



Australian Government



WORKING WITH INDIGENOUS COMMUNITIES

Leading Practice Sustainable Development Program for the Mining Industry

September 2016



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Support for the LPSDP was provided by the Australian aid program administered by the Department of Foreign Affairs and Trade due to the reports' value in providing practical guidance and case studies for use and application in developing countries.

Cover image: Taken in September 2013 by Darren Moncrieff of the Northern Land Council. The photograph captures the then NT Minister for Mines and Energy, Willem Westra van Holthe, with traditional owners looking out over Hanrahan's Creek near Redbank Mine. The traditional owners are, from left, William Davey, Wilton Timothy and John Clarke.

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ACKNOWLEDGEMENTS

The Leading Practice Sustainable Development Program is managed by a steering committee chaired by the Australian Government Department of Industry, Innovation and Science. The 17 themes in the program were developed by working groups of government, industry, research, academic and community representatives. The leading practice handbooks could not have been completed without the cooperation and active participation of all working group members.

Dr Howard Smith, Aboriginal Community Liaison specialist of HDS Technical Management and Consulting, gratefully acknowledges and thanks the following contributors who participated in the drafting of the 2016 *Working with Indigenous communities* handbook:

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FOREWORD

The *Leading Practice Sustainable Development Program for the Mining Industry* series of handbooks has been produced to share Australia's world-leading experience and expertise in mine management and planning. The handbooks provide practical guidance on environmental, economic and social aspects through all phases of mineral extraction, from exploration to mine construction, operation and closure.

Australia is a world leader in mining, and our national expertise has been used to ensure that these handbooks provide contemporary and useful guidance on leading practice.

Australia's Department of Industry, Innovation and Science has provided technical management and coordination for the handbooks in cooperation with private industry and state government partners. Australia's overseas aid program, managed by the Department of Foreign Affairs and Trade, has co-funded the updating of the handbooks in recognition of the central role of the mining sector in driving economic growth and reducing poverty.

Mining is a global industry, and Australian companies are active investors and explorers in nearly all mining provinces around the world. The Australian Government recognises that a better mining industry means more growth, jobs, investment and trade, and that these benefits should flow through to higher living standards for all.

A strong commitment to leading practice in sustainable development is critical for mining excellence. Applying leading practice enables companies to deliver enduring value, maintain their reputation for quality in a competitive investment climate, and ensure the strong support of host communities and governments. Understanding leading practice is also essential to manage risks and ensure that the mining industry delivers its full potential.

These handbooks are designed to provide mine operators, communities and regulators with essential information. They contain case studies to assist all sectors of the mining industry, within and beyond the requirements set by legislation.

We recommend these *leading practice* handbooks to you and hope that you will find them of practical use.



Senator the Hon Matt Canavan

Minister for Resources and Northern
Australia



The Hon Julie Bishop MP

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1.0 INTRODUCTION

Community sustainability and resilience are two ideals that have evolved from the wider concept of corporate social responsibility. In Australia, around 60% of mining projects are located in close proximity to Indigenous communities, making those companies well placed to assist with the development of resilience and sustainability within those communities while meeting some of their own corporate social responsibilities.

This handbook focuses on how the mining industry can work with Indigenous communities to contribute to improving present-day standards of living, generate resilience and create sustainable outcomes for long-term community survival without compromising industry operations. It does not and cannot provide absolute answers for all situations, but demonstrates some of the current leading practices that the Australian mining industry has in place. As more is learned about how industry interacts with remote Indigenous communities, current practices will continue to change and progress in concert with the mining industry's developing philosophies of continuous improvement and zero harm.

Although the topics in this handbook are assessed in the context of the Australian mining industry, the principles and processes discussed also have application in the international arena. Consequently, the word *Indigenous* has been used throughout the handbook to reflect current international practice. In the Australian context, Indigenous should be taken to include Aboriginal and Torres Strait Islander people; the terms 'traditional owner' or 'local Indigenous' include those Aboriginal or Torres Strait Islander people who have self-identified as members of a local group or groups.

In this handbook, key social issues such as the alleviation of poverty through employment, education and business development initiatives are set against the background of Australian history, social demographics and legislation. Mechanisms for the creation of beneficial outcomes are placed into the context of negotiating mutually beneficial agreements that reflect recommendations now being published in international guides on how best to work with Indigenous people and communities. A leading practice process for negotiating different types of agreements is offered, along with suggestions aimed at greater participation of Indigenous people and their communities with the mining industry and what it has to offer. A range of recent case studies that support this cooperative approach is provided, with a special emphasis on those that offer sustainability in the post-mining environment.

This handbook is primarily intended for use as a management tool to assist corporate managers to design effective engagement strategies and to provide guidance to operations managers and staff on how to incorporate those strategies into the way they work with Indigenous communities at the operational level. A separate but related handbook in this series deals with broader community engagement and development.

1.1 Sustainability principles

The sustainability and resilience of Indigenous communities are based on a simple principle: everything that is needed for survival and wellbeing depends, either directly or indirectly, on the natural environment. According to the Report of the *World Commission on Environment and Development: Our common future* (Brundtland 1987):

It is clear that one of the most important features of sustainable development is intergenerational equity. This involves the development of systems and processes that meet the needs of the present without compromising the ability of future generations to meet their own needs.

The concepts of sustainability and resilience based on intergenerational equity immediately create a challenge for the resources extraction industry, the activities of which necessarily result in a degree of damage not only to the natural environment but also by extension to a community's social structure and culture. Leading practice requires these approaches not only to address environmental impacts but also to take a holistic approach that addresses the effects on communities' economies, society and culture over the very long term.

1.2 Community engagement principles

The fundamental principles for community engagement are the same as those required for building any relationship—patience, trust, respect, mutual cooperation and, in some cases, a willingness to make sacrifices and accede to the community's point of view. Success relies on clear communication and an open approach by involving Indigenous communities in all aspects of mining operations, particularly where operations have direct impacts on the communities.

A wealth of available information offers guidance on how mining companies can engage with Indigenous communities internationally (ICMM 2015) and locally (MCA 2005b). Signatories to such frameworks undertake to contribute to the social, economic and institutional development of communities where they operate and to engage with and respond to stakeholders through open and informative consultation.

In Australia, a growing number of companies have begun translating those processes into higher level policy commitments and improved practices. Many companies now routinely integrate community engagement into each stage of a mining operation, including planning for community interests beyond the life of the mine.

1.3 The case for resilience and sustainability in Indigenous communities

There is a strong case for developing resilience and sustainability because of the dire circumstances under which many Indigenous communities exist. Such communities are characterised by high levels of unemployment, welfare dependency and chronic health and social issues—issues which are not specific to the outcomes of mining activities, but reflect a larger historical issue that points to the need for significant changes in the way Australian society in general interacts with Indigenous communities.

The mining industry is in a strong position to positively influence the development, resilience and sustainability of many remote Indigenous communities, but for its assistance to be successful some important benefits must flow from the assistance, including:

- improved community infrastructure
- efficient education and employment strategies
- increased capacity among Indigenous people to create, develop and run their own businesses.

Other initiatives often involve the creation of social programs and strategies aimed at the maintenance and promotion of culture and improved health and wellbeing. Historical problems between mining companies and Aboriginal communities mean that implementing social programs can often be a daunting challenge, but it is a challenge that has to be met if sustainable futures are to be achieved.

1.4 Justifying community engagement

There are several reasons why companies should engage with communities, in addition to the value of humanitarian gestures. Engagement and contribution to community development are now expectations under the rapidly developing concept of the 'social licence to operate', which is a part of a wider framework of corporate responsibility. The social licence to operate measures the level of acceptance or approval that local communities and stakeholders accord to mining companies and their operations.

Enduring value: the Australian minerals industry framework for sustainable development states:

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. (MCA 2005b)

1.4.1 The broader industry case

Changing social circumstances have engendered a 'triple bottom line' approach in which companies are now being held accountable for their financial, environmental and social performance. Over the past few decades, there has been heightened concern about the environment and social welfare. Substantially increased time and resources are now required to effectively plan, finance, insure and regulate operations, particularly in the case of large-scale mineral production. If ever-increasing standards of accountability are to be met, the manner in which companies engage with communities will need to improve.

The adoption of leading practice under these changing circumstances will result in real financial returns where strategies that are responsible and target resilient and sustainable community development during and beyond the life of the mine are in place (Harvey & Brereton 2005). Those benefits include reduced time in obtaining approvals and negotiating agreements, easier access to new resources, an improved corporate risk profile and, potentially, the ability to secure access to capital on more favourable terms.

1.4.2 The project-specific case

Mining companies can gain a number of specific benefits through developing durable relationships with local Indigenous communities. They will vary from project to project, but can include:

- security of tenure through negotiated access for exploration and mining
- legal compliance through the protection of Indigenous cultural heritage
- a local labour force based in neighbouring Indigenous communities that could reduce dependence on expensive fly-in, fly-out operations and reduce the need to establish mining towns
- the benefits of workforce diversity through increased Indigenous employment
- a supply chain of local Indigenous-owned businesses
- additional input about various aspects of the mining operation, such as environmental management, risk management, mine closure planning and the management of social impacts
- better outcomes in environmental management through access to local and traditional ecological knowledge
- enhancing the industry's sustainable development credentials by contributing to the development of prosperous and sustainable regional communities.

1.5 Placing engagement into context

The direct negotiation of agreements for access to land for exploration or minerals production with Indigenous people or their representatives is now necessary under legislation. To meet this goal, community engagement should be managed as a complex, time-consuming and often difficult process of relationship building. Guidance is available but there is no specific formula that will ensure successful effective community engagement for an individual project, mainly because such relationships are influenced by wider Australian history and even more by local events in the history of contact between different cultures, conflicts and industrial development.

Durable, positive relationships are crucial because companies are now held more accountable for their performance at multiple levels, and that has led to greater scrutiny of how they affect the sustainability of remote communities. This reflects a significantly changed political and social climate from that of 40 to 50 years ago. To succeed, the mining company should ensure that its staff and consultants have the appropriate level of local knowledge about those places where they work.

In short, effective community engagement makes good business sense.

2.0 THE HISTORICAL POLITICAL CONTEXT

FOUR KEY POINTS TO REMEMBER

1. Relationships between mining companies and Indigenous communities are continuously evolving in response to external stimuli.
2. The broad and local historical and political context must be considered in detail by the mining company before it engages with the community.
3. The strength of a present-day relationship depends on the ability of the mining company to address and overcome the social and environmental legacies left by its predecessors.
4. Companies must go beyond what is considered the industry norm and beyond the minimum required by law to ensure sustainable outcomes.

Politics and history play an important role in the way Indigenous communities view the mining industry. Interactions between the industry and Indigenous communities primarily revolve around access to land and competition for the resources that the land contains. Relationships are shaped by a mutual lack of understanding resulting from the clash between different worldviews and management practices, combined with changing legislation and politics over the years. This has led to deep-seated mistrust and conflict, which often dog projects to this day.

Recognising the area's history and particularly how the mining industry has behaved in the past is an important first step in developing a robust relationship with an Indigenous community. While it is essential to understand the local history, it is equally important to place it in the wider context of social and legislative reform and how Indigenous people perceive that changes over the past decades have had impacts on their way of life.

2.1 The past

In the past, governments and mining companies paid little regard to how mines affected the Indigenous way of life. Environmental standards were lax, and Indigenous people were often removed from potential mining areas to allow unimpeded development and operation. Little thought was given to community development, the inclusion of Indigenous people into the mining economy or how operations affected their cultural heritage or social systems. The principal concern for a company was to produce the maximum amount of ore as cheaply as possible in the shortest possible time.

That approach was little more than a continuation of attitudes and practices dating back to colonial times, when legislation was passed to secure land for settlers and their stock, notwithstanding the objections of Indigenous people or their need for natural resources for their own survival. The failure to recognise and acknowledge the interests and rights of Indigenous people ultimately led to a series of government policies in the late 19th century and the first half of the 20th century in which:

- people were forcibly removed from country and relocated to often distant places, resulting in loss of their accumulated social, cultural and financial capital
- there was a generic failure to recognise that Indigenous people had inherent, existing rights and interests in land on which mining exploration and production occurred
- country that Indigenous people had an obligation to protect was disturbed by exploration, mining and associated activities
- Indigenous workers were subjected to legislative restrictions and discrimination that limited their wages, the kind of work they could do and their access to accommodation and workers compensation
- remote communities and natural resources were affected by legacy mine sites that had not been properly rehabilitated.

2.2 Legislative reforms

As time passed, legislation affecting Indigenous Australians underwent slow change, but it was not until the constitutional reforms of 1968 that the federal government gained the power to legislate with respect to Australia's Indigenous population. This led to significant changes in community and government attitudes and ultimately to the recognition of some key Indigenous rights in Australia. Of those changes, the two that affected the mining industry the most were two Acts of the Australian Parliament: the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*. Those Acts provided Indigenous Australians with formal, legislated rights to own and control land, thus creating a situation in which mining companies had to formally negotiate access to that land. The two Acts are described in detail in Section 8 of this handbook.

While the mining industry was trying to come to grips with the new laws and regulations, many individual companies strove to work their way through the layers of discussion and negotiation with Indigenous people to achieve tenure. They encountered significant resistance from groups who wanted guaranteed recognition of Indigenous rights and interests and acceptable terms and conditions for cultural, social and economic futures. The mining industry became the target for criticism about lack of education, training and health services in the areas where mines were operating, while the federal and state governments were escaping accountability for their responsibilities to provide those services.

