



MINERALS COUNCIL OF AUSTRALIA

JOINT STANDING COMMITTEE ON NORTHERN
AUSTRALIA INQUIRY INTO OPPORTUNITIES AND
CHALLENGES ASSOCIATED WITH TRADITIONAL
OWNER PARTICIPATION IN NORTHERN AUSTRALIA
DEVELOPMENT

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EXECUTIVE SUMMARY

The Minerals Council of Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Northern Australia inquiry into the opportunities and challenges associated with land rights, native title and other land-related agreements for the purpose of engaging Traditional Owners in the economic development of the region. The inquiry also covers payments, benefits and access arrangements under these types of agreements.

This submission is supported by the Queensland Resources Council.

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA advocates for policies with a common purpose of supporting growth, prosperity and sustainability.

Working in partnership to ensure Traditional Owners and Indigenous communities materially benefit from minerals development is a long-standing priority for the minerals industry. Traditional Owners and Indigenous communities are important industry partners. Accordingly, development opportunities provided by minerals development should be maximised to ensure long lasting benefits for Traditional Owners, enabling them and their communities to achieve their aspirations and priorities.

Northern Australia covers an area of more than 3 million square kilometres and hosts a diversity of vibrant regional cities and regional, rural and remote communities.¹ It also hosts some of Australia's most important mining regions, including Queensland's north west minerals province and central Queensland, Western Australia's Pilbara and Kimberly regions and areas across the Northern Territory.

Partners in development and opportunity

The minerals industry recognises and respects the rights and interests of Aboriginal and Torres Strait Islander peoples, the First Peoples of Australia. It is committed to working in partnership to support beneficial outcomes for Traditional Owners and Indigenous communities.²

Much on the land on which the minerals industry operates across Northern Australia is covered by native title or the *Aboriginal Land Rights Act (Northern Territory) 1976*.³ These frameworks and broader social, economic and business change transformed engagement between the minerals industry and Traditional Owners. Over time these changes – and the recognition direct participation in minerals development could provide significant economic opportunity – reshaped the nature of land-related agreements between minerals companies and Traditional Owners.⁴

Decades of shared commitment and focus have helped turn these opportunities into important training, employment and enterprise outcomes. Today 2.5 times more Indigenous Australians work in the minerals industry than in 2006.⁵ Many Indigenous Australians who have gained experience in the minerals industry have gone on to successful careers in other sectors. A generation of diverse Indigenous businesses provide high quality mine equipment, technology and services across the mining life cycle. Significant assets have also been accumulated by organisations from native title monies associated with minerals agreements. And, in some cases, partnerships are entering a new phase with joint venture and supply agreements.

Understanding the barriers to economic development

Mining-related agreements have provided access to significant and important economic opportunities for Traditional Owners and Indigenous communities across Northern Australia. Historical exclusion

¹Department of Industry, [Our North, Our Future: White Paper on Developing Northern Australia](#), Australian Government, Canberra, 2015, p. 132.

²Minerals Council of Australia, [MCA Communique Indigenous Economic Development](#), MCA, Canberra, June 2016, p. 1.

³ *ibid*, p.1.

⁴ M. Langton, [From Conflict to Cooperation](#), Minerals Council of Australia, Canberra, February 2015.

⁵ Department of Prime Minister and Cabinet, [Closing the Gap Report 2018](#), Australian Government, Canberra, 2018, p. 78.

and resulting ongoing disadvantage has meant that minerals development may have provided the first opportunity for economic participation in a private industry for many remote Indigenous communities.⁶

While land-related agreements can provide significant benefits, a range of complex and interrelated factors – socio-economic conditions, access to resources and support and fit-for-purpose policy frameworks and lack of active participation by Indigenous peoples in policy making - may act as barriers for Traditional Owners seeking to maximise economic outcomes from these opportunities. These factors may also affect how benefits are distributed within and between Indigenous communities.

Unlocking opportunities – policy directions

This submission draws on the minerals industry experience and external research and reviews to recommend policy reforms to facilitate greater Traditional Owner economic participation in Northern Australia. In doing so, it details the agreement making context and changing nature of engagement between the minerals industry and Traditional Owners.

Based on this experience, the MCA discusses challenges to greater economic engagement by Traditional Owners with a focus on socio-economic conditions, access to tailored support, resources and infrastructure and fit-for-purpose policy frameworks.

The MCA recommends the following reforms and government actions:

- Improved coordination between local, state/territory and Commonwealth governments while working in partnership with Traditional Owners and businesses to maximise economic development opportunities
- Continued support for forums that enable Traditional Owners from across Northern Australia to guide policy direction, development and implementation. Key forums include the Northern Australia Indigenous Reference Group and the Regional Implementation Committee of the Pilbara.
- Stable and sufficient funding for native title representative bodies and services providers, recognising the diverse needs and logistical realities associated with serving communities across vast regions
- Stable and sufficient funding for Prescribed Bodies Corporates (PBCs) to discharge statutory duties and meet increasing expectations for these entities to drive and support economic development activities
- Continued support for tailored governance and management training and resources for PBCs with a focus on enabling personnel to learn from other PBCs and develop peer-to-peer and collaborative networks
- Progress the Native Title Amendment Bill 2019 to secure practical improvements to the operation of the *Native Title Act 1993*
- Establishment of a new optional PBC Economic Vehicle Status designation to enable PBCs to support private business development while applying concessions available to organisations addressing disadvantage.

This submission should be read in conjunction with [The Next Frontier](#), the MCA's policy priorities to capitalise on the big data, high tech era of Australian mining.

⁶ Minerals Council of Australia, *Minerals Industry: Indigenous Economic Development Strategy*, MCA, Canberra, 2010, p. 4.

