of Indigenous communities. A deeper understanding of these issues has caused some minerals industry leaders to change their attitudes toward the impacts of mining, and the entitlement of Aboriginal communities to compensation for the impacts of mining and related activities.<sup>23</sup>

Until 1994, only Aboriginal Traditional Owners in the Northern Territory had a limited right to veto dealings on Aboriginal land under the terms of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The passage of the NTA in 1993, along with later amendments, established important provisions for agreement-making.

Although the NTA did not grant native title holders a right of veto, the *Native Title Amendment Act 1998* (Cth) introduced the right to negotiate provision (RTN) and a new form of agreement, the Indigenous Land Use Agreement (ILUA). These amendments shifted the focus of native title law towards negotiation and agreement-making under the terms and conditions upon which land use and access could occur.<sup>24</sup>

The RTN gave Indigenous parties a position in the market and the prospect of economic participation that had been denied previously. For the first time, this right provided an opportunity for Indigenous parties to negotiate the access and use of their land with project proponents from the private sector, all levels of government and other parties.

Since the 1970s, agreements between Indigenous people and other parties have increased from one or two

Commonwealth agreements (such as those made under the ALRA) to an estimated 4,000. Most of these are Future Act Agreements (FAAs) under the terms of NTA.

Types of agreements include Indigenous Land Use Agreements (ILUA), Indigenous Protected Area Agreements (IPAA), commercial contracts and Memoranda of Understanding (MoUs). These have been variously negotiated with federal, state and local governments; resource extraction companies; farming, grazing and environmental representative bodies; arts organisations; and many other institutions and agencies.

Agreements relating to native title are the most common, followed by collaboration and partnership, cultural heritage, mining and minerals. They cover a range of matters including access to land, resources and infrastructure, and environmental management. Many focus on employment and training in Indigenous communities particularly in relation to accelerating positive outcomes in skills, income, health and other social and economic indicators.<sup>25</sup>

Other agreements relate to construction and infrastructure, employment and training, environmental heritage, tourism, and cultural heritage, recognition of traditional rights and interests, exploration, and health and community services. While

agreements occur in both urban and rural settings, those relating to land access, mining and exploration are more common in remote and regional areas.

In the last decade, both Indigenous and minerals industry representatives have benefited from the accrual of negotiating experience and understanding of the issues. However, while minerals industry representatives have engaged directly with Indigenous people to conclude agreements, governments have been largely absent from minerals industry agreements and rarely become parties.<sup>26</sup> Even so, the use of agreement-making has forged a new approach to Indigenous affairs.<sup>27</sup>

To varying degrees, agreement-making gives Indigenous people a genuine planning and decision-making role; responsibilities and duties in governance; and opportunities to plan for community development across a range of issues affecting their lives and their environments. Several important aspects to this new approach should be noted. Agreements may:

- Provide a process through which parties can build relationships and redefine future interactions
- Provide a means for the formal recognition of local and regional Indigenous groups, including formal standing, and often, defined roles and responsibilities



■ McArthur River Mine Health, Safety, Environment and Community (HSEC) Manager Julie Crawford discusses seed germination as part of a MRM Community Information Session on nursery production as a cottage industry opportunity.

Source: *Glencore*

in a range of governmental and non-governmental agencies and arrangements

- Allow the negotiation of terms for improving the social and economic conditions of local Indigenous groups
- Provide a means for local Indigenous people to identify their aspirations and develop their social and political plans and strategies to achieve specific goals
- Allow Indigenous people to develop roles as actors rather than victims, or as consensual parties rather than as 'stakeholders', in

the process of development

- Often include provisions for dealing with customary relations that are incorporated as formal features in the relationships between Indigenous people and other parties.<sup>28</sup>

The benefit of agreements lies in the ability to link many elements such as Indigenous decision-making and expression of local aspirations to overcome levels of disadvantage. Agreement-making encourages participation in economic development while providing a legal framework for the negotiation of different interests.<sup>29</sup>

## Legal frameworks for mining agreements

Agreement-making with Indigenous peoples in relation to land has been particularly influenced by various statutory acts, including the ALRA, heritage legislation, and the NTA and its amendments. The majority of negotiations and resultant agreements between minerals companies and Indigenous communities have been triggered by one of the following legislative provisions:

- The mining provisions of the ALRA and other statutory schemes
- The NTA and subsequent amendments
- The absence of a statutory basis for Aboriginal rights in some jurisdictions requiring voluntary agreements for a period of time
- Government requirements for service contracts and Commonwealth/ state agreements for co-ordination in areas such as Indigenous health.

Some agreements have statutory status and others are contractual arrangements, MoUs or simple statements of commitment. The extent to which each type of agreement creates legally enforceable obligations depends upon the identity of the parties and the nature of the agreement.

Land use agreements are the most common form of agreement made with Indigenous peoples in Australia. While these agreements may arise from common law contractual arrangements, most agreements (e.g. ILUAs, exploration agreements, Section 31 Agreements and mining agreements, FAAs, and Consent Determinations) are created pursuant to legislation such as the NTA. In March 2012, there were 588 ILUAs registered with the NNTT. The provisions for the ILUAs and the making of agreements through the RTN have resulted in thousands of agreements, collectively amounting to a bargain with Indigenous people over the use and access to land.<sup>30</sup>

In Australia's federal system, both Commonwealth and state legislation applies in a range of land access matters and dealings with Indigenous people with legal and institutional environments differing from jurisdiction to jurisdiction.

A variety of Commonwealth and state statutes establish the procedures and binding nature of those agreements. These agreements may be used in conjunction with a determination of native title or rights and interests under state and territory legislation, or may exist as stand-alone agreements.

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## The Ranger Agreement and the Gagudju Association

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The Ranger and Narbarlek projects in the Northern Territory present a useful case study of Aboriginal mining payments, their financial provisions and utilisation, and structures created for distributing statutory royalties and negotiated payments. In the case of the Ranger Agreement, the financial management and distribution structures developed in the 1970s to respond to the flow of monies proved to be effective and sustainable for a considerable period.

The Gagudju Association achieved a significant increase in its members' cash incomes for a time, and was able 'to mount an extensive program of outstation development and basic service provision based

on its desired priorities and preferences. This permitted it to build up capital assets which could provide members with a source of future income'.<sup>36</sup> This ensured the viability of the homeland centres and enabled a higher level of economic participation by the Aboriginal Traditional Owners, including ownership of substantial assets in the area.

Only when the uranium commodity price fell sharply in the international market, coinciding with an airline strike affecting the tourism industry in which the Gagudju Association had invested much of its capital resources, did the weaknesses in this model expose the group to financial difficulties.

Whether these agreements are enforceable against all parties will vary based upon the terms of each agreement. Other types of agreements include Consent Determinations, Framework

Agreements, Template Agreements, Joint Management and Joint Venture Agreements, Indigenous Partnership Agreements, Leases, Regional Agreements, Research Agreements, and Interim Agreements.

The purposes of these agreements – and thus their potential benefits and detriments (the latter may be the compulsory extinguishment of native title in some cases) – can relate to exploration, mining, oil and gas extraction, and associated infrastructure such as plants, roads, mining towns, and ports. Agreements involving land access often contain a range of provisions<sup>31</sup>, including the two most important:

- The need for accurate identification of the local Indigenous people, including native title holders, Traditional Owners, persons with custodial interests, and affected communities and their members
- Consent from native title holders and Traditional Owners that remains binding for the life of project and to its terms.