With the introduction of new legislation, the commitment of peak industry bodies to leading practice measures also underwent significant change. In Australia, leading practice is now reflected in higher level policies and demonstrated by initiatives such as:

- the Memorandum of Understanding on Indigenous Employment and Enterprise Development between the Australian Government and the Minerals Council of Australia (MCA 2009)
- similar memorandums of understanding between state governments and state mining industry representative bodies
- the Minerals Council of Australia's *Enduring value: the Australian minerals industry framework for sustainable development* (MCA 2005a)

- the Australian Government's *Minerals and petroleum in Australia: a guide for investors* (Geoscience Australia 2015)
- the Ministerial Council on Mineral and Petroleum Resources' *Principles for engagement with communities and stakeholders* (MCMPR 2005)
- the Leading Practice Sustainable Development Program for the Mining Industry series of handbooks, of which this handbook is a part.

In addition to internal political reform, increased environmental awareness through forums such as the 1992 United Nations Conference on Environment and Development led to international pressure for change. This culminated in further changes to government policy and legislation through the creation of instruments such as the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which required better protection of the environment and Indigenous culture.

In response to these gathering demands for social reform, relationships between many mining companies and Australian Indigenous people began to change dramatically, from mutual antagonism to increasing cooperation and collaboration. There is generally now a greater understanding among mining company board members, executives and operational staff of the need to develop sustainable relationships with Indigenous communities that are based on mutual obligation and respect, a shared interest in the land, and working together for mutually beneficial outcomes.

Some of the best relationships are those that recognise just how important history and its impact on community life are to Indigenous people. Indigenous social structures are primarily based on relationships and the notion that historical events form part of the cultural landscape. Therefore, those factors influence how Indigenous people respond to mining companies. Coming to terms with this can be controversial and confronting to many in the mining industry, but it is a legacy that must be acknowledged and addressed if lasting relationships with Indigenous people are to be built.

2.3 The present

The mining industry norm has traditionally been based on policy and legislation, most of which was not sympathetic to Indigenous people. Legislative changes have led to a shift in that norm, evidenced by the growing acceptance of agreement-making between mining companies, traditional owners and communities. The agreements embody positive progress by providing a foundation for the sustainable development of mineral resources, economic development and the creation of resilient and sustainable Indigenous communities.¹

Present-day relationships between industry and communities have been largely changed through the gradual development of wider social and environmental agendas. Concepts such as the social licence to operate and triple bottom line accounting have been used to exert additional pressure on companies to produce better outcomes and make more social concessions. As a result, many companies have now realised that, if they are unwilling to spend the time and resources to develop robust relationships and negotiate acceptable social outcomes, they run a risk of having their projects blocked or delayed and incurring significant expenditure should legal action occur. Although this has placed an additional burden on companies, it has also resulted in significant positive progress in the way relationships are being managed.

¹ Leading practice agreement processes are discussed in more detail in Section 9 of this handbook.

2.4 The future

The continuous maturing of relationships is essential if sustainable futures are to be achieved. Mining company – Indigenous community relationships are continuing to evolve through a series of fundamental steps, from total exclusion, to recognition, to involvement, to involvement through consultation, and now towards full participation in decision-making on more equitable terms.

How much further they can develop has yet to be determined, but it is now clear that many Indigenous leaders do not want the burden of history to cripple current and future generations of their people. With the mining industry's support, they have adopted many initiatives in the areas of education, training, labour recruitment and new business ventures to build pathways from poverty to fuller economic participation for their communities. Many of those initiatives are highlighted throughout this handbook and are avenues for the continual development of equitable and joint decision-making.

However, as resources become depleted and the mining industry seeks to develop deeper or larger lower grade deposits, economic imperatives and the environmental and social agendas will become more difficult to balance. Robust relationships reflecting strong community support will be critical but may be harder to obtain unless strategies are devised that include more equitable participation of the community in the mining company's business.

3.0 THE SOCIAL CONTEXT

THREE KEY POINTS TO REMEMBER

1. Politics and history have combined to produce economic outcomes leading to serious economic disadvantage in Indigenous communities; that disadvantage needs to be addressed.
2. The existing social situation and its root causes must be considered in detail before engaging with a community
3. The effective resolution of social issues requires a holistic approach to intergenerational planning, which depends on cooperating with government and communities.

History and politics have shaped not only the way Indigenous people perceive the mining industry, but also the economic conditions that affect their social structures and modern standard of living. The significant and rapid social changes that began with the arrival of Europeans in the late 18th century have had profound socioeconomic impacts on Indigenous communities, the most significant of which include:

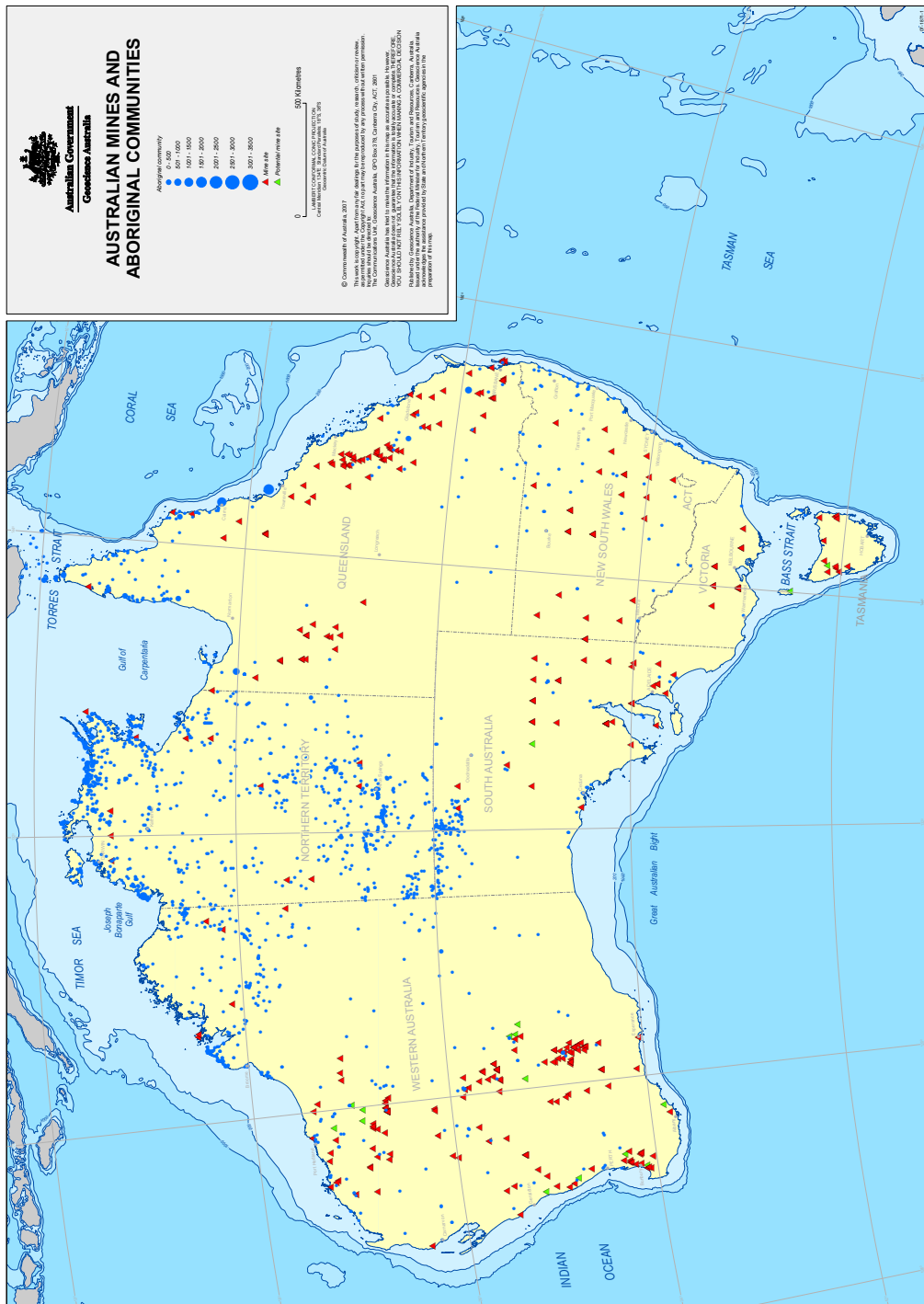
- loss of an economy based on hunting and gathering that maintained a balance with the land and the environment
- forced adaptation to a monetary economic system, in which survival depended on income but opportunities to generate that income were limited
- loss of opportunities to maintain traditional rights, interests, obligations and responsibilities in relation to their land.

Consequently, the Indigenous land estate has shrunk to approximately 18% of Australia's total landmass.

Indigenous people continue to live in remote communities because they seek to maintain their customary obligations to manage their lands. Most Indigenous people live outside major urban centres, and an estimated 47% live in regional and remote areas in close proximity to currently operating mines. As shown in Figure 1 some of the more highly affected communities are in:

- the Cape York Peninsula and Gulf of Carpentaria
- the Northern Territory
- the Kimberley, Pilbara and Goldfields regions of Western Australia
- the coalmining districts in the Hunter Valley in New South Wales and in Central Queensland.

Figure 1: Proximity of mines to Aboriginal communities in Australia



Source: Geoscience Australia.

3.1 Indigenous demographics

Although numerically small, Indigenous populations constitute significant and rapidly growing majorities in some remote mining regions, ranging up to 90% of the permanent population. Communities are often characterised by high degrees of welfare dependency, poverty and poor health and larger than average proportions of young people with lower than average levels of education.

Material disadvantages are common in remote areas due to the drift of income and wealth towards more highly populated towns and cities. Allocations of government support tend to be based on demographics and made by policymakers and administrators who have limited experience of conditions in remote and rural areas. Insufficient funding means that many essential services, such as educational and health facilities, are deficient or non-existent in some Indigenous communities. Other types of goods or services that residents in urban communities take for granted are virtually non-existent in rural and remote areas because the low populations do not attract investment or warrant their supply.

Consequently, mining companies and mining towns become, in many instances, focal points on which Indigenous communities depend for the provision of services. Electricity, all-weather roads and other transport infrastructure, retail outlets, fuel supplies and recreational facilities and activities have become more available in remote areas as a result of mining operations. Although mining towns provide beneficial and essential services to the region, they are not permanent, and many remote Indigenous communities will suffer if sustainable alternatives have not been developed by the time the local mine closes.



3.2 Levels of Indigenous disadvantage

High levels of disadvantage in Indigenous communities are widespread. Indigenous Australians remain the most disadvantaged and underprivileged sector of Australian society (Tiplady & Barclay 2007). Data from the Australian Bureau of Statistics shows that Indigenous people:

- have a low employment to population ratio (2011 census data indicates that the national average has declined from 2.2% to 1.5%)
- have greater dependence on government spending and welfare
- have lower occupational status and higher levels of part-time employment
- generally live in poor housing with very high occupancy ratios
- rely primarily on government programs such as the Community Development Employment Program (CDEP) scheme and 'work for the dole' for employment opportunities.

Although there are indications of some long-term economic improvements, health, employment and education statistics indicate that those improvements have started to slow in recent years (SCRGSP 2014). Notably, literacy and numeracy continue to lag behind Australian averages and continue to contribute to the high level of disadvantage seen in regional and remote Indigenous communities.

3.3 Poverty and deprivation

Poverty and deprivation are major concerns. Poverty is considered to be an inability to afford the essentials of life that most people take for granted. Within that broader definition, deprivation relates to the need to spend most of one's income on unavoidable costs (such as health costs), usually because of the unavailability of essential services within the community (ACOSS–NRHA 2013). Poverty and deprivation are normally measured against an artificial statistic that changes with time, known as the 'poverty line'.

Key social factors that are related to poverty and deprivation include education, health, housing, energy costs, employment, access to goods and services and the costs of goods and services. Those indicators show that a large proportion of Indigenous communities struggle with high levels of poverty and deprivation. That finding is supported by financial statistics, which show that the average disposable income of an Indigenous person stands at \$394 per week—marginally above the poverty line but well below the non-Indigenous average of \$869 per week.

In contrast to the purely statistical view, Indigenous people see poverty and deprivation as a loss of control, rather than an inadequate supply of money. Adopting that perspective can allow a mining company to develop innovative livelihoods approaches to alleviating poverty (Altman 2007). Such approaches focus on ancestral links to the land and are represented in a number of the case studies in this handbook.

3.4 Indigenous education and employment

Two of the most significant drivers of poverty and deprivation are poor standards of education and lack of employment, resulting mainly from inadequate service provision and the scarcity of opportunities.

Statistics show that Indigenous communities tend to be characterised by:

- significant gaps in measures of educational competency between the Indigenous and non-Indigenous population (in particular 50% of Indigenous children assessed at Year 3 and Year 5 in remote communities failed to achieve the national standards for literacy and numeracy)
- lower levels of school attendance by Indigenous students at every stage of schooling
- a decline in the number of Indigenous people undertaking post-school qualifications (which has been linked to increasing numbers forgoing higher education to pursue less-skilled employment in local industry).

Problems in Indigenous education and employment can be partly addressed by implementing improved systems and processes, starting at the recruitment phase. Case study 1 highlights a process designed to encourage Indigenous school-leavers to pursue technical careers. A more detailed discussion of some of the other strategies that can be used to develop a stronger, more stable Indigenous workforce is in Section 5.

Case study 1: BHP Billiton and CSIRO education agreement

In 2014, BHP Billiton entered into a four-year agreement with CSIRO designed to increase the participation of Indigenous students in science, technology, engineering and mathematics (STEM).

The agreement forms a partnership in which BHP Billiton has provided funding of \$28.8 million to CSIRO to develop programs to reach secondary and tertiary students to encourage more participation in higher levels of education. The program provided under the agreement is designed to address key issues that often hamper the participation of Indigenous people—language, mismatches between cultural beliefs and education in STEM, and the challenges of dealing with the expectations of universities.