PARTNERS IN DEVELOPMENT AND OPPORTUNITY

- Land rights and native title regimes provide legal processes and requirements for consultation and negotiation with Traditional Owners regarding minerals development. Decades of engagement and agreement making has transformed relationships between minerals companies and Traditional Owners in Northern Australia.
- In addition to direct financial benefits enterprise development, employment, training and support for broader economic development are common features of contemporary minerals industry land-related agreements. Agreements are usually tailored to support Traditional Owners to achieve their aspirations and priorities.
- Significant investment and focus by the minerals industry, Traditional Owners, Indigenous organisations, governments and others has helped turn commitments into employment, training and education outcomes.

Agreement making context

Land rights and native title regimes provide legal processes and requirements for consultation and negotiation with Traditional Owners regarding land use. Much of the land on which minerals development occurs is covered by land rights regimes and native title and it is estimated there are approximately 2,000 land use agreements between Traditional Owners and minerals companies.⁷

In circumstances where an agreement is not required, many minerals companies and Traditional Owners have formalised relationships through voluntary agreements, memorandums of understanding other arrangements.⁸

Legal context

Land rights and native title regimes can trigger negotiation and engagement between Traditional Owners and minerals companies regarding land use. Agreements may be required by:

- The mining provisions of the *Aboriginal Land Rights Act (NT) 1976* which established statutory rights for Traditional Owners in the Northern Territory.⁹
- The Native Title Act establishes processes through which development can occur in areas where native title exists. Agreements between minerals companies and Traditional Owners under the *Native Title Act 1993* are often made under section 31 (the Right to Negotiate process).

The processes in which engagement and negotiation can occur are prescriptive, requiring a high standard of conduct and for negotiations to occur in good faith. The right to negotiate process established under the Native Title Act has been described as giving 'Indigenous parties a position in the market and the prospect of economic participation that had been previously denied.'¹⁰

The process and contents of agreements have been described as providing a mechanism to:

- Build relationships and guide future engagement
- Formally recognise Traditional Owner groups
- Define roles and responsibilities for delivery of particular commitments
- Negotiate actions, resourcing and support to improve social and economic outcomes, including in relation to economic participation in minerals development

⁷ T Bauman and L Glick (Eds), *The limits of change: Mabo and native title 20 years on*, AIATSIS Research Publications, Canberra, June 2012.

⁸ Langton, op. cit. p. 30.

⁹ SBS, [Aboriginal Land Rights Act \(Northern Territory\)](#), SBS, viewed 24 February 2019.

¹⁰ Langton, op. cit. p 27.

- Enable Traditional Owners to define their own aspirations and priorities and how they will achieve these goals
- Detail arrangements for protection of cultural heritage and environmental management and conservation.¹¹

The scope and complexity of agreements has grown over time as Traditional Owners and minerals companies have gained a deeper understanding and experience.¹²

Box 1: Why agreements matter

In 2016 Rio Tinto released *Why Agreements Matter* a guide for integrating community and social performance aspects into agreements with Indigenous peoples. In addition to case studies and examples, the guide includes important information about common elements of land use agreements relating to minerals development. It lists common elements of community agreements, including:

- Land access provisions and consent to agreed activities
- Financial benefits and participation and how these will be managed
- Economic development, employment and business opportunities
- Social, community and cultural support
- Agreed approaches to environment management
- Cultural heritage management protocols and approaches
- Governance and procedural arrangements including roles and responsibilities.

Source: Rio Tinto, [Why Agreements Matter](#), Rio Tinto, Australia, March 2016.

Voluntary partnerships and agreements

Voluntary agreements are agreements between minerals companies and Traditional Owners that, while not legally required, may formalise working relationships and joint commitments, obligations and processes. Types of voluntary agreements include partnership agreements, letters of intent and memorandums of understanding. Voluntary agreements may cover a range of activities, including consultation and engagement activities, environmental and cultural heritage management and protection, employment and enterprise, and social investment.

A changed relationship

Relationships between the minerals industry and Traditional Owners across Northern Australia have changed significantly over the past 40 years. Previously characterised by limited or insufficient engagement, the introduction of the Aboriginal Land Rights Act required minerals companies to consult and seek agreement with Traditional Owners about mining activity. Recognition of native title further transformed the relationship with the subsequent Native Title Act establishing processes for engaging with common law holders regarding minerals development.¹³

Early agreement making focused on benefit streams, environmental conservation and cultural protection. Over time agreements have expanded to be shaped around direct economic participation - largely through training, employment and enterprise - in minerals development activities.

Change was catalysed by recognition that for many remote Indigenous communities, especially across Northern Australia, minerals development provided access to previously unavailable or limited economic development opportunities. In some instances, historical and discriminatory laws, policies

¹¹ Langton, op. cit. pp. 28-29.

¹² Langton, op. cit. p. 32.

¹³ Langton, op. cit. p. 27.

and practices had severely limited opportunities for Indigenous people to meaningfully participate in economic activities, including minerals development.¹⁴

Senior Indigenous and minerals industry leaders were at the forefront of this change, working with governments and other groups to shift focus from benefit streams to improving socio-economic outcomes through employment and enterprise development.¹⁵

The 2010 Minerals Industry: Indigenous Economic Development Strategy articulated this shift. Developed in consultation with an Indigenous Leaders, MCA members, government representatives and other groups, the strategy noted that:

Economic participation and employment provides a pathway for Indigenous Australians to enjoy the same opportunities as other Australians ...