This approach has expanded upon the conventional understanding of corporate social responsibility as ‘the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life’.<sup>32</sup> The MCA expresses a preference for the negotiating of a sustainable relationship with agreed approaches and conditions for land access and local support for mining operations as a more successful strategy.<sup>33</sup>

Often multiple factors motivate

minerals companies and Traditional Owners to develop agreements such as avoiding costly litigation and delays to exploration and mining projects.<sup>34</sup> Importantly, there is a growing recognition in the minerals industry that ‘it will be increasingly difficult for [organisations] to operate profitably unless they establish cooperative working relationships with local Indigenous interests’.<sup>35</sup>

Indigenous groups have overcome a range of cultural and social problems, such as ongoing feuds and conflicts, to constitute themselves as negotiating parties to improve agreement outcomes.<sup>37</sup> However, the mere fact of agreements does not necessarily assure positive, meaningful or equitable results for Indigenous communities.

Over the past 40 years, agreements have increased in complexity as Indigenous parties have become more experienced with the scope of the legislation involved, and as companies have developed policies to demonstrate corporate social responsibility. The rapid increase in the past two decades of agreements to formalise the relationship between companies and local Indigenous neighbours indicates the importance of this approach to secure the conditions for sustainable operations.<sup>38</sup>



## **The Argyle Diamond Mine ILUA: an exemplary case of agreement-making**

The Argyle Diamond Mine ILUA is one of a growing number of agreements that has set new standards in formalising relationships between resource companies and local indigenous groups in Australia under the terms of the NTA. It formalises a new partnership based on mutual respect and marks a definitive break with that history.

The ILUA sets out the arrangements concluded by the local and regional indigenous parties and the mining company and which are explicitly aimed at maintaining a good relationship, ensuring that local indigenous people benefit from the operation, and increase their economic participation through employment and enterprise. Implementation is as important as the negotiation of agreements if benefits to the community are to be realised.

Further, in order to harness the opportunities that these agreements provide, adequate infrastructure and a minimum level of human or community capacity is necessary to ensure positive outcomes. While this last remains a challenge, the arrangements for implementation in this case set a high standard.

In cases such as the Comalco  
– Western Cape Communities

Coexistence Agreement (WCCCA) and the Argyle Diamond Mine Agreement representatives of minerals companies with experience in collaborating with Indigenous communities have concluded that negotiated settlements can provide resolutions to matters that the NTA does not envision.

The economic future of host and affected communities involve areas of interest that the NTA is silent about, such as wealth creation in the region, sustainable development after the life of the project, and transitioning from welfare dependency to economic participation. These representatives understand that the extinguishment of native title is not a sound basis for sustainable development and long-term relationships.

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## The Argyle Diamond Mine ILUA

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Source: *Rio Tinto*

Under the NTA, any activity such as a grant of land, that may affect native title rights is defined as a 'future act' and must comply with the future act provisions of the act in order to be valid. The parties agree that the above activities are future acts. However, the parties also agree the right to negotiate provisions of the

NTA do not apply, as the alternative consultation provisions are to be followed instead.

Rio Tinto points to its 2004 Participation Agreement with Traditional Owners and its comprehensive mine closure management plan as prime examples of policy commitment

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to sustainable development. Indigenous employment levels at the company's Australian operations have increased ten-fold since 1995.

### ***Activities authorised by the ILUA***

In particular, the parties consent to, support and will not object to Argyle conducting mining operations. This includes:

- Open pit mining exploration
- Exploratory decline
- Underground mining
- Future mining activities
- Granting or renewal of Argyle interests.

Consent to these activities is conditional on Argyle acting according to the law, the ILUA and the Management Plans.

### ***The grazing lease***

One of the activities authorised by the ILUA is the grant of the 'Replacement Lease'. This refers to a grazing lease granted to Argyle. The ILUA deals with the surrender and grant of a replacement lease, which is to be held on trust by Argyle for

the Traditional Owners until the completion of mining operations. The ILUA provides a mechanism for the recognition of native title rights over that grazing area.

### ***Compensation and benefits***

The parties agree that no further compensation will be paid by Argyle for past acts, but that Argyle will pay benefits as described in the ILUA into two trusts:

- A charitable trust that secures funds for future generations and provides funds for law and culture, education and training and community development partnerships
- A discretionary trust that provides benefits to the Traditional Owners for the ILUA area.<sup>39</sup>



SECTION

04

# **Reforming the negotiation and implementation of agreements**



## SECTION 4

# Reforming the negotiation and implementation of agreements

The NTA has contributed to a remarkable attitudinal change in the minerals industry in relation to dealing with Indigenous people. A new approach, developed through the engagement fostered by native title rights, has been both an incentive for, and an outcome of, agreement-making.<sup>40</sup>

More than two decades after the Mabo decision and the rejection of the doctrine of *terra nullius*, this legacy is profound in its impact on Indigenous economic participation. However, there are weaknesses in this statutory system of agreement-making that require reform.

The lack of legal clarity and limitations of specific provisions in the present legislative and policy framework inhibit the development of an institutional environment that encourages diverse Aboriginal economic opportunities. Although Native Title Corporations (NTC) (or Registered Native Title Bodies Corporate (RNTBC)) are statutory institutions to enable the native title holders to manage their titles and natural resources, they may be excluded from functions relating

to the commercial issues that agreements present.<sup>41</sup>

The lack of government investment, especially in Indigenous communities and social infrastructure, in mining provinces draw our attention to the matter of accountability.<sup>42</sup> NTCs lack resources to participate in the market and with 100 registered or waiting to be registered, the challenge of local governance and capacity is a high priority for innovation in policy.

A majority of agreements are with regional Aboriginal communities where isolation and the absence of the state is marked. Often, this is manifested by little or no service delivery and inadequate relationships among Commonwealth and state governments, agencies and Indigenous communities.

In this environment, it is therefore not surprising that a widespread lack of understanding of policies within Indigenous communities contributes to confusion and poor compliance in Indigenous affairs. In addition to service contracts, delivery agreements between agencies add to the complexity of arrangements and it is 'entirely possible that an agreement might in fact leave an Indigenous party worse off than before'.<sup>43</sup>

Issues of power imbalances, resource allocations, capacity, compliance and lack of implementation plans need to be addressed in order to make the agreement-making process produce more beneficial, sustainable outcomes. Rigorous monitoring and evaluation performance frameworks are vital to track the benefits and detriments to Indigenous parties. This would ensure that agreement-making arrangements continue to improve.

While best practice in agreement-making may be context-driven and related to the specific circumstances in which agreements are made, some general principles can be discerned. The following themes for the development and implementation of agreements have emerged from my research at the University of Melbourne.

## **Developing agreements**

### ***Leadership***

Attention must be given to the development of strategies to overcome obstacles to the effective participation of Indigenous people in negotiations. The manner in which parties are identified, described and included in the decision-making process can have long-term implications for the sustainability of agreements. It is critical to that coherent cultural identity and 'ownership' of agreement outcomes<sup>44</sup> is established by the relevant native title and other Aboriginal Corporations.<sup>45</sup>

Indigenous groups that are cohesive with well-recognised structures for decision-making — such as the Noongar in southwest Australia and Western Cape communities in Queensland — have a greater capacity to advance negotiations. Leadership has a consequential impact on the development of a strong negotiating mandate. This is illustrated by New Zealand's Ngai Tahu Settlement<sup>46</sup>, the Larrakia Nation in Darwin, the Tsawassan First Nation in British Columbia<sup>47</sup>, the Yellowknives Dene First Nation of Canada's Northwest Territories<sup>48</sup>, and the Southern Pitjantjatjara people of South Australia.<sup>49</sup>

A number of native title courses for professionalisation of the sector's



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## Aboriginal Leadership Program – Diavik, Canada

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The International Diamond Exchange News Room announced on 28 January, 2007, that the Rio Tinto-owned Diavik diamond mine in the North West Territories of Canada had completed its Second Aboriginal Leadership Program:

Designed and delivered by SAIT Polytechnic in collaboration with Diavik, the program is aimed at preparing Aboriginal employees of both DDMI and its contractors to take on increasing work responsibilities. Over half of the Diavik workforce is employed by Aboriginal firms who, together with DDMI, are helping increase employment and business capacity in the Aboriginal community.