The outcomes of the agreement will be delivered through six elements:

1. Science Pathways for Indigenous Students, which will target primary and middle school students in remote communities using on-country projects
2. Inquiry for Indigenous Science Students, which will target middle school students in regional and urban areas
3. Counting Futures, which is aimed at primary and middle school to improve outcomes in mathematics
4. Aboriginal Summer School for Excellence in Technology and Science, which will provide a residential camp for high-achieving Year 10 students and a mentoring program to take them through Years 11 and 12
5. Excellence Awards, which will be established to reward and acknowledge high-achieving Indigenous students who are taking STEM subjects
6. Bachelor of Science (extended), which will provide a supported pathway for Indigenous students to complete a Bachelor of Science degree at the University of Melbourne.

Although it is too early to assess the success of this program, these steps are an integrated approach that should encourage greater inclusion of Indigenous students in tertiary education and the technical workforce. The partnership between a mining company and a high-level provider of technical services is an innovative approach that may prove especially useful where a mining company does not have the necessary expertise to provide such a service to the community.

3.5 Indigenous political representation

Over the past 30 years, more Indigenous leaders have started to come to political prominence. They are often skilled and accomplished advocates for the critical challenges facing their communities and enjoy strong support at formal and informal levels. Many are now involved in local governments and in other important regional or statutory bodies, and are in a position to lobby harder for favourable outcomes for their constituents.

In 2015, the Northern Territory Legislative Assembly had six Indigenous members, including the Chief Minister. There were two Indigenous members of parliament in Western Australia and two in Queensland. In the Australian Senate, there were one each from the Northern Territory and Western Australia.

Increasing inclusion of Indigenous people in the political arena will lead to a fundamental change in political dynamics that has the potential to force further changes in the way government and industry address disadvantage in Indigenous communities. Companies would do well to embrace this change and incorporate it into the way they manage their social impacts.

3.6 Social management tools

Ultimately, every company should, as a minimum, aim to undertake its operations without causing any permanent harm to surrounding communities and the environment. This is costly and difficult, and success depends on the suitability of available social management tools and systems. As time passes and companies respond more diligently to community needs, new tools will be developed and existing ones will become more sophisticated.

Demographic analyses, risk assessments and social impact assessments are important tools used in the environmental risk assessment process applied to the approvals phase of mine development. They provide a coordinated system in which social disadvantages are identified and pathways are designed to maximise potential benefits from the project. More recently, greater emphasis has been placed on engendering resilient and sustainable communities through the creation of intergenerational wealth and opportunities, rather than just addressing current needs. This requires a high level of planning, an important part of which commits the mining company to leave no legacies that nearby communities cannot manage.

Impact management plans and tools associated with the assessment process are designed to address identified risks and impacts but do not always consider future social needs.

Social management tools commonly used during the environmental impact assessment phase of project development include:

- social mapping and demographic studies to provide important baseline information
- risk assessments and risk management plans
- social impact assessments and management plans
- cultural heritage surveys, assessments and management plans.

Ideally, the company should take a robust, structured approach, assessing and planning for individual parts of the social structure such as health, education, employment and improving community infrastructure. Successful plans are flexible, address multiple issues in a coordinated fashion, are constantly reviewed and are firmly entrenched in company policy.

Despite this approach, there remains considerable scope for improvement, including to assess and develop plans for some critical aspects, such as community economic management, and to incorporate key cultural issues related to language, traditional knowledge and Indigenous concepts of science into assessments and management plans. Broadening the scope of assessments and plans will create additional opportunities for the mining industry to apply the concept of intergenerational equity and leave a positive legacy.

Beyond this, the next logical step is to generate social management plans that are formally integrated with company operational plans to ensure that they evolve in accord with ever-changing mining operations. If workable plans are to be created, this will require a deep understanding not only of the social environment within which the company operates, but also of the cultural mores and values of the surrounding communities.

4.0 WORKING WITH INDIGENOUS CULTURES

FOUR KEY POINTS TO REMEMBER

1. Culture is shaped by the way the world is viewed, and differences between mining culture and Indigenous cultures are significant.
2. Use plain English, interpreters and visual tools for communication. Jargon or scientific language may lead to confusion and misunderstanding.
3. Allocate sufficient time for decision-making according to Indigenous custom. Plan consultations well in advance and use a slow, steady and staged approach.
4. Respect the proprietary nature of Indigenous cultural information.

Indigenous cultures in Australia are known to pre-date modern Australian culture by tens of thousands of years. At the heart of each culture is a worldview, which is an integration of all of the tangible and intangible pieces of how that cultural group perceives the world. This includes interactions with the natural and social environment, history, politics, economics and belief systems. Consequently, there is a vast range of cultures not only among people, but also among their constructs, such as corporate organisations. Overcoming these differences is a major challenge because they affect the fabric of how each group transacts its business.

History, politics and the modern social context all have an effect on relationships between mining companies and Indigenous communities, but the biggest challenge lies in resolving cultural differences. Those differences permeate the way business is done and reflect the unique ways each group makes decisions, does research and relates to individuals and to their environment. Working effectively in a cross-cultural environment is a two-way process of information exchange that requires some measure of understanding by both parties of each other's worldviews.

4.1 Indigenous and mining cultures

Communication between mining companies and Indigenous communities is easily affected by misunderstandings that result from cultural differences, which are often expressed as differing worldviews and language and need to be managed carefully if positive long-term relationships are to develop. Without effective communication and shared understanding, it is difficult for companies and Indigenous communities to coexist amicably or to manage issues that arise effectively.

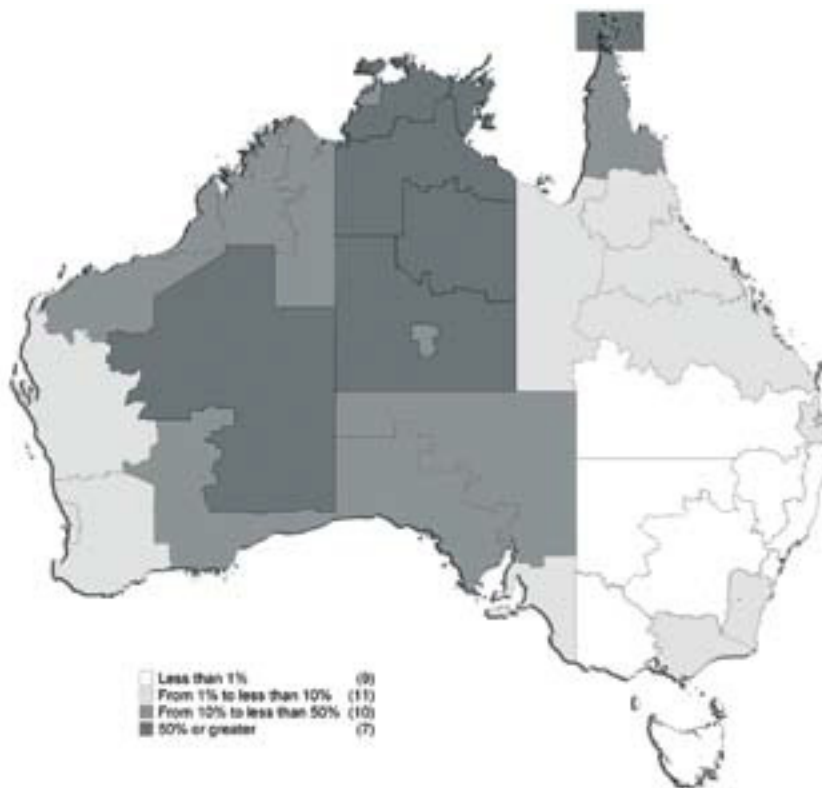
Traditional Indigenous cultures operate within a worldview that is generally animistic and based on conserving the value of natural resources, plants and animals. Social structures are built upon moiety systems that extend deeply into the natural and spiritual environment, creating familial relationships between people, animals and plants that are reflected in art, dance and ceremony.

Within this overall framework is a high degree of cultural and linguistic diversity. In particular, cultural practices and responsibilities for Indigenous land estates and waterways differ markedly across Australia.

This means that a solution to a problem that works well in one community might not work in another, or might need some modification to be successful. A mining company preparing to work with an Indigenous community for the first time will benefit from local expert advice about Indigenous practices and responsibilities

The Indigenous worldview is a holistic one in which all activities are linked and decisions and outcomes are relationship oriented. Through that worldview, Indigenous people have a well-developed and close affinity with the land and have maintained a high level of cultural and spiritual responsibility for it in accordance with traditional law and custom. As a result, the Indigenous worldview contains its own science, complete with knowledge sets that are equal to and complement those of industrialised societies.

Figure 2: Proportion of Indigenous people who speak an Indigenous language at home in Australia



Source: The Centre for Aboriginal Economic Policy Research, ANU

The mining industry, on the other hand, exemplifies an outcome-oriented industrial culture in which the main focus is on efficiency, productivity and profits, rather than family and relationships. The worldview is non-holistic, because there is no link between spirituality and science and because, until recently, scientific studies did not generally take a multidisciplinary approach.

Unfortunately, these differing worldviews often create conflicts between Indigenous culture and mining industry norms. The industry's values are particularly noticeable in the workplace, where all employees are expected to adhere to strict attendance, leave and other time-management principles, rigid shift structures and stringent occupational health and safety regulations. The most common and visual impacts are seen in

workplace absences when Indigenous workers must attend to cultural obligations. Similarly, certain family members or groups designated by custom may need to avoid direct contact with other family or community members.

Many companies are making significant changes to bridging these gaps, particularly in the way they develop their human resource policies for recruitment, training and leave entitlements and the way they report on environmental and cultural heritage issues. Although culturally appropriate time management is being developed for some large mining operations, considerably more work is needed to bring them to fruition.

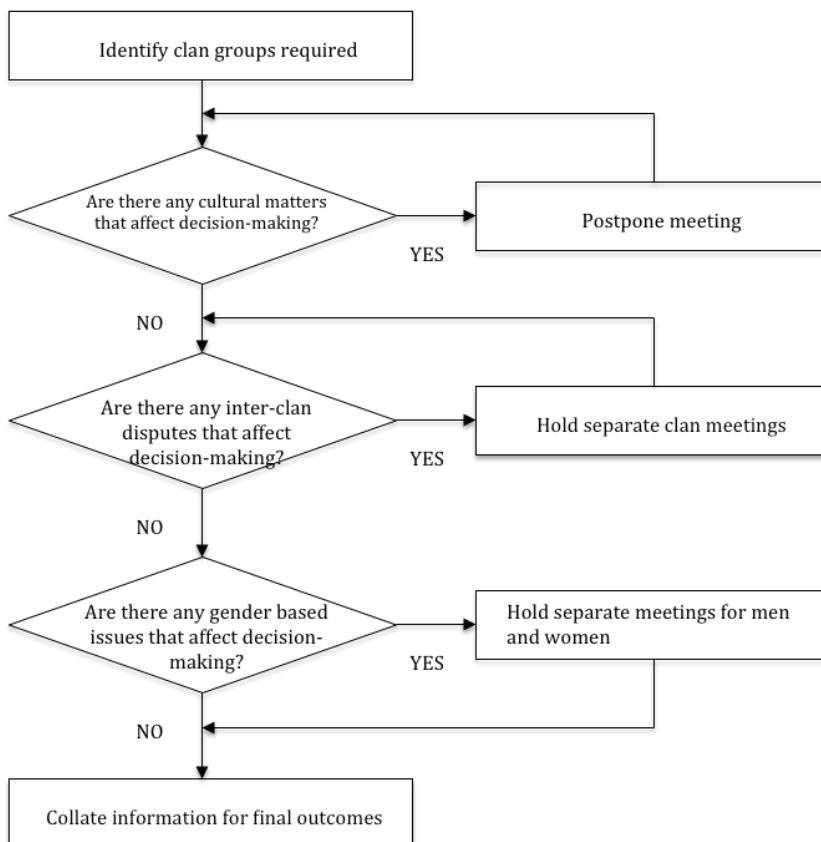


4.2 Consultation and decision-making

In mining, it is often necessary to make operational decisions quickly to maintain production efficiently and economically. Managers have a high degree of autonomy and, in some instances, operational expediency does not allow them enough time for thorough discussions with third parties, such as the local Indigenous community. Where prior discussions cannot occur because of an emergency, such as a potential or real severe environmental impact, it is important to have follow-up discussions with the community. Where community input to long-term planning is required (such as for contract negotiations), that process should be well planned and community engagement should begin as early as possible.

Indigenous decision-making is oriented around family relationships and is far less autonomous than decision-making in industry. Protocols require thorough consideration of matters along multiple lines to reach a consensus, meaning that considerable time is needed before matters can be thoroughly worked through (Figure 3). In discussing a project or negotiating an agreement, it may take several meetings before trust is established and meaningful negotiations commence. Additional time may be needed to deal with external cultural influences, such as ceremony or conflicts between family groups. Attempting to force the pace may result in expedited outcomes that do not stand the test of time.

Figure 3: Flowchart for decision-making



Source: Smith (2012).

A transparent approach to communication is vital to successful decision-making and building long-term relationships. Underpinning this is the ‘free, prior and informed consent’ (FPIC) concept, which is currently the highest standard for the participation of Indigenous communities in decision-making.

In FPIC, Indigenous people are entitled to determine the outcome of decision-making that affects them, not just to be consulted about projects, the outcomes of which will be determined by others. FPIC offers the best opportunity for minimising the negative impacts of large projects and protecting Indigenous communities’ economic, social and cultural rights. It gives Indigenous communities the opportunity to approve, reject or modify a project before it begins and to participate in setting the terms and conditions that address the economic, social and environmental impacts of all phases of the project.



4.3 The role of language

FPIC relies upon the clear, concise and accurate communication of information. The correct interpretation of messages transmitted in a foreign language is critical to effective and accurate communication. Although Indigenous people are often able to communicate with each other in multiple dialects, English is not likely to be the principal language for many. Indigenous people who are multilingual are generally found in remote communities, where mining is more likely to occur, but particularly where there has been little or no disturbance caused by the separation of Indigenous people from their lands.