It is anticipated that by 2050, 50 per cent of the population in Northern Australia will be Indigenous. The level of both current and anticipated minerals industry activity in Northern Australia provides an incredible opportunity for creating wealth and economies that Indigenous people will benefit from if current barriers to their participation can be constructively and innovatively addressed.¹⁶

Principles to guide minerals industry support for Indigenous economic development were incorporated into the strategy, including to:

- Build the financial independence of Indigenous people, and contribute to the transition of some communities from welfare to economic participation
- Respect Indigenous cultural and heritage and contribute to the protection and strengthening of cultures
- Recognise and support choices by Indigenous Australians to stay in home communities or be more mobile
- Support positive relationships between Traditional Owners, Indigenous communities, the minerals sector and other industries and groups.¹⁷

Mundine and Henderson have charted the change from limited engagement to benefit-sharing, followed by economic participation and increasingly partnership arrangements:

The minerals industry was the first industry that needed to engage with Indigenous Australians in order to do business in Australia. Some of the engagement has been negative, even fraught, and some has been positive. As a result, the industry has learnt a lot about what to do and what not to do. It has developed deep relationships with Indigenous nations, leadership, representative organisations and individuals across the country and strong cultural understanding.¹⁸

¹⁴ Department of Industry, Innovation and Science, [The Social Context](#), Australian Government, viewed 11 March 2019.

¹⁵ M. Langton, op. cit. 7.

¹⁶ Minerals Council of Australia, *Minerals Industry: Economic Development Strategy*, op. cit. p. 14.

¹⁷ *ibid*, p. 7-8.

¹⁸ N. Mundine & E. Henderson, [Crafting the future: Minerals industry engagement with Indigenous Australia](#), Minerals Council of Australia, Canberra, 2017, p. 27.

Box 2: 20 years of socio-economic progress

In 2015 Professor Marcia Langton reviewed the changing nature of relationships between the minerals industry in the monograph from *Conflict to Cooperation*.

The introduction of the Mabo decision and the NTA in the early 1990s catalysed parts of the minerals industry to depart from 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 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.

Source: M. Langton, [From Conflict to Cooperation: Transformations and challenges in the engagement between the Australian minerals industry and Australian Indigenous peoples](#), Minerals Council of Australia, Canberra, February 2015, p. 17.

Contemporary Indigenous economic development programs

Minerals companies and Traditional Owners work closely together to meet commitments within agreements. To meet commitments, many MCA members have established Indigenous economic development policies and programs to facilitate economic participation. Facilitating Indigenous economic development, especially in regions where disadvantage is high, also requires cooperation and involvement by other partners, including governments, environmental and community organisations, education providers and other entities.

The nature of company and collaborative economic development programs and/or initiatives varies depending on the mining activity, local aspirations and priorities, partner engagement and the socio-economic context. These initiatives are important to assist Traditional Owners and Indigenous communities to access opportunities in Northern Australia. Common initiatives within economic development programs include:

- Specialised employment and training initiatives to recruit, retain and support career advancement of Indigenous employees
- Business development to support Indigenous business owners and entrepreneurs to secure supply and procurement contracts across the mining supply chain
- Assistance to enable Traditional Owners and Traditional Owner organisations (such as Prescribed Bodies Corporate) to develop specialist governance and strategic management skills necessary to discharge statutory duties and unlock enterprise development opportunities
- Social investment to address social determinants and improve quality of life and employment outcomes for Traditional Owners. Investments may include financial and in-kind support to support education outcomes, health improvements and cultural activities.

An overview of common aspects of Indigenous economic development initiatives are provided in Box 3.

Box 3: Common aspects for Indigenous economic development program initiatives

Business development	<ul style="list-style-type: none"> • Targeted workshops to raise awareness of enterprise opportunities • Pre-qualification assistance and coaching • Access to business development assistance • Preferential tendering arrangements, where appropriate • Access to business financing support • Encouraging or facilitating joint venture arrangements between Indigenous businesses and specialist suppliers to create new opportunities
Employment and training	<ul style="list-style-type: none"> • Targeted activities to identify potential and interested job candidates in consultation with Traditional Owner representatives • Job-readiness and pre-employment pathway programs • On-site mentoring and support for new and ongoing employees and contractors. This can include coaching as well as literacy and numeracy support, if needed. • Career advancement support, including access to traineeships, apprenticeships and university cadetships • Cultural leave entitlements • Transportation support to enable employees to travel to and from work, enabling Indigenous employees to live on country if they wish
Governance development	<ul style="list-style-type: none"> • Funding and support for Traditional Owners with director responsibilities to participate in governance training • Support for PBCs and other Indigenous organisations to undertake community and business planning activities • Assist PBCs in addressing and complying with agreement commitments, where appropriate • Direct support and assistance as requested and appropriate
Long-term regional development	<ul style="list-style-type: none"> • Engagement in and support for regional economic development programs
Social investment	<ul style="list-style-type: none"> • Partnerships with Traditional Owner and Indigenous organisations and groups to address social determinants, including barriers to employment

Further detail about these about these initiatives and outcomes is provided below.

Working together – employment and training opportunities

Decades of focus has established the minerals sector as one of Australia’s leading employers of Indigenous people, particularly in regional and remote Australia. In 2016, the industry employed 6,599 Indigenous Australians – 2.5 times higher than in 2006. The Closing the Gap report confirmed ‘mining jobs are providing crucial opportunities for employment in mining regions.’¹⁹

¹⁹ Department of Prime Minister and Cabinet, [Closing the Gap 2018](#), Australian Government, Canberra, 2018.

Partnerships between minerals companies and Traditional Owner groups and organisations, particularly in regions and communities where low educational achievement can create barriers to workforce participation, have been critical to achieving these outcomes. Work readiness and skills development assistance is often provided and can include:

- Skills identification processes to identify Indigenous people that may wish to join the minerals workforce. Companies often work with Traditional Owner representatives and education providers to identify potential candidates and advertise vacancies.
- Initiatives to assist candidates that may need additional support to prepare for the minerals workforce. Literacy and numeracy support, financial education and foundation mining, safety and health training can form part of these programs.
- Career development support including traineeship, apprenticeship and university cadetship and scholarship opportunities for Traditional Owners and Indigenous people
- On-site training to support skills development for operational and other roles
- Mentorship and coaching by Indigenous and appropriate non-Indigenous employees to assist with the transition to the minerals workforce.
- Cultural leave entitlements to support involvement in cultural and community activities.

Increasingly, focus is increasingly moving to supporting Indigenous people to upskill or pursue careers in science, technology, engineering and mathematics.