The leadership program comprises eight modules that addressed 16 leadership competencies, and includes over 160 hours of

leadership training, augmented with mentoring from Diavik staff. Course content is built around SAIT's Applied Management Certificate Program, but is customized to take into account Diavik's 24-hour, 365-day mining operation and the varying work schedules of its workers.

Diavik employs over 700 workers, the majority of whom are northern residents. Approximately half of the northern workforce is Aboriginal.

The Diavik Diamond Mine, located 300 kilometers northeast of Yellowknife, Northwest Territories, is an unincorporated joint venture between DDMI (60 per cent) and Aber Diamond Limited Partnership (40 per cent). Both companies are headquartered in Yellowknife, Canada. DDMI is a wholly owned subsidiary of Rio Tinto.<sup>51</sup>

personnel have been developed. Leadership training and skills transfer in this highly complex area are essential for continuing improvement in agreement implementation and management,

as well as closure and post project community outcomes.<sup>50</sup> An international example from Diavik in the North West Territories of Canada sets a high standard.

The membership of NTCs changes over time and it can occur quickly as new members are born and some pass away. The customary rules for recruitment and membership alter occasionally from lineal to cognatic. These issues of changing traditions and customs contribute to structural limitations upon Indigenous communities engaged in negotiations, and the impacts of legal, governance and administrative frameworks influence agreement outcomes. In some cases, the combination of these factors with short timeframes has resulted in a division of interests between parties negotiating agreements, or overlapping claims.

Often, there is even insufficient attention to the definition and description of particular NTCs at their inception. As a result, their sustainability is frequently jeopardised by the absence of measures to ensure that they can serve as viable entities responsible for land holding and other legal duties.

The fragility of NTCs, such as Prescribed Bodies Corporate (PBC), results from the conflicting purposes of the entity created as a legal personality. Designed to ensure the perpetual succession of native title — as well as the management of native title in the market place — NTCs have legal duties and cultural obligations to members.

The development of protocols for communication and decision-making between Indigenous landowners and other parties in a region can assist with reducing disputation and power manoeuvres. This approach can aid the negotiation and implementation of agreements with parties external to the Indigenous domain, and it has proved most effective when:

- Parties develop confidence in the process of agreement-making
- Disputes have been solved in a principled way according to set rules
- When parties clearly understand the rules and decision-making processes of the Traditional Owners.

Where Indigenous parties engage in negotiation, the capacity for Indigenous leadership and entrepreneurship is enhanced. Recognition, engagement, and the development of effective and proper governance mechanisms are essential for successful sustainable outcomes, as seen through initiatives such as the Cape York Caring for Country Program and Traditional Knowledge Project.<sup>52</sup> The effective functioning of Indigenous groups is dependent on other parties to the negotiations supporting the legitimate governance mechanisms established by those groups.

### ***Resourcing***

In accordance with native title, the responsibilities of NTCs are transmissible to the next and future generations. As such, it is critical to understand the types of assistance that would be required for a sustainable existence.

Few NTCs have the resources for basic administration of their duties and the further development of the group's fortunes. Forty or more NTCs and PBCs presently exist, but most are insufficiently resourced to attend to their responsibilities. The membership of these Corporations is often dispersed across vast regions, making it difficult and expensive for members to meet. It is a challenge to recruit competent, skilled staff and service providers, even if resources are available.

The adequate resourcing and capacity-building of representative Indigenous bodies is therefore crucial for the effective performance of communities in conducting and managing negotiations, and representing the aspirations of their constituents.<sup>53</sup>

### ***Frameworks and flexibility***

Building Indigenous perspectives into agreements is essential to success. Formal frameworks to guide negotiations have been well-developed in Canada and New Zealand. This model however is less advanced in Australia and employed

more so on a case by case basis, as seen in the South West Australia Regional Agreement.<sup>54</sup>

Typically in Australia, informal frameworks are employed to progress negotiations as a common framework does not exist beyond that which is inherent in the NTA. As a result, strategies have been developed differently in several negotiations.

A 'one size fits all' approach is therefore not tenable for negotiation and agreement-making in Australia. Even where government policy and frameworks in which negotiations occur are common, details vary. Innovation and flexibility are important elements in negotiations, as New Zealand's arduous Ngai Tahu Settlement has taught us.<sup>55</sup>

Although the NTA provides for a set of standards for the negotiation of native title related issues, no model exists to promote consistency in agreement-making or the subsequent distribution of benefits. In Canada and New Zealand, established frameworks and models for processes and claims for the restitution of land, and governance mechanisms relating to rights associated with respective treaties are more common.

There are several models for the distribution of benefits used in land access agreements with Indigenous parties in Australia, and some are

more effective and sustainable than others. These include cash distributions that have in some cases created deleterious conditions for Traditional Owners and contributed to ongoing poverty.

An increasingly consistent feature of ILUAs negotiated to secure access for minerals companies is the establishment of trusts to manage the financial benefits negotiated in agreements. Their importance, beyond an example of good practice in financial management, lies in their potential to strengthen Indigenous governance and capacity for the long-term management of funds for intergenerational prosperity.

The goal of a 'final' settlement is often unrealistic, and instead an outcome-oriented approach with ample time should be made available for negotiations. Comprehensive assessments of factors would assist with identifying opportunities for the proactive — rather than the historically reactive — provision for future requirements, and appropriate and significant collaboration in agreement-making.<sup>56</sup>

Importantly, incorporating new caveats for agreement-making processes requires further inquiry. This must be based on careful consideration of research that examines relevant socio-economic indicators. Questions remain over the extent to which government policies

can adequately address new and diverse Indigenous demographic trends, varied Indigenous and non-Indigenous approaches to governance and comparative Indigenous disadvantage.<sup>57</sup>

### ***Performance indicators***

Developing standard criteria to assess agreements would be feasible. Given what is known about the objectives of Indigenous groups involved in negotiations, the criteria must be accompanied by an analysis of agreements to identify common indicators.<sup>58</sup> The design of a performance framework should include consultation with Indigenous groups to ensure relevant values and aspirations are reflected.

Some preliminary research has occurred to establish performance baselines for agreements.<sup>59</sup> A major constraint however, is that many remain confidential, making comparison and analysis difficult. Research has shown that agreements impact in two ways. Provisions can either deliver outcomes through implementation, or they can be developed from the commencement of negotiations.<sup>60</sup> As a result, agreement-making results are highly variable and introducing indicators would assist with further collaboration in agreement-making and the delivery of objectives.

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## Thamarrurr Region Shared Responsibility Agreement

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A study was undertaken to evaluate the Thamarrurr region in the Northern Territory where administrative processes were established under the Shared Responsibility Agreement and the Northern Territory Stronger Regions Policy. It identified 'mutually determined social economic and service delivery outcomes, together with the means to achieve them and assume responsibilities'.<sup>61</sup>

The study's goals were to be codified in a regional plan for evaluation.