A limited understanding of English creates special challenges for mining companies wishing to build relationships with Indigenous communities, engage in mutual decision-making and recruit Indigenous employees. To address these challenges, several inter-related approaches should be used.

It is recommended that a dual or multi-language approach be used, along with visual tools. Most Indigenous groups do not have a written language, so documents should be written in plain English and, where possible, translators and interpreters should be engaged during discussions. Jargon and industry-specific acronyms must be avoided if a clear message is to be sent, and feedback mechanisms must be put into place to ensure that the message received is the one that was sent. It may also necessary to use local experts to ensure that the information is being presented in its correct cultural context.

4.4 Cross-cultural awareness training

Cross-cultural awareness training is an important tool that is often used by companies for engagement and employment. The aim is to develop mutual respect and understanding between non-Indigenous employees and Indigenous employees and their communities. The most effective cross-cultural training programs are run as part of the induction process for all new employees and reinforced through ongoing training and development.

As a minimum, Indigenous recruits should undergo cross-cultural training that introduces them to the requirements of the mining industry, especially in relation to matters such as risk; workplace health and safety; site entry; operational procedures; and work expectations. Non-Indigenous recruits should be introduced to ways to develop and maintain respectful relationships with traditional owners; respect and protect Indigenous cultural heritage and practices; and adhere to environmental regulations and social mores.

4.5 Cross-cultural research

Including Indigenous science and culture in mining operations, especially during the approvals and closure phases, is essential to foster relationships and to demonstrate a cooperative approach. Cross-cultural research programs aimed at producing a detailed understanding of the ways Indigenous people interact with the environment will produce confidential information that should be protected by law.

In many cases, opportunities for sustainable Indigenous business have been missed because large corporations have patented valuable natural products and traditional knowledge, without recompense to the owners. Companies doing research with Indigenous people should follow prescribed standards and guidelines and be prepared to manage Indigenous information by way of proprietary agreements.

Standards and guidelines for ethical research developed by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS 2012) and CSIRO (2007) are useful references for companies seeking to do cross-cultural research.

4.6 Management of cultural heritage

Australian law requires the correct management of cultural heritage. The two main pieces of legislation that guide cultural heritage management are the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the EPBC Act.²

Culturally important (heritage) places are integral to Indigenous peoples' connection with their traditional lands. The cultural heritage management model currently used is based on interest groups and holds that

² The Acts are discussed in more detail in Section 8.

consultation between Indigenous peoples, cultural heritage professionals, archaeologists and developers should be a dialogue between equals. However, the model fails to account for the power differential between stakeholders that leaves Indigenous people at a disadvantage and does not fully recognise their ownership of their cultural heritage and their customary and moral right to control if and how their cultural heritage is managed.

Leading practice requires collaborative host-guest models to be used in which Indigenous people are not considered equal stakeholders but are instead acknowledged as the owners and controllers of their heritage. In the case of development in which it is likely that sites will be damaged or destroyed, Indigenous people must have an overriding voice in the way such activities take place.



These models operate according to important principles, including the following:

- Recognition of the legal, customary and moral rights of communities to control if and how the community's cultural heritage is managed. This could be achieved through an agreed heritage protocol linked to a broader land use agreement and based upon mining and heritage legislation.
- Incorporation of an assessment of risks to cultural heritage in the earliest planning stages of the project and reassessment of it as the project develops. This is normally a part of the environmental impact assessment process and includes a multi-staged strategy of:
 - avoidance—including the potential surrender of parts of a lease or ore body
 - mitigation—where avoidance is impossible
 - management—if previously unrecorded cultural heritage is located during operations, particularly where it involves human remains.
- Recognition of cultural heritage management programs as value-added components of any engagement with Indigenous communities.
- A proactive approach that provides educational opportunities for local Indigenous community members and allows the transmission of cultural information to future generations.

Case study 2 provides an example of a leading practice approach to cultural heritage management in Queensland. Potential risks to Wik-Waya cultural heritage caused by the modification of the physical landscape are being addressed through a community, heritage and environment management plan. The

plan provides a collaborative framework through which Indigenous people can maintain the connection with their country and continue to fulfil their responsibilities as custodians.

Case study 2: Collaborative heritage management

From 2011 to 2013, the South of Embley (SoE) Project Working Group developed the Communities, Heritage and Environment Management Plan (CHEMP) for the area of Rio Tinto Alcan's mining lease between Weipa and Aurukun. The area encompasses the land of the Wik-Waya people, and Rio Tinto proposes to build and operate a new bauxite mine there. The mine will result in a significant change to the physical landscape that poses a number of risks to the traditional owners' ability to fulfil their responsibilities as the cultural custodians of their traditional lands.

The Wik-Waya people maintain a strong sense of cultural identity and spiritual connection to their country. Associated with this is an inherited personal responsibility as traditional owners, especially for elders, to look after their country for both their ancestors, whose spirits live 'on country', and for future generations of their families. The elders would like to see the young people in their community take more responsibility for country, so the CHEMP was jointly developed by traditional owners and Rio Tinto to capture the traditional owners' aspirations and outline how the country will be managed in the future.

Despite the changes to country that mining will bring, the traditional owners broadly support the establishment of the mine. Their support has been gained through several years of consultation with the Western Cape Communities Co-Existence Agreement (WCCCA) Coordinating Committee, the formal body representing the interests of the traditional owner groups who are signatories to the WCCCA. The consultation included detailed traditional owner input into the content of the SoE Project EIS.

The CHEMP is a new approach to land management, and is designed to formalise the involvement of Wik-Waya traditional owners in planning and implementing annual land, sea and cultural heritage management activities in the SoE Project area. It also addresses specific requirements arising from the environmental impact statement submitted to the Queensland Government as part of the approvals process. The CHEMP is written from the perspective of traditional owners and Rio Tinto, working as partners in the ongoing management of the project area. While the two groups acknowledge that there are differences between their approaches to land management, they found that they shared common aspirations and goals to minimise the impacts of mining and, where possible, enhance the management of the land. At the same time, the groups recognise that mining will forever change the land from its present natural state.

The CHEMP provides the framework for traditional owners and Rio Tinto to work collaboratively to manage the country over the life of mining in the SoE Project. It works within a relationship based on mutual respect, trust and understanding of common objectives to minimise the environmental and social impacts of mining on the land and the culture of Wik-Waya traditional owners.

We are all getting too old. It's time for the young people to step up and take their responsibility in looking after country. This plan that we have been working on will help that to happen. Those young people need to get back to country. They have a good opportunity to be involved in looking after country as rangers and so forth. We can work with Rio Tinto, and talk about the old ways of doing things and understand some of the new ways as well. I believe if we work closely together then we can look after country properly, and with respect for our ancestors and each other.

Tony Kerindun – Wik-Waya Traditional Owner

5.0 DEVELOPING AN INDIGENOUS WORKFORCE

THREE KEY POINTS TO REMEMBER

1. Build capacity among Indigenous employees using mentoring in a non-hostile environment.
2. Focus strongly on family relationships that provide 'culturally safe' training and workplace environments.
3. Use Indigenous decision-making processes to assist with the selection of candidates.

The creation of a stable Indigenous workforce is beneficial to company operations, helps alleviate poverty and deprivation in communities and can be used to build a strong foundation for sustainable futures. Existing recruitment and retention strategies do not always suit Indigenous candidates, and current research suggests that integrating Indigenous cultural values into those strategies may get better results.

Creating a local Indigenous workforce to service the needs of the mine is one potential foundation for developing sustainable futures. A second foundation is Indigenous business development, which can only happen after Indigenous workers' capacity has been increased.

Demographics paint a relatively bleak picture. Data derived from the 2011 Census indicates that Indigenous unemployment rates in remote regions average around 18.2% (ABS 2012). It varies from region to region according to the available infrastructure and opportunities, but had not changed significantly since the previous census in 2006.

These high levels of unemployment represent an opportunity for mutually beneficial engagement with local Indigenous communities. For the company, local engagement brings with it some specific advantages, including:

- a pool of employees who can move between local projects and operations as demand and fortunes change
- employees who are not intent on leaving the region to pursue careers elsewhere
- significant cost benefits from reduced requirements to construct communities, run fly-in, fly-out operations, or both.

For Indigenous communities, the prospect of local project development brings with it the opportunity for a higher standard of living with improved community infrastructure and increased personal and communal wealth. However, to be successful, community and individual skill sets must match industry requirements, so the company and the community must be willing to develop and participate in meaningful and culturally appropriate training and workplace schemes.

5.1 Education and capacity building

The greatest challenge in developing a local Indigenous workforce is addressing the diminished capacity of many communities and people to participate in mining ventures. Correcting this requires the development of strategies to assist Indigenous people to gain the skills and tools they need to work effectively in the mining industry or to develop their own businesses.

A wider examination and interpretation of statistical data suggests a range of impediments to building increased capacity in Indigenous communities, such as:

- below-standard levels of general education, and few Indigenous people with professional qualifications
- cultural differences, including language and communication difficulties
- family, health and other social issues
- social and geographical isolation.

Of those, undereducation is one of the bigger obstacles. A targeted intergenerational and participative approach based on partnerships with local schools, TAFE colleges, government, and local community members and organisations may be one solution to overcoming this obstacle and creating an educational framework that is more meaningful to Indigenous people. The modified approach would require information packages or structured courses specific to mining projects and integrated at the lowest feasible level into the normal school curriculum to slowly generate interest in the mining industry and the development of associated businesses.

Most educational processes in Australia are highly structured and monocultural and stifle the development and integration of Indigenous attributes and knowledge. In preparing education strategies to promote Indigenous employment, it is now recognised that a different approach designed around wider perspectives of culture, Indigenous modes of learning and local demographic influences is warranted (Hughes & Moore 1997).

5.2 Workplace training systems

One other fundamental assumption of both the mining industry and governments is that Indigenous employment can be fostered through engagement in vocational education and training (VET) schemes. Many companies have developed useful VET schemes that include pre-employment programs targeting key criteria such as literacy, numeracy and life skills. Outcomes have been variable, suggesting that a number of contributing factors have yet to be fully addressed.

Ongoing research suggests that culture is one of those factors (Williams 2015). Companies that place a higher value on the practical integration of cultural views into training and workplace activities appear to have the best chance of attracting and retaining Indigenous employees. Put simply, those companies become employers of choice.

This approach requires strong executive leadership, organisational commitment and the commitment of:

- significant financial and professional human resources
- a strong focus on family relationships and mentoring
- a more flexible approach to managing work systems
- accountability for supporting Indigenous employees
- cultural awareness training.

Case studies 3 and 4 highlight two different approaches to Indigenous workplace training. The first uses an agreed mentoring approach to generate work and business opportunities in Queensland and New South Wales. The second directly incorporates Indigenous cultural values into recruitment, training and retention strategies.

Case study 3: Anglo Coal Australia's Indigenous training program

Anglo Coal Australia (ACA) operates coalmines in Queensland and New South Wales and is developing plans for a coal-to-liquid fuels plant in Victoria. The company produces about 41 million tonnes of coal a year and employs more than 4,400 workers and contractors. Recognising that working with local Indigenous communities would be beneficial for its projects, ACA embarked upon developing policies and agreements in cooperation with them. An Indigenous training program developed under an agreement with the Woorabinda community led to increased Indigenous employment at local mines.

Woorabinda Shared Responsibility Agreement

In 2005 the Woorabinda community indicated it would like to pursue the development of a timber products business using established infrastructure and the skills capability within the community. To bring this to fruition, the shared responsibility agreement was signed in January 2006. This agreement was the first of its kind in Australia involving a private industry partner to go beyond direct funding or in-kind assistance, offering a mentoring role to guide the community with business strategy and project planning. The aim is to build the capability of the community and create ongoing jobs and healthy business opportunities.

Indigenous training program

One important outcome of the shared responsibility agreement is a pre-employment program to better prepare Indigenous people wanting to apply for work. The program gives participants an overview of the industry and accustoms them to the site environment, operational safety, work procedures and the job application process before they develop on-the-job skills as production operators and truck drivers. A program pilot ran for three weeks from 22 January 2007. Fifteen trainees of varying ages, including four women, from Woorabinda, Yeppoon and Mackay participated. Based on the pilot's success and extremely positive feedback from participants, ACA has decided to run further courses. Together, the agreement and the training program have created several positive outcomes, including local jobs for Indigenous people, role models with a strong work ethic, a pool of local tradespeople, and profitable businesses.

Case study 4: GEMCO Indigenous work model

Groote Eylandt Mining Company (GEMCO) has operated a manganese mine on Groote Eylandt in the western Gulf of Carpentaria since 1961. As part of its social charter, the company has always sought to provide employment for local Indigenous people, but has had varied success since the inception of its workplace programs. The company found that, while it was possible to achieve employment rates as high as 15%, retaining workers was difficult.

In 1997, GEMCO revisited its Indigenous human resources strategies and modified them to include a more robust cultural framework. Known as 'Making a Difference', the strategy involved providing substantive work in rehabilitation and mine services supported by practical, self-paced training (Tiplady & Barclay 2007). Traditional owners progress through four levels of on-the-job training—with suitable candidates selected and nurtured via a strong family and community support mechanism (Williams 2015), which involves:

- family and community selection of appropriate employees according to traditional decision-making processes
- the creation of an Indigenous workplace environment populated only by Indigenous people from compatible family groups
- mentoring of Indigenous employees by Indigenous employees
- rosters that allow for cultural activities
- mutually agreed arrangements to allow time off for ceremony.

