

# WORKING WITH INDIGENOUS COMMUNITIES

*Disclaimers:*

- *The numbers used in this draft are for organisational purposes only, and do not prejudice the system to be used in the final text.*
- *The case studies used in this draft require updating, and information is being sought from relevant companies to do so for finalisation prior to publication.*

**Draft for Stakeholder Comment and Review**

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## FOREWORD

The Australian mining industry is well aligned to the global pursuit of sustainable development. A commitment to leading practice sustainable development is critical for a mining company to gain and maintain its “social licence to operate” in the community.

The handbooks in the Leading Practice Sustainable Development in Mining series integrate environmental, economic and social aspects through all phases of mineral production from exploration through construction, operation and mine-site closure. The concept of leading practice is simply the best way of doing things for a given site. As new challenges emerge and new solutions are developed, or better solutions are devised for existing issues, it is important that leading practice be flexible and innovative in developing solutions that match site-specific requirements. Although there are underpinning principles, leading practice is as much about approach and attitude as it is about a fixed set of practices or a particular technology. Leading practice also involves the concept of 'adaptive management', a process of constant review and 'learning by doing' through applying the best of scientific principles.

The International Council on Mining and Metals (ICMM) definition of sustainable development for the mining and metals sector means that investments should be: technically appropriate; environmentally sound; financially profitable; and socially responsible. Enduring Value, the Australian Minerals Industry Framework for Sustainable Development, provides guidance for operational level implementation of the ICMM Principles and elements by the Australian mining industry.

A range of organisations have been represented on the Steering Committee and Working Groups, indicative of the diversity of interest in mining industry leading practice. These organisations include the Department of Industry, Tourism and Resources, the Department of the Environment and Heritage, the Department of Industry and Resources (WA), the Department of Natural Resources and Mines (QLD), the Department of Primary Industries (Victoria), the Minerals Council of Australia, the Australian Centre for Minerals Extension and Research and representatives from mining companies, the technical research sector, mining, environmental and social consultants, and non-government organisations. These groups worked together to collect and present information on a variety of topics that illustrate and explain leading practice sustainable development in Australia's mining industry.

The resulting publications are designed to assist all sectors of the mining industry to reduce the negative impacts of minerals production on the community and the environment by following the principles of leading practice sustainable development. They are an investment in the sustainability of a very important sector of our economy and the protection of our natural heritage.

***The Hon Ian Macfarlane MP***

***Minister for Industry Tourism and Resources***

# 1.0 INTRODUCTION

## 1.1 *Aims and Focus*

This handbook provides guidance for resource developers on how to work effectively with Indigenous communities. It is one of a series of complementary handbooks that have been produced as part of the *Leading Practice Sustainable Development Program*. This program aims to:

- identify key issues affecting sustainable development in the mining industry;
- provide information for resource developers; and
- demonstrate good practice in building a more sustainable basis to the industry through the use of practical case study examples.

The importance of the social dimension of sustainable development is acknowledged in key industry policy statements such as the International Council on Mining and Metals' *Sustainable Development Principles* (ICMM, 2003) and the Minerals Council of Australia's *Enduring Value* framework (MCA, 2004). Among other things, signatories to these frameworks undertake to 'contribute to the social, economic and institutional development of the communities in which (they) operate' and to 'engage with and respond to stakeholders through open consultation processes'.

A growing number of small, medium and large companies are developing corporate policies that align them with the principles adopted by the ICMM and espoused in *Enduring Value*. In particular, these companies emphasise that community considerations are integral to each stage of a mining operation, from design and construction, through to operation and closure. The purpose of this handbook is to provide guidance to mining industry practitioners on how to translate these higher level policy commitments into improved practices on the ground.

Specifically, this handbook focuses on the challenges that companies may encounter as they engage with Indigenous communities. Effective community engagement depends on the development of relationships based on trust. If companies are to contribute to the sustainability of Indigenous communities and earn exploration access and mine development consents for their operations, they need to develop trusting and mutually respectful relationships with local communities. This handbook provides case studies to illustrate how companies have engaged successfully with Indigenous communities in a range of contexts.

The aims of the handbook are to:

- provide a history of Australia's and resource developers' interactions with Indigenous peoples that establishes the context for a contemporary understanding of 'working together';

- provide a benchmark for Indigenous community engagement to help companies and operations assess the maturity and appropriateness of their current approaches;
- articulate key principles to guide resource developers working on Indigenous lands and alongside Indigenous communities;
- describe the benefits to companies and operations of entering into sustainable and durable agreements with Indigenous communities that are based on mutual respect and recognition;
- set out the basic steps for planning and engaging in mutually beneficial agreement making; and
- provide examples of good practice.

This handbook is primarily intended for use as a management tool. It is intended to assist corporate managers in designing effective engagement strategies with relevant Indigenous parties. For management at the operations level, the handbook contains guidance and practical examples on how to implement good practice in working with Indigenous communities at the site level.

The handbook is also relevant to people with an interest in leading practice in the mining industry, such as community relations practitioners, environmental officers, mining consultants, governments and regulators, non-government organisations, neighbouring and mine communities, and students. All users are encouraged to take up the challenge to continually improve the mining industry's sustainable development performance and apply the principles outlined in this handbook.

## **1.2 The Business Case**

Engaging with communities and contributing towards community development is not only the right thing for companies to do, it also makes good business sense.

### ***The broader case***

First and foremost, companies need to secure broad community support and acceptance in order to protect their 'social licence to operate'. As stated in *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development* (Minerals Council of Australia, 2005):

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.