Central to this evaluative approach was the need to develop indicators against which the impact of the agreement could be measured. Care was taken to collate data sets from a range of sources which were then correlated against regional cultural factors. Despite considerable research, the derivation of culturally appropriate indicators remained problematic. This highlights the need for Indigenous people to be involved in determining key performance requirements.<sup>62</sup>

### Implementing agreements

#### *Sustainability*

The increase in agreements has seen concomitant financial and human resource support directed to negotiations.<sup>63</sup> Thus, the value of 'non-litigated' outcomes for Indigenous people has increasingly been recognised. Yet, the emphasis to date has primarily been on reaching agreement as an end in itself with little focus on long-term sustainability.<sup>64</sup>

The success of agreements depends on the capacity and functionality

of Indigenous bodies in place. Agreements — especially land access agreements and Regional Partnership Agreements — can enhance enabling bodies that are already established and functioning well.

There are several reasons for supporting Indigenous enabling organisations, such as Native Title Representative Bodies (NTRB), regional service provision corporations, agencies and community councils (for instance, the Balkanu Aboriginal Development Corporation, the Torres Strait Regional

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## The Comalco – Western Cape Communities Coexistence Agreement

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The Comalco – WCCCA was based on a partnership between the eleven Traditional Owner groups of the region, the four communities of Napranum, Aurukun, Mapoon and New Mapoon, the Cape York Land Council and the Queensland Government.

Registered as an ILUA in 2001, the agreement comprised:

- A charitable trust controlled by a majority of Traditional Owners with community, state, CYLC and Comalco representatives as invitees
- A \$2.5 million Comalco annual contribution and a \$1.5 million annual Queensland Government contribution indexed to mine revenue and the consumer price index
- 60 per cent of annual funding to the Trust placed in long-term secure investments
- A \$500,000 employment and training budget managed by Comalco for programs endorsed by the Coordinating Committee
- A \$150,000 Cultural Awareness Fund, and allowances for bursary, cultural heritage and ranger programs.

Immediately after the WCCCA was signed, Comalco set up the trusts, coordinating committee and secretariat. Trustees were appointed by the Traditional Owners using the selection criteria recommended by Comalco. It was recognised that younger generations could be better placed to assume roles of responsibility, and overall, those nominated provided stable representation. Success was made in the implementation of its initiatives in employment and training, cultural heritage protection and support for local Indigenous businesses.

The agreement's financial benefits were directed into the community trust with most of the funds invested to provide a sustaining economic base for current and future beneficiaries. The balance remaining was for current expenditure for specific purposes to northern, central and southern communities. In return, the traditional owners agreed to support Comalco's lease for mining operations in western Cape York.

However, once management of the agreement was underway, governance arrangements became a concern. A review of the agreement

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found that clear communication between all parties was needed for effective delivery. While Comalco provided support to trustee directors, management of the trusts was under resourced due to inexperience in the secretariat. This led to delays in the disbursement of benefits, inefficient administrative practices and poor communication.

Externally, collaboration between Comalco and the secretariat could have been enhanced. It was revealed that Comalco employees had a general lack of knowledge about the agreement's details which affected awareness in line accountability and responsibilities including business planning, support for local business development, and administrative capacity.

The secretariat was unequipped to provide the guidance advice that was sought and needed by trustees and stakeholders. Appropriately skilled staff is fundamental to the successful operation of all benefit-receiving trusts. As a broader issue of importance for agreements in general, it is critical independent mentoring, and programs are provided to trustees over a period of time.<sup>66</sup>

Authority, and the Cape York Institute for Policy and Leadership).

These bodies are often 'inspired by and developed in partnership with elders and traditional culture', and innovative non-Indigenous figures and organisations.<sup>65</sup> The roles of Noel Pearson and the Hon. Peter Beattie in the establishment of the highly successful Cape York Partnership are exemplary cases. It is important to acknowledge organisations in existence, and encourage their growth and development.

For the most part however, there is an urgent need throughout the Indigenous domain to improve administrative and governance arrangements for these organisations. In particular, capacity-building programs should be provided to the leadership and personnel involved. The implementation of the Comalco - WCCCA demonstrates that this needs to be addressed as part of agreement implementation.

### ***Protection***

Current governance arrangements for the management of land-related payments from agreements to Indigenous parties are inadequate. Substantial funds in trusts are vulnerable to private agents managing payments on behalf of Indigenous landowners and communities. There have been

reported instances of individuals diverting proceeds from FAAs for their own benefit. These undesirable outcomes have resulted from poor governance structures and the lack of probity or failure of government agencies to enforce regulations.<sup>67</sup>

Another critical contributing factor to this poor governance environment is the lack of clarity in the NTA. It might be thought that under the Act, the proceeds of native title agreements would belong to the native title holding (claiming) community and that the named applicant(s) are in a fiduciary relationship with the authorising community. Although this intuitive position is supported by recent case law<sup>68</sup>, it is by no means beyond doubt.

These two key areas that demand reform to protect native title beneficiaries from unconscionable behaviour of private agents. The MCA, the NNTC and experts recommend amending the NTA and relevant regulations to clarify that a fiduciary relationship exists between a native title applicant and the broader group of native title holders.

While the NTA contemplates that claimants will be represented by NTRBs or Native Title Service Providers (NTSP), section 84B allows the possibility for private agents to provide these representational services without appropriate regulatory mechanisms in place.

As a result of reports about improper dealings in these funds by private agents, the MCA, NNTC and experts recommend the Commonwealth take steps to regulate the practice of such persons and commercial entities. This should include the regulation of private agents, other than NTRBs and NTSPs, involved in negotiating FAAs.

FAAs made under section 31 of the NTA are not required to be reported and there is little transparency. To protect agreements from poor management, the MCA and NNTC recommend a process for the registration of these agreements be legislated. Furthermore, a statutory trust should be established to hold native title agreement funds in situations where there are no NTC or PBC entities to receive them. This would provide native title holders with an alternative to private agents.<sup>69</sup>

### ***Transparency***

Little is known about the details of commercial contracts due to the commercially sensitive nature and confidentiality of arrangements. My own research has been able to identify and publish only 15 full or partial texts of agreements out of a total of 930 recorded on database.<sup>70</sup>

The content of agreements should be made publicly available for the evaluation of the outcomes of agreement-making over time.



Given the economic value of these agreements in the Indigenous domain, the measurement of their financial and economic impacts is an ever more pressing concern with increasing complaints that Indigenous people are missing out on the benefits of economic opportunities.

This is a high-priority matter that has long been discussed amongst experts and is long overdue. It will be critical to implement measures to encourage transparency without limiting the potential of the free market, and protect rights to negotiate specific terms on an agreement by agreement basis.

Although private contracts are discrete, they are not necessarily unregulated. Depending upon the type of contract in place, the agreement may be subject to general statutory conditions for behaviour (for example, precluding unconscionable conduct or fair trading principles which provide a safety net). Furthermore, common law provides redress for issues such as misrepresentation and fraud. However, NTCs, PBCs and associated Corporations will find it impossible to pursue matters through the courts for legal enforcement because of time and cost prohibitions.

There is an urgent need to rigorously evaluate and monitor the implementation of agreements

and to involve Indigenous communities in these processes.<sup>71</sup> It is equally important that such evaluation processes themselves are transparent and involve governments and their agencies where relevant.<sup>72</sup>

While agreements should be made with specific reference to the circumstances in which they are developed, it is important that a broader understanding of legal, commercial and financial models is developed. This would ensure that parties entering into negotiations are able to determine which model might best be suited to their particular circumstance.



SECTION

05

# **Post agreements: removing obstacles to economic participation**



Source: *Newmont Asia Pacific*

## Post agreements: removing obstacles to economic participation

There is an urgent need for policy reform to enable Indigenous peoples to leverage the native title benefit payments to trusts to increase their capital for economic enterprises.

The ability for Indigenous communities to benefit further from activity in the minerals sector depends to a large extent on the willingness of governments to reform policies, especially in relation to the efficiency of the native title system.