Box 4: Glencore's Indigenous Employment Program

Glencore owns and operates Mount Isa Mines, an operation which includes four zinc and copper mines in northwest Queensland. Mount Isa Mines fully funds a \$1.3 million Indigenous Employment Program that supports Indigenous Australians to gain work ready skills and undertake career and personal development.

The program includes two stages: the first stage includes a 12 week work-ready course to assist participants to prepare for the mining workforce. The program includes mentorship and support for participants during and outside of work hours.

Participants that successfully complete the first stage may be selected to complete the second stage of the program. The second stage involves a mining program to assist participants to gain entry-level operational skills.

Program graduates then have the opportunity to progress into fulltime employment with Glencore or one of its partner organisations.

Source: Mount Isa Mines, [Indigenous Employment Program](#), Glencore, viewed 24 February 2019.

Growing the Indigenous business sector together

In Northern Australia, some agreements include commitments by minerals companies to support Indigenous business and enterprise development. Commitments can include opportunities for preferential tendering arrangements, support for business and enterprise development and other actions to maximise business opportunities.

These arrangements meant the minerals industry was one of the first – if not the first - sectors to recognise the potential of, and work with Indigenous business owners and entrepreneurs, to grow the Indigenous business sector. Decades of collaboration and partnership have resulted in strong business partnerships with Indigenous businesses supplying high quality mining equipment, technology and services (METS). METS goods and services range from construction and maintenance, environmental services and labour hire firms.

The strength of this partnership is demonstrated by the increase in Indigenous business incomes during the minerals investment phase.²⁰ PwC estimate the economic value range of Indigenous enterprises servicing the mining industry as between \$200 million and \$350 million (real 2016 terms).²¹ This does not include enterprises that may be classified under other business types.

Box 5: A vibrant Indigenous business sector

BHP has a strong commitment to supporting Indigenous businesses to develop, grow and diversify. The company adopts tailored approaches to facilitating these opportunities for Indigenous entrepreneurs and business owners.

The BHP Indigenous Business Support program provides a range of support to Pilbara Traditional Owner businesses. Indigenous business owners registered with Pilbara native title claimants from areas in which BHP Iron operates can access the service.

Traditional Owners can access free, expert financial, commercial and strategic advice to support business development, including assistance with business plans, business finance issues, identifying business risks and advising on mitigation strategies, reviewing marketing plans and business structure advice.

More than 120 businesses have accessed the service since its establishment in 2011.

Source: BHP, [Reconciliation Action Plan 2017-2022](#), BHP, Melbourne, 2017.

Governance and strategic planning

Many MCA member companies support, or have provided support, for Indigenous organisations and businesses and community groups to participate in governance training and education.

Innovative products have been developed with Traditional Owners to personnel with governance and management responsibilities to enhance these skills. For example, the Memorandum of Understanding to Increase Indigenous Participation in the Queensland Resources Sector – a collaborative initiative between the Queensland Resources Council and Queensland Government – has a tailored program assisting Traditional Owners with agreements with resources companies to enhance governance and management capabilities (see Box 5).

²⁰ Department of Prime Minister and Cabinet, [Indigenous Business Sector Strategy](#), Australian Government, Canberra, 2015, p. 22.

²¹ PwC, [The contribution of the Indigenous business sector](#), PwC, Australia, April 2018, p. 15.

Box 6: Traditional Owner Governance for Prosperity Program

The Traditional Owner Governance for Prosperity Program is a tailored initiative to support Traditional Owner groups to plan and build capacity to achieve their long-term aspirations. It specifically assists Traditional Owners with agreements with resources companies in Queensland. In Northern Australia, training has been held in Townsville and is also planned for Mount Isa.

Developed and delivered through the *Memorandum of Understanding to Increase Indigenous Participation in the Queensland Resources Sector*, the program involves a mix of group work and presentations from expert speakers and Traditional Owners from across Australia.

Key aspects of the program include:

- Developing a shared vision and long-term strategy for the whole Traditional Owner group
- Structuring Traditional Owner corporations
- Options to manage native title payments
- How to obtain good advice and manage advisers and service providers
- Managing agreements with resources companies.

A key feature of the program involves the use of volunteer 'Governance Friends' to provide hands-on support, coaching and facilitation for each Traditional Owner group. Each Traditional Owner group develops a short capacity-building plan for follow up after the program. Emphasis is placed on enabling participants to learn, share and network with other Traditional Owner groups that have established effective governance mechanisms that balance traditional governance and decision-making structures with the need to operate in a Western corporate and legal environment.

The MoU is a partnership between the Queensland Resources Council and Queensland Government. Sponsorship for the program is provided by resources companies with *pro bono* support from Indigenous Community Volunteers and volunteer 'Governance Friends'.

Long-term regional development

The importance of regional development approaches to facilitate greater economic participation by Traditional Owners is well-recognised by the minerals industry. Specifically, the benefits associated with mining-related land use agreements can be amplified when part of a broader, consistent and coordinated economic development strategy. It also recognises the need to distribute socio-economic benefits beyond those directly engaged in minerals development activities.

Companies are working with Traditional Owners, governments and others to progress a range of place-based approaches that seek to maximise outcomes through improved coordination, cooperation and planning. Examples of forums and approaches facilitating greater coordination include the:

- Regional Implementation Committee comprised of representatives from eight Traditional Owner groups and Rio Tinto focusses on addressing joint commitments and aspirations aligned to 7 Regional Standards, including employment and training and business development and contracting
- Hedland Collective is a group of more than 50 organisations seeking to work collectively to strengthen employment, training and business development, coordinate social services to provide support for residents and support Port Hedland's vibrant community. Focused on collective impact, it was initially instigated by BHP. This initiative includes Indigenous organisations and extends to local government, non-government organisations, community services providers and resources companies.²²

²² BHP, [Hedland Collective: A collaborative focus on community enhancement](#), BHP, viewed 11 March 2019.