In conjunction with this approach, GEMCO has focused on making subtle changes to a range of other strategies to improve outcomes, including integrated drug and alcohol training, revision of literacy and numeracy, and greater emphasis on risk management and human health and safety. These changes appear to have had a positive impact by reducing absenteeism and encouraging Indigenous people to actively seek employment. The success of the workplace strategy was evidenced by 30 applications for six Indigenous jobs in 2014, despite an influx of income from royalties.

5.3 Workplace recruitment and retention strategies

Australian workplace legislation is now firmly based on equal opportunities: discrimination based on age, race, disability or gender is not permitted when considering potential employees. This creates an implied requirement for a culturally diverse workforce, making it possible to use agreements to reserve positions for qualified Indigenous people or encourage contractors to target a set number of local Indigenous positions in their contracts. In other instances, Indigenous people have skills (such as multiple languages) that make them ideal for a specific job.

Many Indigenous people continue to face a disadvantage during recruitment because notifications of vacancies do not reach them or they lack skills in resume preparation or interviewing. Often, the standard psychometric testing and interview techniques used are based on non-Indigenous cultural precepts and create an unfamiliar and potentially hostile environment for Indigenous people. Companies then find that even if they can nurture Indigenous people and assist them through the recruitment process, it can be difficult to retain their services.

Alternative ways of recruiting Indigenous candidates are typically characterised by:

- face-to-face communication at community level about vacancies
- the use of extended family networks to identify potential candidates
- assistance in preparing recruitment documents
- provision of preliminary advice on the importance of occupational health and safety and zero tolerance policies in relation to alcohol and drug use at the mine site.

The use of 'selection centre workshops' to recruit Indigenous employees has been particularly successful at a number of sites. Typically, this involves short-listed candidates attending a residential workshop where company staff observe them as they participate in classroom activities, practical outdoor and indoor exercises, site visits and social activities. This allows skilled trainers to assess the candidates' practical effectiveness, problem-solving ability, understanding of safety measures and ability to work interpersonally, understand and take instruction, and work cooperatively in a cross-cultural team.

Many Indigenous recruitment systems now include work-readiness and life skills training and mentoring as important parts of their curriculums. They are designed to allow Indigenous trainees to adopt acceptable work habits, show high levels of attendance and punctuality, manage family-work obligations and in some circumstances better manage their personal finances.

Guidance of an Indigenous candidate through the recruitment process is the first part of a holistic approach to addressing recruitment problems. Retention is equally challenging and is related to a number of cultural and social factors. The most success has been achieved where Indigenous workers have been provided with a non-hostile workplace characterised by racial equality, development opportunities, family support mechanisms and flexible rosters.

Flexible rosters are particularly important because they can accommodate Indigenous customary obligations, such as attending frequent funerals. This is often done within normal workplace practices and policies, such as using bereavement or holiday leave or taking leave without pay. However, difficulties may still arise if those avenues are exhausted and more time away from work is needed for lengthy ceremonies or for ceremonies that are held close together. If this cannot be addressed to the satisfaction of the employee, they are likely to leave.

6.0 DEVELOPING INDIGENOUS BUSINESS

THREE KEY POINTS TO REMEMBER

1. Sustainable business development programs for Indigenous communities must be culturally relevant and consider ventures that are beyond the immediate needs of the mine.
2. Agreements should allocate additional finances to trusts designed as seeds for business development, rather than as direct cash payments.
3. Sustainable business extends beyond the mine and links into regional planning, infrastructure and resources.

Small populations and remote locations mean that business opportunities for Indigenous communities are difficult to find. Short- to medium-term opportunities arise when mining activities begin, but the most pressing challenge is to turn them into business that can continue to be viable well beyond the life of the mine.

Many Indigenous communities are in remote areas, where extensive business opportunities are few. Those businesses that exist are often managed by non-Indigenous people because the abilities of Indigenous community members to create, develop and run a business are limited by poor business skills, limited formal education and lack of experience in the workforce. People who show aptitude or are relatively more capable are quickly employed in the few mainstream roles available.

Often, a mining company will enter this environment with a commitment to local Indigenous business development but an inadequate strategy and little focus on long-term sustainable solutions. Many businesses that are started are linked to the mine's immediate needs, making them prosperous in the short term but prone to failure once the mine ceases operations. The aim of leading practice is to leave a positive business legacy so that communities are resilient and remain sustainable after mine closure.

6.1 Creating community businesses

Creating and running a business is a complicated form of economic engagement and will only be successful where genuine business opportunities can be identified. It requires people with high skill levels who are motivated and educated and who have had previous work experience. Such people are hard to find in most remote Indigenous communities.

The second step is to develop capacity. As with education and pre-employment training schemes, business acumen and capacity must first be developed at the individual and community levels. Guidance can be drawn from the experiences and programs that have fostered successful Indigenous businesses. Their common characteristics include:

- the involvement of youth
- robust governance, structures and systems
- effective mentoring relationships with business support professionals

- a formal commitment by mining and other companies to foster local business
- a partnership rather than tendering approach to local contract management
- appropriate support by the mining company, such as expeditious payment
- links to external support systems, such as financial advisers and services
- a special focus on and support for community businesses that are culturally appropriate and designed to be of future benefit to the community.

Identifying specific opportunities within and beyond the immediate needs of the mine and the community is an important step towards business creation. This can be done during the pre-approval demographic and social impact studies and will be most effective if the potential for the development of other large projects in the surrounding region can be projected. The most prospective local business opportunities, even if not directly associated with the mine, can then be targeted with financial support and specific training systems can be created and delivered by the mining company. Even where business development is well planned, the sustainability of any business cannot be guaranteed because business projections are limited to 5–10 years and social, economic and political factors change continuously.

6.2 Engendering sustainability

Some business opportunities will be solely relevant to the immediate needs of the mine, while others will have longer term prospects. The challenge is to keep each of the created businesses functioning as long as possible and, preferably, well beyond the life of the mine. Post-mining funding through trusts is only a partial solution because those funds will ultimately be exhausted. Businesses that rely primarily on grants, loans or the support of a large nearby project tend to fail once the project has ceased or the grant money has expired.

Long-term survival must therefore consider a number of other socioeconomic and cultural factors related mainly to the types of goods and services on offer, their marketability and their relevance to consumers.

Developing sustainability relies on a number of basic non-financial principles, including recognition that:

- an innovative business model may need to be built around cultural values
- strong community support, ownership, interest and vision for the business are vital
- the business must be linked to wider regional planning, infrastructure and resources
- business planning must take a long-term view
- robust governance processes are required.

Case study 5 is an example of an attempt at sustainable business development in remote Indigenous communities in north-east Arnhem Land in the Northern Territory. Several Indigenous businesses have been established with no direct financial assistance from the company, other than that used to develop skills-based training through a local VET program. It is too early to determine whether the businesses will remain viable and sustainable long into the future, but they have strong community support and provide avenues for future business capacity development.

Case study 5: Ralpa: a regional VET program leading to local business development

In 2007, Rio Tinto Alcan established the Indigenous Arnhem Land Education and Regional Training (ALERT) system to deliver nationally accredited qualifications for Indigenous people to work in the mining sector. However, ALERT was only partially successful because, while it attracted 138 local Indigenous people into the training scheme, fewer than 10 were ultimately placed into mainstream jobs at the nearby bauxite mine or refinery.



In 2012, a new dimension was added to ALERT—the Ralpa scheme—targeting immediate employment where suitable positions existed and preparing Indigenous people for mainstream work in a number of industrial areas outside the mining sector. In doing this, the company has helped to assist local Indigenous people to work towards developing self-managed sustainable industries that may last well beyond the remaining 10–15 years of mining.

Ralpa uses an Indigenous concept embedded in local heritage and built upon four cornerstones:

- *Indigenous paternalism*—the decision-making process begins and ends with the involvement of senior Indigenous men. Following interaction between the company, communities and employment agencies, the male elders endorse suitable candidates.
- *Family orientation*—the family is a most important facet of Indigenous society, and Western education is of only secondary importance. Capturing family support and involvement in Ralpa provides customary social capital and allows the candidate to work in a culturally appropriate place within the work structure.
- *Pragmatism and culture*—a strong emphasis is placed on being fit for work, and only secondary emphasis is placed on literacy and numeracy. The program has a highly oral and visual structure and daily patterns of events designed to instil memorisation (a core function of Indigenous learning).
- *Long-term, sustainable outcomes*—the process is viewed as a long-term social investment designed to cater for Indigenous cultural requirements. Work arrangements are adjusted to allow candidates to perform traditional practices and attend ceremony, thereby maintaining their proper position within the clan. In addition, post-graduation mechanisms are in place to enhance continued employability.

Within the first 18 months of the start of the Ralpa program, 46 Indigenous people had transitioned from welfare to mainstream jobs in a recently created local job market, featuring, most notably, a hardwood timber and construction industry, a retail store and a plant nursery. Although it is still too early to gauge the long-term results of the program, its cultural appropriateness and focus on environmentally friendly jobs provides one possible pathway to sustainability in remote mining communities, especially once the mine has closed.

6.3 Financing community businesses

An important part of engagement is to contribute to Indigenous business development. This is usually done in three ways: through direct cash contribution, by acting as guarantor for a loan or by directing more of the company's agreed commitments directly towards community development and away from cash-based royalty payments.

Where direct financial contributions are made, due diligence assessments are recommended, and financial support must taper off as the business matures and becomes independent. If the business is designed to service the mine, continued financial support can be replaced by income-generating fee-for-service contracts.

Mining companies may be able to assist in financing Indigenous businesses by acting as guarantors. Procuring of start-up financing is problematic because Indigenous people are typically viewed as high risk because of lack of collateral, welfare dependency, long-term unemployment and poor credit ratings. In addition to mainstream banks, there are opportunities to tap into other sources of finance, including some innovative solutions, such as:

- formal funding institutions such as Indigenous Business Australia (IBA)
- structures established under regional agreements, such as business development trusts
- showcasing to a wider potential investor base through mechanisms such as the Indigenous Stock Exchange (ISX)
- microfinance and small business grant options
- securitisation of royalty and benefits streams.

Royalty payments can amount to tens of millions of dollars annually, and allocating a significant portion of that money to business development and investment will help promote sustainable practices. To succeed, the negotiated benefits of agreements need to focus more on creating well-governed trusts, rather than on cash payouts.

6.4 Business development support organisations

Non-financial assistance is available from a number of enterprise development and support organisations in Australia. By linking potential business opportunities and proponents with the support groups, mining operations can remove themselves from the difficult position of being both business mentor and contract manager.

Such organisations include:

- Indigenous Community Volunteers, <http://www.icv.com.au/>
- the Department of Employment, New Enterprise Incentive Scheme, <https://www.employment.gov.au/who-can-take-part-neis>
- the Indigenous Stock Exchange, <http://www.isx.org.au/>
- Indigenous Business Australia, <http://www.iba.gov.au/>
- DEWR—Indigenous Business Development Program, www.workplace.gov.au/workplace/Programmes/IndigenousProgs/IBAEnterprises.htm
- the Small Business Development Corporation, Western Australian Government, <http://www.smallbusiness.wa.gov.au/small-business-development-corporation-home-page/>
- the Western Australian Department of Industry and Resources, Aboriginal Economic Development, www.doir.wa.gov.au/businessandindustry/.

7.0 ENVIRONMENTAL MANAGEMENT

THREE KEY POINTS TO REMEMBER

1. Indigenous knowledge is complementary to and has equal standing with many streams of Western science.
2. Applying Indigenous knowledge and land management practices at all stages of the mining process will provide a wider perspective on how environmental impacts are perceived, assessed and managed.
3. Co-management creates improved relationships with Indigenous communities and may lead to greater satisfaction with outcomes.

The protection of the environment has become an important social, scientific and political issue over the past 25 years, and government environmental policy is changing constantly in response to pressure from the public, industry and the international community. This raises a number of challenges for a mining company; in particular, it must ensure that effective systems are in place to monitor compliance with environmental legislation and that site-level management practices address local environmental concerns that affect its social licence to operate.

A company's attitudes and environmental management practices at the operational level have a profound effect on local communities and play an important role in shaping its relationships. Indigenous people are particularly adept at environmental management, having developed unique bodies of traditional knowledge and management practices most suited to the Australian environment. Integrating that knowledge and experience into the company's environmental management systems is an ideal way to engender employment, create business opportunities and foster relationships. One approach being adopted by leading companies to manage environmental impacts and build relationships with Indigenous communities is environmental co-management.

7.1 Principles of co-management

Environmental co-management is an inclusive, consensus-based approach to resource use and development that takes the mining company beyond its commitment to formal land use agreements. It requires a partnership approach that involves the mining operation, local Indigenous people and sometimes other parties, such as Indigenous representative organisations, governments, researchers and NGOs. The partners share the authority and responsibility for the management of the environment in and around the mine site.

Environmental co-management is proactive and moves the company beyond simple legislative compliance, while also providing material benefits for the company and Indigenous communities. Those benefits can include new business and employment opportunities for Indigenous communities and a means to access and maintain land according to cultural traditions.

For co-management systems to be effective, they must recognise that Indigenous science is valid and equal with modern non-Indigenous science. In particular, the use of traditional environmental and cultural knowledge in the environmental assessment process is now recognised in Canadian and New Zealand legislation. This produces assessments that are more complete, apply to a wider array of risks, address issues of specific importance to Indigenous people, are more relevant to Indigenous people, and encourage meaningful participation and relationship building.

Although Australia has no legislation that mandates the inclusion of traditional knowledge in environmental assessments and management, a subtle shift in policy has occurred as more environmental impact assessments now require the consideration of Indigenous values. Case study 6 demonstrates how Indigenous ecological knowledge can be applied to generate mine closure criteria based on co-management. Numerous other studies, including studies related to developing mine closure and measurement criteria based on traditional ecological knowledge, are currently being undertaken. They are important steps towards developing a more cohesive and integrated system of environmental co-management that can be used at all phases of mining activity, from pre-approval to post-closure management.