The introduction of a new approach to dealing with native title bodies and their charitable status under the *Charities Act 2013* (Cth) was a significant step forward to empowering economic development and sustainability.<sup>73</sup> It ensures that trusts or entities for native title holders, claimants or Traditional Owners by common descent or kinship are not denied charitable status. Even so, more needs to be done to increase pathways for economic participation.

As discussed in the previous chapter, further legislative reform and policy arrangements are required

for the governance, management and distribution of native title trust revenues. This would not only assist with improving governance arrangements for the relevant bodies, but also improve access to funding for economic development. Significant priorities for native title arrangements and trusts are:

- The creation of appropriate vehicles to allow Indigenous communities to maximise the economic development potential of revenues derived from project approvals and native title future acts
- The need for regulatory change to ensure that native title future act revenues are made available to the relevant native title holding community and not diverted or appropriated by a negotiation agent or individual members of the native title holding community.

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*The immediate and future business case for the ICDC structure to better generate economic participation for Indigenous communities is significant.*

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By translating the recognition of native title into tangible economic and social benefits for communities, native title groups have achieved high levels of economic participation and wealth creation. Even so, the situation for most Indigenous parties involved in agreements is that the land-related payments are trapped in the charity and not-for-profit (NFP) sector by legal limitations on directly releasing these funds for commercial activities.

These charitable trusts have a mixed record as vehicles for Indigenous economic development. This is particularly the case for the immense opportunities that mining projects can offer for enterprise development in contracting and ancillary service provision. The legal definition of ‘charitable purposes’ is the primary limitation to the ways in which funding can be invested. This can pose difficulty for native title arrangements to participate in initiatives of a commercial nature and many community development and capacity building programs.

Removing the obstacles to economic participation and business development opportunities for Indigenous communities is a high priority. To this end, the NNTC and MCA propose a new governance model — ICDC model — for trusts or similar entities established to manage land-related payments.



■ A smoking ceremony at a mine site.

Source: *Newmont Asia Pacific*

### **The Indigenous Community Development Corporation proposal**

The ICDC proposal is a new approach to corporations for land-related payments for native title holders. It encourages cooperative approaches in which holders of land-related payments can co-invest with governments and the private sector in regional development projects. The immediate and future

business case for the ICDC structure to better generate economic participation for Indigenous communities is significant.

The ICDC model proposed would not only be income tax exempt and deemed NFP, it would also hold Deductible Gift Recipient

status. The model would enable NTCs to access revenues to invest directly in community programs, business enterprise development, and commercially sound initiatives over a long period of time. The ICDC model would be subject to robust governance standards, and accountable both to the Indigenous community it serves and the regulator.

The intention of the proposal for an ICDC structure is twofold. Firstly, Indigenous communities could use an ICDC to provide financial support for a wider range of community or economic development activities than is possible under the existing charitable trust framework. The ICDC could enrich local Indigenous communities by contributing to business and social ventures that can create flow-on socio-economic opportunities, particularly in job creation.

This measure, if adopted by government and legislated, would contribute substantially to the new policy drive for measures to accelerate the transition of thousands of Indigenous people from welfare dependency to full economic participation, thereby raising the low socio-economic status of Indigenous people and enabling them to enjoy the opportunities available to other Australians in employment,

education, wealth creation, asset accumulation and intergenerational wellbeing.

Secondly, it would be able to facilitate the accumulation of payments towards a 'future fund' of private monies derived by an Indigenous community from native title agreements or other sources, which could then be applied for the community's benefit in the longer term (unlike charitable trusts which are capped at 10 to 20 year timeframes). Through the application of prudential standards, ICDC funding could be invested in sub-trusts to develop sustainable income streams for both immediate community needs and future generations. Its tax-exempt status would maximise the funds available for economic development.

Improved governance is crucial if full benefits are to be derived from any new entity that may be used by Indigenous communities for overseeing land-related payments. Before it could be implemented, further development of the ICDC concept is needed in consultation with Indigenous communities, government agencies and experts to develop the structure in detail. To ensure its successful delivery, the following must be established in line with recommendations made by the Native Title Tax Working Group covering:



- The legislative framework that would establish and broadly govern the ICDC model
- Governance arrangements that would apply to ICDCs
- Regulatory requirements and the mix of bodies working with of ICDCs, including:
  - Procedural matters, such as registration requirements
  - How existing entities would need to modify their set-up to qualify as an ICDC
  - Transition arrangements, including for existing charitable entities managing land-related payments and other income that wish to move to the ICDC model.<sup>74</sup>



SECTION

06

# Conclusion



■ Bryce Rory commenced work with McArthur River Mine, near Borroloola in the Northern Territory, in 2014 as a school-based apprentice. Bryce is now apprenticed to the mine as a diesel fitter.

Source: *Glencore*

## Conclusion

**Engagement between the minerals industry and Aboriginal people has advanced radically since the inception of agreement-making in the 1970s, and the NTA in the early 1990s.**

This has been driven both by the economic opportunities for Indigenous peoples presented by legislative reform, and a shift in the way in which the minerals industry engages.

Despite sustained improvements in economic participation for Indigenous communities, high levels of disadvantage (even among those located near mining projects) remain a troubling concern. Given the unprecedented prospects offered by the minerals industry to remote and regional Indigenous people, it is vital to understand enduring constraints on Indigenous economic participation and the resulting impacts on 'poverty in the midst of plenty'.

While research has forecast a strong demand for employment in some areas, more change is required to take advantage of opportunities available. Many

Indigenous people are seeking employment opportunities, but the Indigenous and many NGOs that represent their interests have not usually developed a regional approach to securing industry-wide outcomes. The regional variation in Indigenous employment rates in the minerals and energy industries ranges markedly from zero across most of the continent, to more than fifty per cent in the Pilbara region. These differences demonstrate there is great scope for continued growth and progression in Indigenous employment.

Various government and non-government programs have addressed to some extent the persistent problems of Indigenous under-employment and poverty. However, the research community, government, and agencies have yet to identify the size and characteristics of the Indigenous workforce in the

minerals industry with any precision. Ascertaining the exact outcomes for Indigenous people from their agreements and other forms of engagement with industry remains difficult, even though a growing body of research points to encouraging developments. Understanding these developments would assist with:

- Informing decision-making for the most effective outcomes for local communities affected throughout the life of a mining project (including the management of impacts)
- Identifying the most effective strategies for engaging local Indigenous people in employment
- Measuring and reporting outcomes rigorously such as recruitment and retention
- Engaging agencies to identify the contributions needed to achieve better outcomes
- Developing relationships between local communities and mining operations.

The population profile of, and demographic change in, the Indigenous Australian population counters the global trend of structural ageing present in the non-Indigenous Australian population and other OECD nations. The very high proportion of youth and children in the Indigenous

population underpins the need to develop strategies to increase Indigenous participation in the workforce, especially for younger cohorts entering the workforce in the coming years.

The pace of growth in Indigenous economic participation is too slow to benefit the next generation of school leavers. Younger people far outnumber Indigenous people in older age-cohorts and, in some geographic areas, lack the capacity to join the workforce in sufficient numbers to avoid the low socio-economic status that has characterised Indigenous Australia throughout Australian history.

Governments, the private sector and NGOs collectively recognise that efforts should be focused on the school-age population. It is critical that the next generation's education and employability is elevated as far as reasonably possible to avoid a widening of disadvantage gaps.

Without effective strategies for employment pathways, there is a danger that perpetual welfare dependency will remain a part of the Indigenous population, particularly in remote regions. As a result, government and non-government parties alike should refocus their attention on education participation and employment pathways based on population profiling for optimal outcomes.