- Newmont, Central Land Council and Yapa 10 year plan to work together to achieve better outcomes for Yapa (See Box 8).

Box 7: Regional Implementation Committee – working together in the Pilbara

For more than 20 years Rio Tinto has engaged in agreement making with Traditional Owner groups of the Pilbara. For Traditional Owners these agreements provide recognition of native title rights and interests, while for Rio Tinto these agreements secure its ongoing operations in this region of Western Australia.

Over time this has led to ‘country wide’ agreements covering the traditional lands of the Banjima, Eastern Guruma, Kuruma Marthudunera, Ngarlawangga, Ngarluma, Nyiyaparli, Puutu Kunti Kurrama and Pinikura, Yinhawangka and Yindjibarndi Traditional Owner groups.

Following the execution of Claim Wide Participation Agreements, these Traditional Owner groups were able to opt into a Regional Framework Deed. The purpose of the deed is to support the improved wellbeing of Pilbara Aboriginal People, particularly Traditional Owners, and provides non-monetary assistance to address joint commitments aligned to seven regional standards that cover:

- Aboriginal employment and training
- Aboriginal business development and contracting
- Cultural heritage management
- Environmental management
- Life of mine planning
- Land access
- Cultural awareness training.

The deed provided an opportunity for Rio Tinto and Traditional Owner groups to establish a regional forum to address particular commitments around employment, training and business development. The forum, known as the Regional Implementation Committee (RIC), was convened for the first time in April 2016. The Traditional Owner groups of the RIC are Banjima, Kuruma Marthudunera, Ngarlawangga, Ngarluma, Nyiyaparli, Puutu Kunti Kurrama and Pinikura, Yinhawangka and Yindjibarndi.

The partnership between Rio Tinto and Pilbara Aboriginal people has helped secure important outcomes for Indigenous people. Key outcomes for 2017 included:

- 967 Indigenous employees were employed in Rio Tinto’s iron ore business – representing over 8 per cent of its workforce
- More than 39 per cent of Rio Tinto’s expenditure in the Pilbara was with Pilbara Aboriginal businesses and their joint venture partners
- Around 96 per cent of Rio Tinto’s workforce had completed its leading practice cultural awareness training.

Source: Rio Tinto, [Land Agreements](#), Rio Tinto, viewed 11 March 2019.

CHALLENGES TO GREATER ECONOMIC PARTICIPATION

- Across Northern Australia benefits derived from mining-related agreements have provided Traditional Owners with access to important economic opportunities. However complex interrelated factors can prevent Traditional Owners and Indigenous organisations from these opportunities.
- Social-economic conditions, particularly in remote Indigenous communities, inadequate access to tailored support, resource constraints and inflexible policy frameworks are interrelated challenges that create barriers to participation.

Across Northern Australia benefits derived from mining-related agreements have provided access to important economic opportunities. For many Traditional Owners and Indigenous communities, these opportunities have led to improved employment, education and health outcomes. Many Traditional Owner groups have also secured significant assets from native title monies associated with these agreements.

However the minerals industry has observed a complex and interrelated range of factors that may prevent Traditional Owners and Indigenous organisations from deriving further benefits from native title and land rights and interests. These challenges can also affect how economic opportunities are distributed within Indigenous communities and within and between Indigenous groups.

This section provides a summary of key challenges to greater economic participation: socio-economic conditions, inadequate access to tailored support and resource constraints and inflexible policy frameworks.

Socio-economic conditions

The impact of historical exclusion

Various authors describe how historical policies and practices and continued disadvantage may prevent some Traditional Owners from further economic participation. The Indigenous Business Sector Strategy describes how these factors can create barriers to economic participation for some Traditional Owners and Indigenous communities. The strategy notes that:

Aboriginal and Torres Strait Islander people face some unique barriers to participate in the economy. Historic economic marginalisation, together with low intergenerational wealth transfer, and the ongoing impact of poor education, employment and health outcomes mean that Aboriginal and Torres Strait Islander people require additional business support, access to information and access to capital to grow and establish their businesses.

The strategy recognises challenges are particularly significant across Northern Australia. It states:

These barriers are compounded in remote Australia, where additional barriers are faced that hinder business development and opportunity. Businesses in remote and very remote communities have limited access to essential infrastructure, skilled labor, business networks and fit-for-purpose business advice. There are also fundamental barriers such as lower levels of education, and limited access to business leaders to model and learn from.²³

Remote communities near mining activity

The Leading Practice Sustainable Development Program handbook *Working with Indigenous communities* describes how socio-economic conditions affect social structures and standards of living in remote communities. The handbook notes that many Indigenous communities neighbouring minerals development are affected by:

²³ Department of Prime Minister and Cabinet, [Indigenous Business Sector Strategy](#), Australian Government, Canberra, 2015, p. 4.

- Higher levels of part-time employment and reliance on government employment programs
- Poorer quality housing with often higher occupancy rates²⁴
- Gaps in education, schooling and post-school qualifications.²⁵

The handbook describes how these factors can affect the ability of individuals to participate in economic development. For example, an individual experiencing poor health and with limited employment experience may be unsuitable to join the minerals workforce despite the availability of work readiness programs and other support. This can create uneven outcomes between those that can and cannot participate in development activities.

Lack of adequate and tailored resources and support

Native title bodies and services organisations

Native title representative bodies and services providers play an essential role in native title claims, agreement making and community development. However these organisations often do not receive adequate funding to enable them to represent diverse Traditional Owner groups and Indigenous communities located over vast geographic areas.

Prescribed Bodies Corporate

Native title holders are required to establish a PBC following a native title determination. Incorporated under the *Corporations (Aboriginal and Torres Strait Islanders) Act 2006* and registered with the National Native Title Tribunal, PBCs are required to manage common law holders' native title rights and interests in relation to a range of matters. This includes in relation to land use proposals, native title decisions, compensation matters and native title applications. PBCs may also be required to discharge other statutory responsibilities regarding biodiversity management, land use planning and cultural heritage.²⁶ Of the approximately 190 PBCs, 141 are located in Northern Australia.