Case study 6: Indigenous ecological knowledge and mining in the Northern Territory

Indigenous ecological knowledge may be considered as the sum total of ecological and cultural knowledge (including land management practices and resource use patterns) held by an Indigenous group. Until recently, there were few examples of the direct application of Indigenous ecological knowledge to mining in Australia. This case study highlights recent advances in applying that knowledge at all phases of mining projects. It represents only a small part of what is rapidly becoming an ongoing process.

Driven by the need to address cultural matters related to environmental management and closure at the Ranger Uranium mine, Mirarr traditional owners and the Northern Land Council began a process that sought to tie together traditional ecological knowledge and engineering principles to develop mine closure criteria that were acceptable to both Mirarr and ERA, the operator of the mine. The process considered in detail Aboriginal consultation protocols, Western science, cultural heritage and differing worldviews, including metaphysical or spiritual concerns.

Three key matters addressed were whether the criteria were culturally acceptable, technically possible and economically viable.

The process was iterative: if a negative answer was provided to any of the questions, an alternative answer was sought. To achieve high-quality and appropriate outcomes, the consultation was driven by the Mirarr people and allowed for:

- gender-related issues
- inter- and intra-clan rivalries
- cultural activities, such as ceremony, that influenced timing of discussions
- language and the interpretation of concepts that have no analogy in Mirarr culture.

The process was supported by interpretive walks across country and discussions on the area's history, which allowed the development of a detailed cultural map that expressed patterns of environmental (including cultural and social) use and land management practices. It was then possible to identify key areas for which a special focus was needed to develop closure criteria for the mine that were understood by and acceptable to the Mirarr people (Smith 2008). This work continues, and the next stage is to identify and implement a set of monitoring values against which success in meeting the criteria can be measured.

This process is accepted worldwide as leading practice because it successfully integrates two knowledge systems to provide practical outcomes. Although the mine closure phase was targeted, it can be readily adapted to provide input at all phases of mining operations, from pre-approvals and impact assessments through operations and well into the post-closure monitoring period.

Indigenous knowledge systems are now recognised in Western science as legitimate areas of knowledge. They include knowledge of country, plants, animals and techniques of environmental management. Indigenous knowledge has many potential applications to mining industry activities; for example, it can be used to:

- provide a more comprehensive environmental assessment prior to approval
- contribute to the development of more relevant monitoring programs at mine sites
- improve satisfaction with rehabilitation programs and outcomes
- assist in management of pastoral leasehold lands, in cases where mining companies are major landowners
- provide an additional pathway to Indigenous engagement and employment
- demonstrate that communities, people and their knowledge are valued.

If implemented, this approach offers the potential for the establishment of Indigenous businesses designed to manage natural resource projects and development opportunities and opportunities for structured and culturally appropriate work in the mining industry. However, care must be taken to ensure that the businesses remain a shared responsibility and that Indigenous communities are not left with a post-mining environmental legacy that they do not have the resources or capacity to manage.

7.2 Adaptive co-management

Adaptive co-management systems are variants of the co-management approach discussed above. They use 'flexible community-based systems of resource management tailored to specific places and situations and supported by, and working with various organisations at different levels' (Olsson et al. 2004:75). The main difference is that they incorporate a larger range of stakeholders to produce management outcomes that apply to a wider area and longer span of time.

Adaptive co-management contributes to the ongoing resilience of social and environmental values by combining dynamic learning with the partnership aspect of collaborative management. To be successful, it relies upon:

- enabling legislation and agreements that create space for collaboration in ecosystem management
- adequate funding to respond to environmental change and permit remedial action
- appropriate monitoring, including local people's involvement in monitoring
- consultation of a variety of data sources to gain the most accurate information
- good information flow and social networks involving all people connected with ecosystem management
- strong values and a vision for ecosystem management
- opportunities for collaborative learning.

This new area of research may ultimately lead to stronger provisions for environmental co-management being included in future land use agreements as mining companies and Indigenous groups become more aware of its potential.

Case study 7 demonstrates how adaptive co-management was applied to develop a long-term strategy for biodiversity management in the Tanami region of the Northern Territory. Its key community-based benefits include the development of Indigenous ranger groups and the promotion of traditional systems of knowledge and land management.

Case study 7: Tanami Biodiversity Strategy

The Tanami Biodiversity Strategy is a cooperative and strategic approach to understanding the effect of exploration and mining on the environment in a very remote and arid region of the Northern Territory.

Newmont Australia Ltd's Tanami operation began in 1986. Its mines, water extraction and exploration interests extend over 45,000 square kilometres and employ a workforce of more than 500 people. All exploration, mining and associated infrastructure is subject to agreements between Newmont and the Central Land Council (CLC), which represents the interests of the land's Aboriginal owners.

At first, the focus of environmental management and monitoring was site specific and aimed at minimising impacts by applying best practice principles. However, both Newmont and the CLC grappled with how to understand the cumulative impacts of exploration and mining on the region. Although Newmont collected environmental data over many years, it was difficult to quantify impacts.

The Tanami Biodiversity Strategy was developed after a meeting between the CLC and Newmont in 2003 and progressed in consultation with other important stakeholders, including conservation groups, the Northern Territory Government, the Bushfires Council and private environmental consultants. The idea was to complement Newmont's existing environmental monitoring with a sound scientific approach to monitoring environmental change on the macro and micro levels.

The strategy involved the selection of almost 100 sites for regular twice-yearly monitoring. Site selection took into account Aboriginal ecological and cultural knowledge as well as scientific parameters. The monitoring methods adopted make extensive use of Warlpiri tracking skills, and a field program provides paid work for the ranger groups involved. The Warlpiri people have developed the ranger groups over several years with support from the CLC, the Natural Heritage Trust and CDEP programs.

The Tanami Biodiversity Strategy contributes to sustainable development in the region and provides a means for Newmont to meet its corporate and statutory obligations to minimise environmental impacts. It also enhances Newmont's social licence to operate by contributing to wider scientific knowledge of the region, supporting the development of the Warlpiri ranger groups and promoting Aboriginal land management knowledge and skills.



7.3 Benefits of co-management

Effective environmental co-management programs can be used to promote strong partnerships and high standards of environmental management on work sites and across the local region, creating potential benefits for Indigenous communities and mining companies. In particular, programs that respect Indigenous knowledge help build Indigenous communities by supporting the local economy and enhancing the confidence and skills of the Indigenous workforce.

By partnering with mining companies to adopt environmental co-management practices, Indigenous communities benefit by:

- maintaining and transmitting traditional knowledge and skills to their next generations
- gaining a focus for trusted relationships and power sharing
- developing pride, confidence, work habits and a lifelong learning culture to support younger generations
- increasing business development opportunities for sustainable livelihoods and economic development on Indigenous lands
- building community and cultural resilience.

Mining companies benefit by using Indigenous employees and knowledge as part of their environmental management programs. Sponsoring or contracting Indigenous people to manage their lands for conservation and to re-establish customary land management practices that have biodiversity or other positive environmental outcomes allows companies to offset some of the environmental impacts of their operations. They also place themselves and nearby communities in a position from which a skilled workforce, capable of managing the post-mining environment and its liabilities, can be created and trained throughout the life of the mine.

7.4 Building the Indigenous environmental management workforce

Environmental co-management can support Indigenous livelihoods and economic development by engaging Indigenous people in the workforce. Conservation and environmental work appeals to many Indigenous people and is valued by others inside and outside the Indigenous community. It gives people the opportunity to use the observational skills and environmental knowledge that they developed from their early childhood.

Community ranger groups are a growing force in remote Australia, and some are well placed to provide environmental services to the mining industry. Companies can encourage them by contracting Indigenous organisations for environmental management tasks at mine sites, such as rehabilitation, weed control and fire management. Case study 8 outlines the collaborative approach used by Dhimurru Aboriginal Corporation and its partners to develop a sustainable Aboriginal owned and operated environmental co-management business.

CASE STUDY 8: Dhimurru Aboriginal Corporation

Dhimurru Aboriginal Corporation is located in Nhulunbuy in the Northern Territory.¹

Established in 1992, the corporation is a community-based Indigenous organisation that serves the 15 Yolngu clans of north-east Arnhem Land holding estates and interests in the Dhimurru Indigenous Protected Area. It was created to protect Yolngu land and seas from the impacts of increasing population influx in the mining town of Nhulunbuy, constructed some 20 years earlier to serve the Alusuisse-owned bauxite mine and alumina refinery on the Gove Peninsula (currently owned by Rio Tinto Alcan).

Dhimurru delivers natural and cultural resource management services across the Gove Peninsula and adjacent sea on behalf of Indigenous landowners. Those services have been developed using a collaborative 'both ways' approach involving a number of partners, including the Parks and Wildlife Commission of the Northern Territory, NT Fisheries, the Australian Government, CSIRO, the Northern Land Council, Conservation Volunteers Australia and Rio Tinto Alcan.

The eight key features that define this as a leading practice venture using leading practice environmental co-management are:

- investing project ownership in the area's Indigenous landowners through Dhimurru
- working in an atmosphere of mutual respect and trust
- taking a tolerant and patient approach in developing relationships
- considering the range of worldviews involved and what each partner has to offer
- using effective multilingual communication that considers concepts and words unfamiliar to Aboriginal people
- formally documenting agreements to provide clarity, prevent misunderstanding and meet the requirements of non-Indigenous governance
- using adaptive management to provide mutually acceptable outcomes for projects
- ensuring that Dhimurru builds capacity among its workforce by not overcommitting to work.

By adopting this approach, Dhimurru has always met the needs of its customers and is well placed to remain viable after the closure of the Rio Tinto Alcan mine and refinery. This collaborative approach is an excellent model for other mining companies seeking to develop sustainable Indigenous businesses, particularly those aimed at environmental co-management.

¹ Dhimurru Aboriginal Corporation, <http://www.dhimurru.com.au/>.

8.0 STATUTORY AND INSTITUTIONAL FRAMEWORKS

FOUR KEY POINTS TO REMEMBER

1. Failure to apply the correct legislative framework and negotiate with the appropriate representative body may cause a project to stall or fail.
2. The roles and responsibilities of the various community organisations and statutory bodies that will be involved in negotiations must be identified before engagement.
3. Most negotiations will be held with representatives of institutional bodies who are not necessarily Indigenous people.
4. Strong, positive and ethical relationships must be maintained with institutional bodies as well as Indigenous communities and individuals.

Working effectively with Indigenous communities requires an understanding of laws that pertain to rights relating to land and the protection of cultural heritage. The principal pieces of legislation and the institutions that administer them are described in this section. Different types of agreements (discussed in more detail in Section 9) are needed for different tenures.

Before the 1960s, Indigenous people in Australia had few legal rights to access and use land according to custom. Landmark events of the 1960s and 1970s included the 1966 Gurindji walk-off at Wave Hill and the 1971 Gove land rights case, which were two of the earliest forays into legislating Indigenous rights to land after the 1968 constitutional reform. The Gurindji walk-off was a protest against appalling wages and conditions. In 1975, the federal government handed back 3,236 square kilometres of Wave Hill station to the Gurindji traditional owners.

8.1 Aboriginal land rights Acts

Various state Aboriginal land rights Acts date back to the 1960s but were seldom applied, as mining is managed under state minerals and energy legislation or the federal Native Title Act (discussed below).

The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) was enacted in response to a 1971 legal challenge about bauxite mining on Yolngu traditional land. An important precept raised was that Yolngu traditional owners already had their own systems of land tenure according to Aboriginal laws that predated Australian systems. Although the concept of Indigenous tenure was not upheld by the court, the case started a parliamentary process whereby it was soon to be recognised. The Aboriginal Land Rights (Northern Territory) Act vests freehold ownership of Aboriginal land in Aboriginal people. It sets out a framework around which:

- Aboriginal customary rights are recognised and protected
- the right to veto development is maintained
- land is vested in trusts for the benefit of Aboriginal communities
- exploration and mining agreements may be negotiated using a consultative approach
- statutory land councils are established to manage land and negotiate mining and exploration applications.

Almost 50% of the Northern Territory and 85% of its coastline are covered by Aboriginal freehold granted under the Act.

Parts of South Australia are covered by the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and the *Maralinga Tjarutja Land Rights Act 1984*. In Queensland, the two main Acts are the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. The Acts provide for a system of community-level land trusts under a special form of title called a 'deed of grant in trust'. The *Mineral Resources Act 1989* requires applicants for mining leases to seek the consent of the trustees of Aboriginal reserves. In New South Wales, the *Aboriginal Land Rights Act 1983* provides an Aboriginal land title, grants of land and procedures for obtaining access to and use of land. In Tasmania, the relevant statute is the *Aboriginal Lands Act 1995*.

8.2 The Native Title Act

'Native title' is the term used by Australia's High Court to describe those entitlements of Aboriginal and Torres Strait Islander peoples to land according to their traditional laws and customs that are now recognised under Australian law. Native title is only held over areas where a 'continuing connection' with lands or waters in accordance with traditions can be demonstrated. The *Native Title Act 1993* (Cwlth) formally recognises those interests and provides a framework:

- under which native title and customary rights are recognised and protected
- that establishes standards through which future dealings affecting native title may proceed
- that establishes a mechanism for determining claims to native title
- that validates past acts and intermediate period acts, invalidated because of the existence of native title.

The Native Title Act specified that native title existed over a variety of lands, including vacant Crown land or other public land, national parks, public reserves, mining tenements and waters. Amendments made in 1998 in response to the High Court's *Wik* decision meant that native title rights could coexist with pastoral leases. They also validated some actions that had occurred after enactment that may otherwise have been rendered invalid, expanded provisions relating to future acts and provided for the making of Indigenous land use agreements (ILUAs).