Consequently, further reform must now take place to enhance immediate Indigenous economic participation and secure long-term growth. Improving governance arrangements for negotiations and agreement-making, the management of land-related payments and a more contemporary approach to trusts would unlock the potential for greater Indigenous economic empowerment.

Reform in these areas could deliver programs to ensure young Indigenous Australians are able to take up employment and business opportunities. It would equip Native Title Corporations (NTCs) with the tools to properly negotiate economic agreements with minerals and other companies. Finally, it would enable structures such as the ICDC to be introduced and better enable intergenerational transfer of improved financial status and enable transition from a charity focus to one of economic development.





## Endnotes

- <sup>1</sup> See Hunter B, Howlett M and Gray M (2014), *The Economic Impact of the Mining Boom on Indigenous and Non-Indigenous Australians*, CAEPR Working Paper No 93/2014, Centre for Economic Policy Research (Australian National University, Canberra):

‘In remote mining areas, 9 per cent of Indigenous employment in 2011 was directly in the mining industry, which is substantially lower than the 22 per cent of non-Indigenous employment in the same areas. In non-remote mining areas, 9 per cent of Indigenous employment, and 13 per cent of non-Indigenous employment, was in mining. In non-mining areas, Indigenous and non-Indigenous employment in the mining industry was only 1 to 2 per cent, and was likely to be in head offices or small-scale mines, or include FIFO workers who travel to mining areas to work.

In remote areas, the overall Indigenous employment rate in mining areas was 4 per cent higher than in non-mining areas (43 per cent compared with 39 per cent), and the rate of full-time employment was 5 per cent higher. In non-remote areas, there was an even more marked difference, with 55 per cent of Indigenous people in employment (compared with 48 per cent in non-mining areas) and a 7 per cent higher full-time employment rate in mining areas’ (p7 – 8).

The authors used ABS statistics from the 2006 and 2011 Censuses.

Note that the CDEP was replaced by a new ‘reformed’ scheme entitled the Remote Jobs and Communities Program in 2012 – 2013.

- <sup>2</sup> The CDEP was reformed in 2012-2013 by the Commonwealth Government and is now titled the Remote Jobs and Communities Program.
- <sup>3</sup> See section 31 of the *Native Title Act 1993* (Cth).
- <sup>4</sup> See the ATNS website <http://atns.net.au>, funded by the Australian Research Council and Industry Partners. With its searchable database of agreements with Indigenous people, it serves a global community of Indigenous people, lawyers, researchers and market analysts. The Agreements, Treaties and Negotiated Settlements database (ATNS)

is an online gateway to a wealth of information relating to agreements between indigenous people and others in Australia and overseas. The database offers a range of features including background information on each agreement; links to related agreements, organisations, signatories and events; a glossary of relevant terminology as well as direct access to published and on-line resources.

- <sup>5</sup> These include consent determinations and Indigenous Land Use Agreements involving issues of native title (see the National Native Title Tribunal website <http://www.nntt.gov.au>).
- <sup>6</sup> For example, see the *Argyle Diamond Mine Participation Agreement: Management Plan Agreement*.
- <sup>7</sup> For example, see the *Yorta Yorta Co-operative Management Agreement*.
- <sup>8</sup> Minerals Council of Australia (2006), *Minerals Council of Australia 2007–2008 Pre-budget Submission* (Minerals Council of Australia, Canberra).
- <sup>9</sup> Commonwealth of Australia (2014), *The Forrest Review: Creating Parity* (Department of Prime Minister and Cabinet, Canberra) p185.
- <sup>10</sup> Ibid p174.
- <sup>11</sup> Gray M, Hunter B and Howlett M (2013), 'Indigenous Employment: A Story of Continuing Growth', CAEPR Topical Issue No 2/2013, Centre for Aboriginal Economic Policy Research (Australian National University, Canberra).
- <sup>12</sup> See especially the following: Hunter B, Howlett M and Gray M (2014), *The Economic Impact of the Mining Boom on Indigenous And Non-Indigenous Australians*, CAEPR Working Paper No 93/2014, Centre for Economic Policy Research (Australian National University, Canberra); Gray M, Hunter B and Lohar S 2012, *Increasing Indigenous Employment Rates*, Issues Paper No 3, Closing the Gap Clearinghouse (Australian Institute of Health and Welfare, Canberra); Gray M, Hunter B and Howlett M (2013), *Indigenous Employment: A Story of Continuing Growth*, CAEPR Topical Issue No 2/2013 (NATSIS 1994 and 2008); Hunter B and Gray M (2013), 'Workplace Agreements and Indigenous-Friendly Workplaces', *Indigenous Law Bulletin*, Vol 8, Issue 8 p 7–13.
- <sup>13</sup> Gray M, Hunter B and Howlett M (2013), *Indigenous Employment: A Story of Continuing Growth*, CAEPR Topical Issue No 2/2013 (NATSIS 1994 and 2008) p8.

- <sup>14</sup> Ibid p7- 8.
- <sup>15</sup> Ibid p7- 8.
- <sup>16</sup> Vidler P (2007), *Indigenous Employment and Business Development in the Queensland Resources Sector: Report to the Queensland Resources Council June 2007*, Centre for Social Responsibility in Mining (The University of Queensland, Brisbane) pvii.
- <sup>17</sup> Commonwealth of Australia (2014), *The Forrest Review: Creating Parity* (Department of Prime Minister and Cabinet, Canberra) p47.
- <sup>18</sup> Ibid.
- <sup>19</sup> Ibid.
- <sup>20</sup> See Langton M (2013), *The Quiet Revolution: The 2012 Boyer Lectures* (HarperCollins, Sydney).
- <sup>21</sup> See Minerals Council of Australia (2005) *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development, Guidance for Implementation* (MCA, Canberra):
- ‘Simply defined the ‘social licence to operate’ is an unwritten social contract. Unless a company earns that licence, and maintains it on the basis of good performance on the ground, and community trust, there will undoubtedly be negative implications. Communities may seek to block project developments; employees may choose to work for a company that is a better corporate citizen; and projects may be subject to ongoing legal challenge, even after regulatory permits have been obtained, potentially halting project development.
- The Australian minerals industry strongly supports the role of a ‘social licence to operate’ as a complement to a regulatory licence issued by government. To the minerals industry ‘social licence to operate’ is about operating in a manner that is attuned to community expectations and which acknowledges that businesses have a shared responsibility with government, and more broadly society, to help facilitate the development of strong and sustainable communities’ (p2).
- <sup>22</sup> Ibid.
- <sup>23</sup> Australian Government (2007), *Leading Practice Sustainable Development Program for the Mining Industry: Working with Indigenous Communities* (Department of Industry, Tourism and Resources).