PBCs are increasingly expected by native title holders, governments and other parties, to engage in and unlock economic and social development opportunities arising from native title rights and interests. This can reflect the desires and aspirations of many Traditional Owners for self-determination and expectations that may have arisen during the claim process.²⁷

Many PBCs require additional funding to employ staff and engage external expertise to assist to discharge these studies and undertake detailed economic development planning. Need is greatest for PBCs without income from land-related agreements or economic development activities.

Governance and management development

Directors, executives and officers within Traditional Owner organisations, including PBCs, have significant legal, financial and business responsibilities. At times, directors may have responsibilities across a number of organisations in addition to full-time work or other obligations. In Northern Australia, logistical realities associated with distance – even in major regional centres – can create additional challenges for these personnel.

Cost effective, tailored and quality governance and management training and ongoing support are needed to enable personnel to effectively discharge these responsibilities. The need for training and support can be greater in regions, including those in Northern Australia, affected by historical economic exclusion and continued socio-economic disadvantage.

In 2014, the Memorandum to Increase Indigenous Participation in the Queensland Resources Sector explored governance and management skills required by Traditional Owner organisations, current

²⁴ Department of Industry, [Levels of Indigenous Disadvantage](#), Australian Government, viewed 24 February 2019.

²⁵ Department of Industry, [Indigenous education and employment](#), Australian Government, viewed 29 February 2019.

²⁶ Australian Institute of Aboriginal and Torres Strait Islander Studies, [About PBCs](#), AIATSIS, viewed 24 February 2019.

²⁷ M. Limerick, *Governance and management capacity-building for Traditional Owner organisations*, MoU to Increase Indigenous Participation in the Queensland Resources Sector, Brisbane, July 2014, p. 7.

training offerings and the potential for a targeted response. The paper noted that existing training offerings were often expensive and required travel to and accommodation in major cities. Few options were tailored to the needs of Traditional Owner organisations, such as PBCs.²⁸

Some organisations may also benefit from being able to engage trusted experts to support strategic planning and organisational development activities. However, it may be difficult for PBCs without significant income streams to secure this assistance.

Professional services providing support for Traditional Owner organisations

There is often much focus on the need for Traditional Owner organisations to build governance and management capability. Equally important is that professional services firms advising these organisations have sufficient cultural capability and appropriate expertise to do so.

Firms providing expert advice must understand the complex statutory responsibilities of Traditional Owner organisations as well as the socio-economic and historical context in which these organisations operate.

Box 8: A 10 year plan to work together for better outcomes for Yapa

Newmont has operated the Granites and Dead Bullock Soak mines on the lands of the Warlpiri people (Yapa) since 2002. The Northern Territory's Tanami Desert is one of Australia's most remote areas, located approximately 500 kilometres north-west of Alice Springs.

Newmont has an agreement with Yapa people as required under the Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976. Negotiations in 2003 led to the consolidation of various mining and exploration agreements into a single agreement, which committed Newmont to provide employment and training opportunities and increased royalty payments to support the Warlpiri Education and Training Trust. WETT provides support for early childhood care, secondary schooling and language and culture, mostly in the Yuendumu, Lajamanu, Willowra and Nyirripi communities. WETT has received \$22 million since 2005.

The Central Land Council (CLC) monitors implementation of the agreement on behalf of the Yapa people.

In 2016, Newmont, CLC and Yapa began a one year process to develop a shared 10 year strategic plan to help them work together to achieve better outcomes for Yapa. Core to the process was recognition that by all parties that, while the agreement and existing relationships had delivered some good outcomes, more could be achieved by focusing on what was most important to Yapa.

Independently facilitated workshops involving key personnel, detailed discussions with Yapa and consultation with a range of consultative and community groups informed a draft plan. The plan was finalised at a workshop in November 2016 before it was endorsed by Traditional Owners, CLC regional delegates and Newmont in 2017.

Three shared priorities are identified in the plan: a stronger voice Yapa, Yapa education and Yapa employment. The plan also establishes a commitment for Newmont, Yapa and CLC to develop annual priority actions and an annual action plan.

Source: Austrade, [Case studies](#), Australian Government, viewed 11 March 2019.

Inflexible policy frameworks

Asset management structures

Payments associated with land-related agreements, including payments relating to minerals development, have assisted some Indigenous organisations to accrue significant assets. However the regulatory framework provides limited flexibility for effective management of these assets.

²⁸ M. Limerick, op. cit.

Over almost a decade the MCA has supported the National Native Title Council (NNTC) and other parties to understand and propose solutions to factors inhibiting Traditional Owners from utilising native title monies in a way that supports long-term economic development.

In March 2018, the NNTC, supported by MCA, convened a seminar for PBC, Native Title Representative Bodies and Service Providers, minerals companies, legal, academia and professional services representatives to discuss current impediments. Participants identified a number of factors that impede maximisation of economic development opportunities from native title monies. Factors included:

- Native title holders with less extensive resources are more likely to rely on simpler charitable trust structures, such as acquiring Public Benevolent Institution (PBI) status. While these structures may reduce taxation liability, this status limits the scope of activities to which native title monies can be used.
- The administrative requirements associated with asset management vehicles being complex and difficult for native title organisations with limited resources to manage.
- The need for improved training, resources and peer-to-peer learning to enable native title organisations to understand best practice and different design and operating models.²⁹

²⁹ National Native Title Council, *Structural encouragement of economic development activities by Native Title Holders*, NNTC, Melbourne, March 2019, p. 2.