Further amendments were made in 2007 to improve regulatory efficiency and to encourage the resolution of land claims through agreement-making in preference to litigation. Under the amendments, financial assistance is available for peak organisations (including mining companies) to participate in the negotiation of template agreements relating to the application of the right to negotiate process and the 'expedited' procedure for mining-related acts. Assistance is primarily available to develop pro forma agreements (or review existing agreements) relating to the application of the negotiation procedure and 'expedited' procedure for mining-related acts with the aim of reaching agreement at an earlier stage in the 'right to negotiate' process, thus improving efficiency, making better use of time and resources and achieving more expedient outcomes.

The National Native Title Tribunal administers the Native Title Act. The tribunal has a range of functions, including mediating native title claims, assisting with the negotiation of ILUAs, providing mediation and arbitration in relation to certain future acts and maintaining the National Native Title Register. The register contains information about every native title determination made and other determinations relating to native title in decisions of courts or tribunals.

8.3 Cultural heritage and sacred sites legislation

Sacred sites are places or objects within the landscape that have a special significance in Indigenous tradition. They are an important part of overall Indigenous heritage, which also includes archaeological and historical sites that have no spiritual significance.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth) is used in conjunction with state legislation to protect cultural heritage. The EPBC Act (discussed below) offers additional levels of protection to World Heritage listed places. These Acts provide a framework for:

- redress where Indigenous individuals or groups believe that state processes have not adequately protected heritage places of significance to them
- the management of heritage sites through negotiation between communities and developers
- the establishment of Indigenous people as beneficiaries of the legislation
- the acknowledgement of Indigenous peoples' continuing interest in places deemed significant to their tradition, culture, history and heritage more generally.

The rights to Indigenous cultural places and objects operate regardless of underlying land tenure or whether rights are available to Indigenous people under the native title or other Aboriginal land rights Acts. However, this does not mean that Indigenous people have complete or total control. In most cases, where a mining company or other third party has competing interests, a government minister or body has the ultimate say over whether or not Indigenous sites, artefacts, remains and objects are preserved, conserved and protected or are allowed to be damaged, destroyed or relocated.

A number of sources of information can assist companies in meeting legislative heritage requirements. Guidelines are available from the relevant state heritage authorities on working with the jurisdiction's legislation, training courses and workshops are provided by heritage consultants in most states, and professional heritage bodies can also provide assistance.

8.4 Environmental legislation

The overarching framework for environmental legislation in Australia is provided by the EPBC Act, which was developed in response to directions of the United Nations Conference on Environment and Development (UNCED) held in 1992. The Act is firmly grounded in the principles of sustainable development and reflects international expectations on environmental and heritage management and the inclusion of indigenous values. It has several objectives, including:

- the identification and approval of matters of national environmental significance
- the implementation of biodiversity provisions to protect Australia's native species
- assigning the responsibility to protect heritage-listed properties to the Australian Government.

In response to the passage of the EPBC Act, most of Australia's state and federal environmental policies and legislation have now come to reflect the concept of sustainable development.

While the EPBC Act focuses on matters of national interest, ensuring compliance with anti-pollution legislation is the province of state, territory and local laws. This level of legislation deals primarily with three main categories of pollution (air, water and noise), site contamination and waste management.

From a compliance perspective, it is essential for a mining company to be familiar with the legislation applying to its projects because it is liable for the costs of cleaning up after any pollution incident and after the mine closes.

8.5 The institutional environment

The institutions with responsibilities under the Aboriginal land rights and native title Acts include:

- native title representative bodies recognised under the Native Title Act, which have powers and functions to provide support to Indigenous people and native title holders when they are making various applications, including by acting as the claimant, making objections, applying for future act determinations and compensation and negotiating ILUAs on behalf of native title parties
- statutory land councils, such as the Northern Land Council, the Central Land Council, the Tiwi Land Council and the Anindilyakwa Land Council established under the Aboriginal Land Rights (Northern Territory) Act, and responsible for the administration of that Act, but that may also act as the native title representative bodies for traditional owners across their jurisdictions
- statutory corporations, such as the Anangu Pitjantjatjara Council and the Maralinga Tjarutja established under the South Australian *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and the *Maralinga Tjarutja Land Rights Act 1984*, which function as land trusts and as administrative bodies with functions similar to the Northern Territory land councils
- prescribed bodies corporate
- community councils, especially in Queensland where they may have trust responsibilities for the DOGIT lands and manage the trust functions
- Aboriginal townships
- various bodies with statutory roles under cultural heritage legislation, including the Aboriginal Areas Protection Authority in the Northern Territory and museums and other state agencies in other jurisdictions.

In the design of a detailed engagement plan, the main emphasis should be on the development of sustainable relations on an institution-to-institution basis. It is important to recognise that, while good interpersonal relationships are important, they can evaporate with changing personnel. Therefore, institution-to-institution relationships based on ethical dealings and mutual respect and recognition provide a more sustainable foundation for enduring relationships. When institutions work together, the opportunities for promoting the exchange of ideas, building relationships and reaching mutually beneficial agreements are enhanced.

9.0 NEGOTIATING AND IMPLEMENTING AGREEMENTS

This section does not constitute legal or policy advice; nor is it detailed instruction on how to negotiate agreements between mining companies and Indigenous people. Project proponents and the Indigenous peoples affected by projects should commission experienced advice to guide agreement-making.

THREE KEY POINTS TO REMEMBER

1. Individual and group responsibilities and accountabilities under an agreement should be clear.
2. Benefits are targeted to addressing immediate, short-term and long-term community and company needs, with a special emphasis on sustainable outcomes.
3. Negotiation and implementation follow well-planned, cooperative strategies commensurate with Indigenous decision-making.

Successful agreements are a result of effective community engagement that creates a framework around which future participation is planned and implemented. Exploration and minerals production agreements provide important frameworks for managing the expectations that Indigenous communities have of mining companies. They are the outcomes of good communication, developing trust, mutual cooperation and the common desire for a beneficial present and sustainable future. The path to an agreement varies according to local circumstances and legislation. Irrespective of whether agreements are motivated by risk management, legislation or enlightened self-interest, the Australian Government strongly encourages negotiation in preference to litigation. Agreements provide a structure around which each party's needs can be addressed and progress towards sustainable outcomes can develop and be measured.

Agreements provide mining companies with secure tenure, which is vital to the investment of large sums in high-risk, long-term mining ventures. Agreements also recognise the interests of Indigenous people who have maintained strong connections to the land and waters where, as a matter of law, their native title no longer exists or survives only in a limited way. Agreements are vehicles through which durable relationships and working partnerships can be forged and sustainable communities and local businesses can be developed.

Durable relationships and agreements leading to resilience and sustainability require community views and needs to be fully understood and met. Indigenous community leaders recognise a need for improved standards of living to provide sustainability and a positive future for subsequent generations, and they see industrial developments on their land as one means to achieve this.

9.1 Types of agreement

Under the Native Title Act, there are two principal types of agreement that can be applied to mining projects—the tripartite deed and the Indigenous land use agreement (ILUA). Both types of agreement can be used, but the tripartite agreement normally takes precedence when impacts are expected to be significant enough to trigger the right to negotiate (NNTT 2008). Under the Native Title Act, Indigenous people might or might not choose to be represented in negotiations by statutory representation bodies such as native title representative bodies, locally constituted land councils or private lawyers.

Section 44 agreements specific to the Aboriginal Land Rights (Northern Territory) Act are required where any mining or exploration activity is to be undertaken on Aboriginal freehold land in the Northern Territory. Negotiations are normally carried out through the representative land council.

9.1.1 Tripartite deeds

The tripartite deed is an agreement between native title parties and their representative bodies, the mining company and the government, required under the future acts 'right to negotiate process'. The tripartite deed is a high-level document that is supported by ancillary agreements, which include the critical objectives, commitments and level and types of community benefits to be derived from the project. Governments are not usually privy to the contents of an ancillary agreement.

A tripartite deed is normally negotiated when the impacts of the proposed activity, such as mining, are deemed to be significant. Under the right to negotiate, a time frame of 24 months is applied to completing good faith negotiations. Where impacts are deemed to be less significant, such as minerals exploration, the right to negotiate does not occur and an expedited procedure applies.

9.1.2 Indigenous land use agreements

The ILUA is a common type of agreement negotiated under the Native Title Act. It is an agreement between native title groups and others about the use and management of land and waters. ILUAs are not normally used for large-scale mining unless access to additional land to undertake activities associated with mining (such as the procurement of water) is required. An ILUA can take several forms:

- An *area agreement* can only be made where there is no registered native title body corporate (or bodies corporate) for the entire area of land subject to the agreement.
- An *alternative procedure agreement* can be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area, but one exists for part of the land.
- *Body corporate agreements* are restricted to areas where one or more registered native title bodies corporate hold native title over the entire area of land subject to the agreement.

Although ILUAs are cost-effective where multiple activities can be covered in one agreement, their broad scope and less restricted time frame means that they are not always appropriate for stand-alone mining projects because they may fail to meet the specific objectives of native title parties or mining companies.

9.1.3 Section 44 (land rights) agreements

The Section 44 type of agreement applies only in the Northern Territory and only on land where Aboriginal freehold is held in the form of community-based trusts. Although it requires the same matters to be addressed as with native title, it is fundamentally different from tripartite deeds and ILUAs because:

- the government is not involved in the negotiations
- freehold tenure allows Indigenous communities to veto development on their land
- the payment of a royalty can be negotiated.

Section 44 agreements are conjunctive and required irrespective of the extent of impact expected. If agreement to access land is obtained, terms specific to exploration and overarching principles for mining must be negotiated. Legal agreement to explore removes the right of veto over future mining activities, but the ability to develop a mine remains subject to the negotiation of a separate mining agreement.

More recent amendments to the Northern Territory *Mining Titles Act 2010* permit non-ground-disturbing reconnaissance activities to be undertaken without negotiation of a formal Section 44 agreement, although permission to access to land is still required under the Aboriginal Land Rights (Northern Territory) Act.



9.2 Common pitfalls in negotiations

Confusion about the legislative frameworks under which negotiations are held is one risk. The protocols and practices used under freehold-based land rights legislation differ significantly from the Native Title Act framework. When operating under the land rights framework, attempts to force negotiations along the same lines as the Native Title Act framework often fail, damaging relationships and prompting the veto of the mining company's access to the land.

Failure to reach leading practice agreements is a second risk, and can usually be ascribed to the way negotiations are approached. Risk of failure occurs when the party with the most power determines and controls the agenda. Agreements engendered under these circumstances are prone to failure because the pressure asserted on the weaker parties during negotiations means that there is no true equality or participation and probably little in the way of true consent. Parties forced to sign agreements under duress may be unwilling or unable to carry out their responsibilities or may ultimately feel forced to mount a legal challenge.

Positional bargaining, in which one party (usually the most powerful) begins with a 'bottom line' or non-negotiable position, presents a third risk. Changes to the position may be offered grudgingly and only in response to concessions made by the other party. This may lead to a concluded agreement, but often at the expense of a long-term working relationship and sustainable outcomes. Closely related to positional bargaining are negotiations that overemphasise the rights of one party. The incorporation of recognised rights in an agreement is important but it should not be a primary focus because the parties would then miss the opportunity to widen the discussion to include broader issues such as regional development.

9.3 Conducting negotiations

Successful, cost-effective negotiations are well planned and follow a series of steps. Negotiations take considerable time and might not accord with the expectations of inexperienced negotiators or the company's critical path timelines. The number of stages in negotiations varies according to the requirements of the negotiating parties, but leading practice negotiations tend to follow the generic approach described in this section.

9.3.1 Background preparation

A critical first step is to resolve the rules of conduct. Agreement-making must be approached with complete openness in an atmosphere of trust, mutual respect and recognition of each party's interests. Disclosing all matters that are not commercially confidential promotes common understanding of each other's objectives and opens the way to joint decision-making and partnerships.

Successful negotiation involves adopting the principle of Indigenous peoples' rights to 'free, prior and informed consent', which is now enshrined in international and national law (Tamang 2005) and is an integral part of the company's social licence to operate. Under this principle, the company is obliged to take measures to enhance and strengthen the capacity of Indigenous communities to be effectively involved in decision-making about all of their cultural matters. Ideally, members of the affected Indigenous communities should be present at all stages of negotiations if this principle is to be fully applied.

Once the rules of conduct have been established, it is prudent for the company to undertake detailed background research. Research, which must be done in the correct Indigenous context, includes finding the answers to two simple, but profound questions:

- Whose country will be affected?
- How will the right people be identified?

Once those questions are answered, the project can be placed into its local historical, political, social and cultural contexts from the perspectives of the company and the affected communities. This usually requires engaging specialists with local knowledge to guide the process and ensure that initial approaches are made according to locally correct custom and with the right people.

If sufficiently detailed background research can be done, the company should be in a position to:

- determine how Indigenous interests can be integrated into its overall objectives
- develop a process that is mutually acceptable, satisfies government requirements and meets the principle of free, prior and informed consent
- protect itself from future compensation claims, either directly or through the government
- develop a mutually beneficial working relationship that is sustained for the duration of operations and allows the communities to remain viable after mining has ceased.

9.3.2 Agreement-making protocol

A formal engagement or agreement protocol is an important part of the negotiation process. It uses a 'who', 'what', 'where', 'how' and 'when' approach for starting negotiations and resuming them if they break down. The protocol requires background work to identify:

- the right people with whom to make the agreement
- key issues that are likely to be brought to the table for negotiation and how the parties intend to work through them
- at what stage of the negotiation those issues will be dealt with
- a location for negotiations that meets community and company needs
- how decision-making occurs in the Indigenous community
- how the Indigenous community will be represented and resourced
- a flexible timetable for negotiations.