- <sup>24</sup> Langton M and Webster A (2012), 'The "Right to Negotiate", the Resources Industry Agreements and the Native Title Act' in Bauman T and Glick L (eds) *The Limits of Change: Mabo and Native Title 20 Years On* (AIATSIS - Aboriginal Studies Press, Canberra) p269 – 288.
- <sup>25</sup> See interactive and searchable database of the Agreements, Treaties and Negotiated Settlements website <http://www.atns.net.au>
- <sup>26</sup> Langton M and Palmer L (2003) 'Modern Agreement-Making and Indigenous People in Australia: Issues and Trends', *Australian Indigenous Law Reporter*, Vol 8, No 1, p1 – 31; Langton M, Tehan M, Palmer L and Shain K (eds) (2004), 'Introduction', *Honour Among Nations: Treaties and Agreements with Indigenous Peoples* (Melbourne University Publishing, Carlton); Blowes R and Trigger D (1999), 'Negotiating the Century Mine Agreements: Issues of Law, Culture and Politics' in Edmunds (ed) *Regional Agreements in Australia*, Vol 2 Case Studies, Native Title Research Unit (Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra).
- <sup>27</sup> See Langton M (2013), *The Quiet Revolution: The 2012 Boyer Lectures* (HarperCollins, Sydney); Langton M and J Longbottom (eds) (2012) *Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom* (Routledge, UK).
- <sup>28</sup> See Langton M and Longbottom J (eds) (2012), *Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom*, (Routledge, UK); Godden LC, Langton M, Mazel O and Tehan M (eds) (2008), 'Special Issue: Indigenous and Local Peoples and Resource Development: International Comparisons of Law, Policy and Practice', *Journal of Energy and Natural Resources Law*, Vol 26, No 1; Langton M and Palmer L (2003), 'Modern Agreement-Making and Indigenous People in Australia: Issues and Trends', *Australian Indigenous Law Reporter*, Vol 8, No 1, p1– 31; Langton M, Tehan M, Palmer L and Shain K (eds) (2004), 'Introduction', *Honour Among Nations: Treaties and Agreements with Indigenous Peoples* (Melbourne University Publishing, Carlton).
- <sup>29</sup> See end note 26.
- <sup>30</sup> Langton M and Webster A (2012), 'The "Right to Negotiate", the Resources Industry Agreements and the Native Title Act' in Bauman T and Glicks L (eds) *The Limits of Change: Mabo and Native Title 20 Years On* (AIATSIS - Aboriginal Studies Press, Canberra) p269 – 288.

- <sup>31</sup> Other terms and conditions of agreements often include: cultural heritage protection; environmental protection; economic and business development, including contracting provisions for Indigenous companies; employment and training; education and community development; responsible management and distribution of financial benefits; capacity building and leadership training; implementation of the agreement; leveraging the benefits of agreements to attract and secure public and private funding and investment in affected communities.
- <sup>32</sup> Corporate social responsibility is defined by the World Business Council of Sustainable Development as:
- ‘The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large’ [WBCSD (2000), *Corporate Social Responsibility: Making Good Business Sense*, World Business Council for Sustainable Development (Geneva, Switzerland) p9].
- <sup>33</sup> Ibid.
- <sup>34</sup> Charlie Lenegan, Managing Director, Rio Tinto (2005), *The Minerals Sector and Indigenous Relations*, paper presented at the Resourcing and Innovative Industry, Minerals Week 2005, 30 May – 3 June 2005, Hyatt Hotel and Parliament House, Canberra, ACT, Australia.
- <sup>35</sup> O’Faircheallaigh C (2000), *Negotiating Major Project Agreements: The Cape York Model* Discussion Paper No 11 (Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra); O’Faircheallaigh C (2002), ‘Implementation: The Forgotten Dimension of Agreement-Making in Australia and Canada’, *Indigenous Law Bulletin*, Vol 5, No 20, p14 –17.
- <sup>36</sup> O’Faircheallaigh C (2002), *A New Approach to Policy Evaluation: Mining and Indigenous People* (England: Ashgate Publishing Limited, UK) p151.
- <sup>37</sup> O’Faircheallaigh C (2004) ‘Evaluating Agreements Between Indigenous People and Resource Developers’ in Langton M et al (eds) (2004) *Honour among Nations: Treaties and Agreements with Indigenous Peoples* (Melbourne University Publishing, Carlton).
- <sup>38</sup> The numbers, breadth of agreement types and subject matters of agreements made with Indigenous people is demonstrated by the data

held in the Agreements, Treaties and Negotiated Settlements (ATNS) database <http://www.atns.net.au/>

- <sup>39</sup> Doohan K, Langton M and Mazel O, 'From Paternalism to Partnership: The Good Neighbour Agreement and the Argyle Diamond Mine Indigenous Land Use Agreement in Western Australia', in Langton M and Longbottom J (eds) (2012) *Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom* (Routledge, Oxford) p231 – 250.
- <sup>40</sup> Langton M and Palmer L (2003) 'Modern Agreement-Making and Indigenous People in Australia: Issues and Trends', *Australian Indigenous Law Reporter*, Vol 8, No 1, p1 – 31; Langton M, Tehan M, Palmer L and Shain K (eds) (2004), 'Introduction', *Honour Among Nations: Treaties and Agreements with Indigenous Peoples* (Melbourne University Publishing, Carlton).
- <sup>41</sup> Native Title Corporations have a range of functions as explained at <http://www.nativetitle.org.au>
- <sup>42</sup> 'The resource curse' and 'the paradox of plenty' refer to the social and economic phenomenon in which many countries rich in natural resources have had poor economic growth, conflict and declining standards of democracy.
- See: Auty R (1993), *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge, London); Stiglitz J (2006), *Making Globalization Work* (WW Norton & Company, New York); Sen A (1999), *Development as Freedom* (Oxford University Press, Oxford); Nussbaum M and Sen A (1993), *The Quality Of Life* (Oxford University Press, Oxford); Mehlum H, Moene K and Torvik R (2006), 'Institutions and the Resource Curse', *The Economic Journal*, Vol 116, p1 – 20; Collier P (2007), *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It* (Oxford University Press, Oxford); O'Faircheallaigh C (1988), 'Resource Development and Inequality in Indigenous Societies', *World Development*, Vol 26, No 3, p381 – 394.
- <sup>43</sup> O'Faircheallaigh C (2004), 'Evaluating Agreements Between Indigenous People and Resource Developers' in Langton M et al (eds) (2004) *Honour Among Nations: Treaties and Agreements with Indigenous People* (Melbourne University Press, Carlton) p304.
- <sup>44</sup> Langton M and Palmer L (2004), 'Treaties, Agreement-Making and the

Recognition of Indigenous Customary Polities' in Langton et al (eds) *Honour Among Nations* (Melbourne University Press, Carlton) p34 - 49.

<sup>45</sup> Mantziaris and Martin describe the role of NTA legislation as:

'The NTA establishes a framework for the holding and management of native title. It requires the use of corporations that stand in a relationship of 'trust' or 'agency' to the members of the native title group. The trust or agency relationship is statutory in character. Delegated legislation made under the NTA specifies the characteristics and functions of native title corporations and lays down procedures to be followed by the corporation in decisions relating to native title matters. The corporate trustee and agency device allows non-native title interests dealing with the group to channel their transactions through a single legal person with perpetual succession. This is intended to avoid the problem of fixing obligations on the ever-fluctuating membership of a group of natural persons lacking legal personality' [Mantziaris C and Martin D (2000), *Native Title Corporations: A Legal and Anthropological Analysis* (Federation Press, New South Wales) p90].

<sup>46</sup> O'Regan T, Palmer L and Langton M (2006), 'Keeping the Fires Burning: Grievance and Aspiration in the Ngā i Tahu Settlement' in Langton et al (eds) *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p44 - 65.

<sup>47</sup> Palmer L and Tehan M (2006), 'From Remnant Lands to Sustainable Communities: Negotiating Spaces for Indigenous Land and Jurisdiction in Darwin and Vancouver' in Langton et al (eds) *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p231-256.

<sup>48</sup> Palmer L and Tehan M (2006), 'Anchored to the Land': Asserting and Recognising Aboriginal Jurisdiction in the Northwest Territories in Langton et al (eds) *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p66 - 94.

<sup>49</sup> Mazel O (2006), 'Returning Parna Wiru: Restitution of the Maralinga Lands to Traditional Owners in South Australia' in Langton et al (eds) *Settling with Indigenous people: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p159 - 181.

<sup>50</sup> The NNTC and Melbourne Business School have collaborated with

Indigenous Business Australia, the MCA and other sponsors to convene the Native Title Master Class program to deliver entrepreneurship, management and leadership modules to native title sector emerging leaders. The Aurora Program has delivered training and scholarships in this field. The Australian Indigenous Leadership Centre delivers certificate level leadership training.