POLICY RECOMMENDATIONS

- These policy recommendations are informed by the minerals industry experience, research collaborative initiatives to identify challenges to greater Traditional Owner participation in minerals development.
- Involvement and leadership by Traditional Owners in developing policy regarding Indigenous economic participation is essential to addressing challenges and maximising opportunities for Traditional Owner participation in Northern Australia development.
- Policy priorities include additional and long-term support to assist PBCs to discharge statutory duties and unlock economic development opportunities and adoption of a proposal to establish a new PBC Economic Vehicle Status designation. The PBC-EVS is a fit-for-purpose, optional vehicle that could enable PBCs to utilise native title monies for enterprise development activities.

Guiding principles

The Closing the Gap initiative has focused resources and attention towards addressing the significant gap in socio-economic outcomes between Indigenous and non-Indigenous Australians. The MCA has supported the intent of Closing the Gap since its inception.³⁰

The minerals industry recognises the importance of strengths-based and community-led initiatives to working with Traditional Owners to achieve their aspirations and priorities. Accordingly, the minerals industry supports the Implementation Principles endorsed by COAG to ensure Aboriginal and Torres Strait Islander peoples are partners in initiatives intended to be involved in development, delivery and review of programs and policies affecting their communities.³¹

There is opportunity for these principles to further inform the Australian Government's approach to working with Traditional Owners to address challenges and maximise opportunities for economic participation in Northern Australian development.

Northern Australia Indigenous Reference Group

The MCA understands the Northern Australia Indigenous Reference Group has provided important advice and guidance to the Australian Government on matters relating to Traditional Owner participation in the economic development of the region. It is important that this group continues to have a lead role in policy direction and development, and providing opportunities for other Indigenous people to provide feedback and input into policy decisions.³²

Governance and representation

Native title representative bodies and services providers

Adequate and stable funding and appropriate support from governments are necessary for native title representative bodies and services providers to facilitate native title claims, agreement making and community development. It is critical that these bodies are resourced to deliver these services, particularly when assisting communities to transition to self-governance arrangements for the management of native title and land-related benefits.³³ Adequate resourcing is especially important for bodies and services providers in Northern Australia which service communities across vast geographic regions.

³⁰ B. Pearson, *New Indigenous strategy will help close the gap*, Minerals Council of Australia, 11 November 2015.

³¹ Australian Government, [Communique](#), Council of Australian Governments, Adelaide, 12 December 2018.

³² Department of Industry, Innovation and Science, [Northern Australia Advisory Groups](#), Australian Government, viewed 11 March 2019.

³³ Minerals Council of Australia, *Indigenous Economic Development Communique*, MCA, Canberra, June 2016, p.2.

The MCA supported the Australian Government's decision to increase funding for these bodies. Future funding models should recognise the need and benefits of appropriately resourced native title representative bodies and services providers to ensuring the participation of Indigenous people in economic development decisions and activities.

Prescribed Bodies Corporates

As noted, PBCs are increasingly expected by native title holders – as well as governments and other parties – to engage in and unlock economic and social development opportunities while discharging statutory roles. Despite undertaking important roles that provide a public benefit, many PBCs are not sufficiently resourced to manage these responsibilities.

The complex and growing responsibilities of PBCs require a stable and sufficient funding base and supplementary support. Funding arrangements could recognise differences in economic development and income streams between PBCs as well as the statutory responsibilities of these organisations.

Tailored training and support

Consistent with its support for supplementary assistance to PBCs, the MCA supports the PBC Capacity Building Program. An action identified in the Northern Australia white paper, the program included \$20.4 million of funding over four years for development and delivery of tailored governance and management training programs.³⁴ The MCA understands several innovative and tailored training programs have been developed by successful funding applicants, including a program led by the NNTC in partnership with RMIT University, University of Melbourne and the Australian Institute of Aboriginal and Torres Strait Islander Studies.³⁵

Extending the program would assist more PBCs to access tailored training and development support. It is important future iterations of the program:

- Are widely advertised to encourage and support funding applications
- Ensure training options cover vocational training and tertiary education
- Consider alternate delivery options, including online training and support. These may be particularly helpful for PBC personnel across Northern Australia.

Peer-to-peer support

It is essential that PBC personnel have easy access to up-to-date best practice tools, templates and resources to enable them to benchmark practice, continuously improve and consider a variety of governance and management options.

The Native Title website managed by AITSIS with funding from the Department of Prime Minister and Cabinet provides PBCs and native title holders with access to such information. In addition, the website provides important information about funding opportunities and opportunities to participate in legislative reform processes.

The MCA supports continued funding for the website and other initiatives to provide PBCs to access to appropriate tools and resources.³⁶ There may be opportunities for industries, such as the minerals industry, to contribute to the website and other initiatives in its next phase.

Asset management structures

A range of financial vehicles are available for management of payments arising from Native Title. While some work effectively, the Northern Australia white paper acknowledges some vehicles are

³⁴ Department of Prime Minister and Cabinet, [Capacity Building for Native Title Corporations](#), Australian Government, viewed 25 February 2019.

³⁵ National Native Title Council, [NNTC welcomes commitment to Native Title training programs](#), NNTC, Melbourne, 17 March 2018.

³⁶ Minerals Council of Australia, *Indigenous Economic Development Communique*, op. cit. p.2.

complex, costly and opaque to manage.³⁷ The report also notes, while common, the use of charitable trusts to manage these monies places limits on how these funds can be used and embeds notions that native title monies are charitable funds. Together, this can inhibit or discourage Traditional Owner organisations from realising greater intergenerational economic development from native title payments.

To address these challenges, the MCA supported advocacy by the NNTC and other parties for establishment of an Indigenous Community Development Corporation (ICDC) designation. The aim of this long-standing proposal was to provide an appropriate legal structure that would enable communities to invest in both charitable and enterprise opportunities.³⁸

In 2018 NNTC, supported by MCA, University of Western Australia and Ashurst undertook a detailed review of a previous proposal for establishment of an Indigenous Community Development Corporation with consideration of current law, new research and emerging practice.