The risk of later conflict can be minimised if the roles of affected parties other than the negotiating parties are considered, even if they are not involved in direct negotiations. Potentially contentious issues include what rights, interests, or both, local Indigenous community members who do not identify as native title claimants or traditional owners have in the project area and how they will be included in the process and outcomes.

The protocol is an important capacity-building step and an important part of building trust, and should be developed in conjunction with community representatives. The main objectives of engagement at this stage are to ensure that each of the parties understands:

- what the agreement-making process involves and how it is structured and conducted
- the roles of all the parties in the agreement-making process
- the nature and extent of the financial or other resource commitments to the negotiations

- meeting dates
- broad joint objectives.

If possible, the order of matters to be negotiated should be identified before entering into negotiations. An Indigenous community's confidence will be built if its most important matters are dealt with first. This will demonstrate that the mining company is sincere, prepared to negotiate agreed outcomes and respects the community and its concerns.

9.3.3 In-principle agreement

The next step in the negotiating process is a formal stage during which the parties or their representatives meet in a structured environment to state their interests and reach in-principle agreement on the broad issues that will need to be resolved. The extent of the discussions depends greatly on the scope and scale of the proposed project and the specific concerns of the Indigenous people.

Issues that might be identified for inclusion in a comprehensive agreement are:

- the quantity and type of compensation and benefits to be paid, including a provision for intergenerational benefits well beyond the life of the mine
- governance structures to promote the effective management of benefits
- joint land management arrangements
- the protection, maintenance and promotion of Indigenous cultural heritage
- education, training and employment programs leading to direct Indigenous participation
- the development of sustainable businesses capable of continuing beyond the life of the mine
- ongoing access to non-operational areas for cultural purposes and to operational areas for the purpose of inspection
- participation in mine closure and rehabilitation planning and works
- community consent and ongoing support for the mine's social licence to operate.

It is at this point that the parties should agree to the kind of legal agreement that will be entered into (for example, a simple non-binding memorandum of understanding, a common law contract or an ILUA negotiated under the Native Title Act).

9.3.4 Formal agreement

Formal negotiation of terms, concessions and benefits begins once the principles of the agreement have been identified. This involves drafting and exchanging drafts of the agreement, settling contentious issues, and agreeing on, authorising and signing the detailed and complex legal documents.

Indigenous communities do not regard land as a commodity that can be bargained away and do not typically regard agreement-making as a quick transactional means to protect assets or gain commercial advantage. Their principal concern is for the land, what it contains and how it can be managed and protected for future generations. Efficient and cost-effective negotiations with them require a different approach from that used for normal commercial negotiations with another company. The pace, tone and content of negotiations tend to be slower and do not follow the pattern of offer, counter-offer and brinksmanship typically experienced elsewhere.

Negotiations can take years if difficult and detailed issues are confronted, but time frames might be shortened where a previously agreed protocol exists and where leadership from the mining company and the Aboriginal parties is demonstrated. There will always be occasions when external mediation is required to keep the agreement-making process alive.

Even when the best possible planning has been done, there is a high risk that negotiations will fail at this stage. Often, this is caused by the loss of influential people due to the length of time required, or a refusal to budge on certain issues. In reaching an agreement, the company must be prepared to give ground if that is the only solution. For example, where prospective areas are of such significance that they cannot be disturbed, the company may be wise to have those areas excised from its lease.

While such a solution often causes major concern to the company, a simple demonstration of understanding and respect of heritage and culture from the outset of negotiations may lead to benefits that far outweigh the losses. Companies that have adopted this philosophy and resolved these issues early have been able to gain agreement relatively quickly and have gained full support for the project from traditional owners, including all other consents required for the project.

Case study 9 discusses the development of relationships and formal agreements between the Brambles Monadelphous Joint Venture and the Ngarluma and Yindjibarndi Foundation and the communities that the foundation represents.

Case study 9: Brambles Industrial Services

Brambles Industrial Services (BIS) had a long history of working with Aboriginal people in metropolitan and remote regions, which proved invaluable in longer term negotiations with the Ngarluma and Yindjibarndi Foundation Limited (NYFL). Significant time and energy were devoted to building a relationship of trust with community elders during negotiations. The outcome was the development, acceptance and signing of two memorandums of understanding between the Brambles Monadelphous Joint Venture (BMJV) and the community.

The first memorandum is an agreement relating to operations on the Woodside LNG4 Expansion Program. BMJV commits to:

- supporting Aboriginal business opportunities
- providing employment and training opportunities for Aboriginal community members during construction
- providing and funding suitable work experience to build capacity among Aboriginal people
- establishing and maintaining direct communications between the BMJV project manager and the chief executive officer of the NYFL
- appointing a representative steering committee to monitor performance under the agreement
- appointing and funding an Aboriginal liaison representative.

The second memorandum is an agreement to extend the relationship beyond the Woodside LNG4 contract, to promote community development. The main commitments include:

- supporting and fostering local Aboriginal businesses and business opportunity in the wider Pilbara region

- appointing a steering committee to set policies and procedures, implement the agreement and monitor its performance
- communicating information about the operation and special events
- comprehensively recording the history and culture of the Ngarluma and Yindjibarndi people (a major cultural undertaking that requires considerable funding and academic support in conjunction with input from the community)
- assisting with the construction of the world-class cultural-tourism centre proposed for the Roebourne Shire
- employing two Ngarluma and Yindjibarndi people to train as operators at BIS's Dampier supply base
- initiating the Brambles Remote Area Education Scholarship, to be offered annually to promising remote area students.

To date, all parties have obtained significant benefits from the agreements:

- Non-Aboriginal employees now have a clearer understanding of the traditional culture of the local Aboriginal community.
- Aboriginal employees have gained an understanding of what is needed to maintain satisfactory performance in the working environment.
- BMJV has the satisfaction of providing opportunities that can make a difference in the lives of community members.

9.4 Implementing agreements

Leading practice agreements aim to promote community resilience and sustainability through actions that lead to substantive and sustainable benefit-sharing. The success of implementation depends on how the company is perceived to be meeting its commitments and how well it is achieving the intended outcomes, particularly in the first year (Crooke et al. 2006; Martin et al. 2004).

Past agreements focused largely on cash distributions to communities, but were beset by lack of good governance, policy frameworks and transparency. Consequently, financial outcomes were poor, and the short-term focus resulted in ineffective promotion of long-term economic development (Söderhol & Svahn 2014). Frequently, agreements underestimated or did not include the real costs of implementation, and there was often a tendency to limit the implementation budget to increase project viability and profitability.

More recently, a number of factors that influence the ability to implement an agreement successfully have been identified (O'Faircheallaigh 2003; Limerick et al. 2012):

- the degree of planning before implementation
- the strength of commitment by all parties to the venture
- the amount and type of resources made available to reach the agreed objectives
- robust governance structures for managing the agreement's implementation and the distribution of benefits
- an understanding of the socioeconomic context in which the agreement will operate
- the willingness of the partners to take responsibility and assist each other to reach desired outcomes

- clear but flexible goals
- genuine incentives for compliance (penalties, rewards)
- monitoring, review and amendment mechanisms
- the support of key political actors in each of the parties
- the capacity of each party to perform its obligations under the agreement
- the effectiveness of two-way consultative mechanisms and communication.

9.5 Allocating responsibility

Leading practice agreements aim to use a cooperative approach to generate beneficial outcomes, which implies that responsibility must be shared. This is often difficult because many Indigenous communities lack the capacity and resources to manage large commitments or assist companies in meeting theirs. This can create an additional intangible responsibility if the company and its staff feel obliged to commit substantively to the intent, requirements and spirit of the agreement.

Some explicit responsibilities (or commitments) are detailed within the agreement, usually listed as specific 'things that each party is legally required to do'. For example, the company is required to provide cash benefits into trusts, while the Indigenous community is required to allow mining to occur.

Behind each agreement also exists a more subtle set of implicit responsibilities that shape how it is implemented. They include tangibles such as adequate budget allocations to pay for the cost of holding meetings, arranging transport to get people to and from meetings, hiring additional people to implement specific agreement requirements and providing additional resources for Indigenous parties to meet before and after joint meetings.

9.6 Implementation tools

The final step in successfully implementing an agreement is to regularly monitor its progress and renegotiate outcomes where necessary. During implementation, the company should develop its own monitoring tools to guide and check on progress. Typically, such tools include:

- a site-based implementation team with competencies in Indigenous relations, Indigenous employment, training, business development and line management
- an agreed approach to implementation, signed off and supported at site management and corporate levels
- strategic and action plans for the implementation team
- written guidelines and checklists
- a clear set of reporting criteria and mechanisms
- community feedback mechanisms
- a set of review mechanisms against which management can report on the implementation of the agreement on a regular basis.

Renegotiation should not occur solely when long-term negative impacts occur but should also be considered when outcomes are better than expected, particularly if contingencies or additional benefits are not already included in the agreement.

Case study 10 describes an agreement between Century Zinc and its neighbouring communities signed in 1997. This was the first mining agreement concluded under the right to negotiate provisions of the Native Title Act.

Case study 10: Century Mine and the Gulf Communities Agreement

Century Mine is 250 kilometres north-west of Mount Isa in the lower Gulf of Carpentaria region. Zinc and lead concentrates are transported from the mine to Karumba on the Gulf coast. The mine, currently owned by MMG Limited, began production in 1999 and was expected to operate until 2015, with closure and rehabilitation to be completed by 2047.

The Gulf Communities Agreement

The Century project is regulated by the Gulf Communities Agreement (GCA), which details the rights and responsibilities of the mining company, four native title groups (the Waanyi, Gkuthaarn, Mingginda and Kukatj peoples) and the Queensland Government. It commits the parties to working together until the expiry of the mine lease to realise a range of objectives spanning the areas of:

- employment and training
- business development
- cultural heritage and environmental management
- Indigenous land access and ownership, including the transfer of pastoral properties.

Governance

A number of entities (corporations, trusts, committees) were established to manage the implementation of the GCA:

- The Gulf Aboriginal Development Corporation is a trust company responsible for distributing monetary benefits to the native title parties.
- The Century Liaison Advisory Committee operates as a forum to discuss, plan, review and exchange information about the project's operation and the progress of the GCA.
- The Century Employment and Training Committee is tasked with guiding and monitoring expenditure on local Aboriginal employment and training.
- The Aboriginal Development Benefits Trust is a trust company established to manage the project's contributions to business development. The trust is a legal entity consisting primarily of local Aboriginal community members and has protocols and procedures for managing funds. It is to invest one-third of its funds into businesses, with a focus on sustainability and growth, and apply the remainder as business development loans, equity and/or grants.
- The Century Environment Committee monitors all environmental issues associated with the project's operation and acts as a formal link with local communities to share information and identify matters of concern.

These bodies are supported by dedicated Century staff with responsibilities assigned under the GCA.

Outcomes of the GCA

A five-year review that concluded in 2012 indicated mixed outcomes. There have been positive changes in communities in relation to Indigenous employment and training, cultural heritage management and Indigenous land ownership. However, some governance problems have led to missed opportunities for greater socioeconomic development across the wider region.

The more substantive outcomes include:

- Increased employment and training opportunities:
 - More than 900 local Indigenous people have been employed over the project's life, consistently averaging over 15% of the workforce.
 - A further 100 were employed by the mine's contractors.
 - Lawn Hill Riversleigh Pastoral Holding Company provides ongoing training opportunities and employs 12 Indigenous people, or 55% of its total workforce.
 - The mine employs 70 Indigenous apprentices.
 - Regular pre-vocational training courses, such as the 'Work Ready Job Ready' program hosted by the Myuma Group at Camooweal, train around 30 participants each year.
 - In total, the annual contribution to employment and training now exceeds \$17.5 million.
- Business development:
 - Several successful Aboriginal businesses have been assisted by the Aboriginal Development Benefits Trust. These operate onsite and offsite and include civil construction, quarrying, engineering, fuel and other retail businesses.
 - Lawn Hill Riversleigh Pastoral Holding Company is a sustainable pastoral business, now majority-owned by the Waanyi people.
 - Annual mining company expenditure with local Indigenous businesses now exceeds \$17 million.
- Cultural heritage and environmental management:
 - The mining company has committed funding to construct a keeping place for artefacts retrieved during the project.
 - Data about rock art and other significant sites has been recorded during project-based cultural heritage clearances and studies.
- Indigenous land access and ownership:
 - Traditional owners have acquired majority control of the corporations holding Lawn Hill, Riversleigh and Turn-Off Lagoons pastoral stations.

Despite these positives, frustration has been expressed that benefits have not been more extensive, better managed and converted into more enduring outcomes. The review criticised the design and under-resourcing of key entities tasked with the GCA's implementation. In particular, GCA's complex governance scheme placed heavy participation demands on a limited number of Indigenous people, while GCA entities and other Aboriginal corporations benefiting from the project struggled with underlying resourcing and capacity issues. The review noted that most of the GCA's governance bodies, including the central Gulf Aboriginal Development Corporation, experienced long periods of ineffective operation or non-operation, and that efforts to redress the situation had limited success.

Important lessons about key needs that should have been identified and addressed at an earlier stage of the GCA's implementation have been identified, including the need for:

- greater transparency and accountability (such as formal reporting) in relation to the distribution and application of monetary benefits
- more active, consistent and better-informed state government support, including senior representation on governance committees
- more timely action by the mining company to rectify problems caused by failings of its own internal management systems and procedures
- greater resourcing and support for capacity development.

The immediate challenge is to find satisfactory mechanisms to implement effective, modified governance arrangements during the mine's post-production phase. Imminent closure will affect employment, because only a small number of jobs will remain in managerial and 'caring for country' roles during mine closure. Most current employees will need assistance to find new employment, as there are limited mining-related opportunities in the Gulf region. Related concerns exist for Indigenous businesses currently supplying to the mine. The parties to the GCA are working to act on the recommendations of the review.

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