- <sup>51</sup> IDEX Online (2007), 'Diavik Completes Second Aboriginal Leadership Program', *IDEX*, 30 January 2007.
- <sup>52</sup> See the Balkanu Aboriginal Development Corporation Caring for Country Business Unit.
- <sup>53</sup> Ivanitz M (1997), *The Emperor has No Clothes: Canadian Comprehensive Claims and their Relevance to Australia*, Native Title Research Unit Discussion Papers, Regional Agreements No 4, Native Title Research Unit (Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra).
- <sup>54</sup> Bradfield S (2004), *Agreeing to Terms: What is a "Comprehensive" Agreement?* Issues paper Vol 2, No 26, Native Title Research Unit (Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra) p1-16; Palmer L and Tehan M (2006), 'From Remnant Lands to Sustainable Communities: Negotiating Spaces for Indigenous Land and Jurisdiction in Darwin and Vancouver' in Langton et al (eds), *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p231-256; Palmer L and Tehan M (2006), 'Anchored to the Land': Asserting and Recognising Aboriginal Jurisdiction in the Northwest Territories in Langton et al (eds) *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney) p66 - 94.
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- <sup>56</sup> O'Faircheallaigh C (2004), 'Evaluating Agreements Between Indigenous People and Resource Developers' in Langton et al (eds) *Honour Among Nations: Treaties and Agreements with Indigenous People* (Melbourne University Press, Carlton) p303 - 328.
- <sup>57</sup> Taylor J (2006), *Population and Diversity: Policy Implications of Emerging*



- Indigenous Demographic Trends*, CAEPR Discussion Paper No 283, Centre for Aboriginal Economic Policy Research (Australian National University, Canberra); Taylor J (2006), *Indigenous Peoples and Indicators of Well-Being: An Australian Perspective on UNPFII Global Frameworks*, CAEPR Working Paper No 33, Centre for Aboriginal Economic Policy Research (Australian National University, Canberra).
- <sup>58</sup> O’Faircheallaigh C (2004), ‘Evaluating Agreements Between Indigenous People and Resource Developers’ in Langton et al (eds) *Honour Among Nations: Treaties and Agreements with Indigenous People* (Melbourne University Press, Carlton) p326.
- <sup>59</sup> O’Faircheallaigh C (2002), ‘Implementation: The Forgotten Dimension of Agreement-making in Australia and Canada’, *Indigenous Law Bulletin*, Vol 5, No 20, p14 -17; O’Faircheallaigh C (2003), *Negotiating a Better Deal for Indigenous Land Owners: Combining ‘Research’ and ‘Community Service*, Research Paper No 11, School of Politics and Public Policy (Griffith University, Queensland); O’Faircheallaigh C (2003), *Implementing Agreements between Indigenous Peoples and Resource Developers in Australia and Canada*, Research Paper No 13, School of Politics and Public Policy (Griffith University, Queensland); O’Faircheallaigh C (2003), *Financial Models for Agreements Between Indigenous Peoples and Mining Companies*, Research Paper No 12, Aboriginal Politics and Public Sector Management, (Griffith University, Queensland).
- <sup>60</sup> O’Faircheallaigh C (2004), ‘Evaluating Agreements Between Indigenous People and Resource Developers’ in Langton et al (eds) *Honour Among Nations: Treaties and Agreements with Indigenous People* (Melbourne University Press, Carlton) p306.
- <sup>61</sup> Taylor J (2004), *Social Indicators for Aboriginal Governance: Insights from the Thamarrurr Region, Northern Territory*, CAEPR Research Monograph No 24 (ANU E Press, Canberra) p2.
- <sup>62</sup> Ibid.
- <sup>63</sup> M Langton O Mazel, L Palmer, K Shain and M Tehan (eds) (2006), *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press, Sydney); Blowes R and Trigger D, ‘Negotiating the Century Mine Agreements: Issues of Law, Culture and Politics’ in Edmunds M (ed) (1999) *Regional Agreements in Australia*, Vol 2 Case Studies, Native Title Research Unit (Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra).

- <sup>64</sup> Sustainability is defined here as the capacity of agreements to endure over time and continue to meet the economic, environmental and social objectives and goals of the parties involved.
- <sup>65</sup> Botsman P (2007), *Polity, Capability, Culture: Thinking Through the Next Phase of Australian Indigenous Affairs* (Peter Botsman's Working Papers, Barrengarry).
- <sup>66</sup> Crooke P, Harvey B and Langton M (2006), 'Implementing and Monitoring Indigenous Land Use Agreements in the Minerals Industry: The Western Cape Communities Co-Existence Agreement', in Langton et al (eds) *Settling with Indigenous People: Modern Treaty and Agreement-Making*, (Federation Press, Sydney) p95 – 114.
- <sup>67</sup> Australian Government (2013), *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, Report to Government*, (Treasury, Canberra).
- <sup>68</sup> *Weribone on behalf of the Mandandanji People v State of Queensland (No 2) (23 May 2013)* [2013] FCA 485 at [50].
- <sup>69</sup> Australian Government (2013), *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, Report to Government*, (Treasury, Canberra).
- <sup>70</sup> See the Agreements, Treaties and Negotiated Settlements (ATNS) database <http://www.atns.net.au/>
- <sup>71</sup> The Aboriginal and Torres Strait Islander Social Justice Commissioner notes:  
  
    'The absence of consistent and comparable data is problematic as it can result in inefficiencies, duplication and a lack of accountability' [Calma T (2005), *Social Justice Report 2005* (Australian Human Rights Commission, Canberra).
- <sup>72</sup> Australian Government (2006), *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs 2006-09* (Office of Indigenous Policy Coordination, Canberra).
- <sup>73</sup> See the definition of 'sustainability' above.
- <sup>74</sup> Australian Government (2013), *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, Report to Government*, (Treasury, Canberra).





## Acronyms

ABS	Australian Bureau of Statistics
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1979</i>
ANU	Australian National University
DGR	Deductible Gift Recipient
ICDC	Indigenous Community Development Corporation
ILUA	Indigenous Land Use Agreement
IPAA	Indigenous Protected Area Agreement
FIFO	Fly-in Fly-out
MCA	Minerals Council of Australia
NFP	Not-for-Profit
MoU	Memorandum of Understanding
NNTC	National Native Title Council
NNTT	National Native Title Tribunal
NTA	<i>Native Title Act 1993</i> (Cth)
NTC	Native Title Corporation
NTRB	Native Title Representative Body
NTSP	Native Title Service Provider
PBC	Prescribed Bodies Corporate
RNTBC	Registered Native Title Bodies Corporate
RTN	Right to Negotiate
SRA	Shared Responsibility Agreement
WCCCA	Western Cape Communities Coexistence Agreement







# From Conflict to Cooperation

Transformations and challenges in the engagement  
between the Australian minerals industry and  
Australian Indigenous peoples

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PROF. MARCIA LANGTON

The past two decades have witnessed a profound shift in the relationship between the minerals industry and Indigenous Australians. Through employment, education and training, business development and the negotiation of agreements, the minerals industry is delivering tangible economic benefit to remote and regional communities. This in turn has substantively contributed to 'closing the gap'.

Prof. Langton draws on her extensive experience in Indigenous economic development, native title and mining land access agreements to identify the policy reforms needed to build on this transformation. Prof. Langton highlights the imperative for greater government investment in education and training for Indigenous youth, reformed governance arrangements for agreement making and a more contemporary approach to the management of funds held in trusts to unlock the potential for greater Indigenous economic empowerment.

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