This led to the PBC Economic Vehicle Status proposal – a proposed new designation that would enable PBCs to undertake a broader range of economic development activities. The designation would also enable PBCs to access tax concessions that may apply to organisations seeking to address disadvantage. PBC EVS key elements and benefits are outlined in Box 9.

Known as the Future Generations Reform, the aim of the PBC EVS is to provide PBCs with a new, tailored and economic development focused option to support intergenerational wealth creation and prosperity. Creation of the new designation could be achieved through targeted reform of the Corporations (Aboriginal and Torres Strait Islanders) Act 2006, its regulations and associated legislation.

Box 9: Key elements and benefits of proposed PBC Economic Vehicle Status designation

<p>A clear economic development objective</p>	<p>A clear focus on economic development to break away from notions that native title monies are charitable welfare (by removing need to establish charitable trust or similar entity)</p> <p>Recognise native title monies are an Indigenous community's opportunity to promote private wealth and prosperity for current and future generations</p>
<p>Position for future generations</p>	<p>Enable existing funds in legacy trust structures to be rolled over to the PBC EVS vehicle for use in economic development activities</p>
<p>Finance new businesses</p>	<p>Enable PBCs to provide finance to native title holders to establish private businesses – an option not available for charities</p>
<p>Standard concessions</p>	<p>Provide tax concessions for entities focused on address economic disadvantage for Indigenous Australians, including fringe benefits tax exemption</p> <p>Ensure grants and other distributions by PBC-EVS that encourage economic development are not taxed in the hands of native title recipients by:</p> <ul style="list-style-type: none"> • Providing tax exemptions for income on invested native title monies and allow tax exempt accumulation of income without being restricted by being a charity • Maintaining equivalent state tax concessions (pay roll, land tax, duties and rates) to those currently accessed by PBCs that are charities

³⁷ Department of Industry, [Our North, Our Future: White Paper on Developing Northern Australia](#), Australian Government, Canberra, 2015, p. 26.

³⁸ Minerals Council of Australia, *Indigenous Economic Development Communiqué*, op. cit. p.3.

Consistent regulations	Be regulated by the Office of the Registrar of Indigenous Organisations under the CATSI Act in line with other Indigenous organisations
Governance and decision-making	<p>Enable PBCs to make decisions regarding asset management that unlock economic opportunities</p> <p>Include new reporting and governance requirements that encourage transparency and accountability (details to be developed during consultation)</p>

Fit-for-purpose legislative framework

Practical reforms with broad support

With much of the land on which minerals development occurs covered by native title the minerals industry is an active participant in the native title system. Accordingly, the MCA has been an active participant in various reviews seeking to progress common sense reforms to improve practical operation of the Native Title Act. The MCA's approach to reform is guided by the principle that a stable and practical native system delivering shared benefits provides investment and operational certainty for all stakeholders.

From late 2017, the MCA participated in a robust process led by the Commonwealth Attorney-General's Department and supported by the Department of Prime Minister and Cabinet on a Native Title reform package drawing on recommendations from past reviews. The extended process included extensive engagement with the native title sector, state and territory governments, minerals industry, agricultural sector and other parties to identify, discuss and refine agreed priority reforms.

This collaborative process resulted in the Native Title Amendment Bill 2019, a balanced package of common sense reforms that is broadly supported by most stakeholders. Key reforms include:

- Clarifying the duties of the applicant, enable the applicant to determine their own decision-making processes and streamline processes for replacement of a member of the applicant
- Allowing body corporate ILUAs over areas where native title has been extinguished
- Creating a public record noting the existence of section 31 and ancillary agreements (not the contents of this agreement). Information on the public record would mirror information on the ILUA register without the same legal effect
- Empowering the NNTT to extend access to dispute resolution assistance to Registered Native Title Bodies Corporate and common law holders
- Mirroring the Native Title Amendment (ILUA) Bill 2017 to validate section 31 agreements that could potentially be affected by the McGlade decision.

While not specific to Northern Australia, progressing these broadly supported reforms would address key recommendations from major reviews over the past decade.

Consultation and consent

Mirroring international developments, in 2005 the MCA began consultation to understand the application of the principles of free, prior and informed consent in the Australian context. MCA drew on this engagement and research to contribute to drafting of the ICMM's 2008 Position Statement on Indigenous Peoples.

In 2013 the MCA expanded its efforts to understand Free Prior and Informed Consent (FPIC) the Australian context. These efforts included workshops and consultation sessions with Indigenous organisations, civil society and members to discuss the Australian legislative framework and local

needs, priorities and perspectives. The MCA position statement on the implementation of FPIC in Australia is a product of this work.

Endorsed in 2014, the MCA position statement recognises FPIC as a process linked to the right for Indigenous communities and peoples to develop development priorities and strategies associated with their lands. Importantly, the statement recognises FPIC's foundation in effective community engagement to achieve mutually beneficial outcomes.³⁹

The statement confirms that the minerals industry supports the application of FPIC in Australia encompassing four core principles:

- It applies to the land connected to Indigenous people in recognising their rights, interests and special connections to the lands and waters where mining development involving significant impacts on those people may occur
- The emphasis of companies in applying the concept of FPIC should be on the implementation of genuine engagement to seek to achieve consent in the form of land use agreements
- Minerals ownership in Australia is vested with the Crown and accordingly the state reserves the final right of veto
- The Native Title Act and Aboriginal Land Rights Act effectively provide the Australian Government's requirements for implementing FPIC and these laws (and other similar state based laws) establish a framework in the Australian context to determine the circumstances when agreement should be sought, from whom, and the process to be used.⁴⁰

MCA member companies apply the position statement as the foundation for their own policies and procedures regarding FPIC.

³⁹ Minerals Council of Australia, *Position Statement – Implementation of free, prior and informed consent in Australia*, MCA, Canberra 2014, p.1.

⁴⁰ Minerals Council of Australia, *Indigenous Economic Development Communique*, op. cit. p.2.