Companies that are perceived as closed and non-responsive will be much less likely to have the trust and support of a community than those that share information openly, listen and respond to people's concerns, and show that they care about the community and are committed to its development. By listening and engaging, companies will also be better placed to identify emerging community issues at an early stage and deal with them proactively rather than reactively.

The time taken to plan, finance, insure and regulate any operation has increased substantially in the past few decades, particularly in the case of large-scale mines. In these circumstances, there can be real financial returns for those companies that are able to show that they take their community responsibilities seriously (Harvey & Brereton, 2005). These benefits can 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.

With more than 60 per cent of Australian minerals operations neighbouring Indigenous communities, the development and maintenance of strong and positive relationships with Indigenous communities is critical to securing and maintaining the industry's social licence to operate. Sustainable development of mining operations necessarily includes integrating considerations of establishing, maintaining and improving relationships with local Indigenous communities into corporate policy and decision-making processes. Indicators of commitment to sustainability at the corporate level include policy statements that include reference to:

- respect for the human rights, cultures, customs and values of Indigenous employees and neighbours who are affected by exploration and mining activities;
- continual improvement of standards of environmental protection and rehabilitation at mining sites and associated operations to satisfy the concerns of the local Indigenous communities and the wider community; and
- contributing to conservation of biodiversity using integrated Indigenous community approaches to land use planning.

### ***The site-specific case***

As well as the broader corporate business case for the establishment of lasting relationships with Indigenous communities set out above, there are a number of specific benefits to mining companies from such relationships. They include:

- facilitating the development of mutually beneficial and sustainable *land access* agreements. Such agreements respect Indigenous rights and interests in country as well as securing access for exploration and mining and are achieved through negotiation based on respect and common understanding, rather than litigation;

- facilitating *legal compliance* through the protection of Indigenous cultural heritage;
- accessing a *local labour force* based in neighbouring Indigenous communities, that could decrease dependence on expensive fly in-fly out operations and/ or reduce the need to establish mining towns;
- attaining the benefits of *workforce diversity* through increased Indigenous employment;
- securing a *local supply chain* through local Indigenous owned businesses;
- gaining input from Indigenous community members in various aspects of a mining operation, such as environmental management, risk management, mine closure planning and the management of social impacts;
- ensuring better outcomes in environmental management through access to local and traditional ecological knowledge; and
- enhancing the industry's sustainable development credentials by contributing to the development of prosperous and sustainable regional communities.

To achieve these benefits, companies need to commit to the development of open and trusting relationships with Indigenous communities.

This handbook provides information for practitioners on strategies currently being adopted in Australian mining operations to achieve these benefits. There are many ways of building strong relationships with Indigenous communities and this handbook provides practical guidance on how to address the social, physical and legal environments in which Indigenous Australians interact with the mining industry.

## **2.0 HISTORY OF THE RELATIONSHIP BETWEEN THE MINING INDUSTRY AND INDIGENOUS PEOPLES**

### **2.1 *The Present***

The relationship between the mining industry and Australian Indigenous people has changed dramatically in the last two decades, from one of widespread mutual antagonism to one of increasing cooperation and collaboration. Many Indigenous, industry and government leaders now share the goal of ensuring that Indigenous people benefit from mining, both socially and economically. There is a greater understanding among mining company board members, executives and operational staff of the need to develop sustainable relationships with Aboriginal communities that are based on mutual obligation and respect, a shared interest in the land, and working together for mutually beneficial outcomes.

Improved relationships between Indigenous communities and mining companies can be attributed to a number of developments over the last twenty years. First, legislative changes have led to a growing acceptance of agreement making between mining companies, Aboriginal Traditional Owners and communities. These agreements provide a foundation for the sustainable development of mineral resources and the economic development of neighbouring Aboriginal communities.

Second, the industry has begun to address concerns about the impact of mining on the environment and on the health and well-being of local communities as well as company employees. Health and safety standards for the workforce and neighbouring communities have been raised and industry standards now include performance indicators to measure the positive as well as the negative impacts of resource development on Indigenous communities.

Third, the mining industry now works with Indigenous people, government agencies, non-government bodies and a range of experts to devise novel approaches to developing economic linkages between mining operations and Indigenous communities that will contribute to the development of sustainable regional communities.

Finally, a better understanding of the Indigenous peoples of Australia and their history has been a significant factor in the development of a mutually beneficial relationship between Indigenous communities and mining companies. The industry has come to understand that the negotiation of a social licence to operate in areas where Indigenous people live requires an understanding of local and national history to better appreciate the concerns and aspirations of Indigenous Australians.

## **2.2 The Past**

In the nineteenth century and for much of the twentieth century, governments and mining companies paid little regard to the detrimental impact of prospecting and mining on Indigenous people. Indeed, governments often removed Aboriginal people from potential mine sites to allow unimpeded development and operation. The re-location of the settlement of Mapoon on Western Cape York and the forced drilling at Noonkanbah in Western Australia in 1980 are examples of Indigenous peoples' interests being subordinated to those of resource developers. These cases represent the continuation of attitudes and practices that date back to colonial times. For example, both colonial and post-Federation governments passed legislation to secure land for settlers and their stock, notwithstanding the objections of Indigenous people.

This failure to recognise and acknowledge the interests of Aboriginal people led to a series of government policies in the late 1800s and the first half of the 20th century that saw:

- Aboriginal people forcibly removed from country and relocated to often distant places;
- dislocated Aboriginal families lose their accumulated social and financial capital;
- country which Aboriginal people had an obligation to protect, disturbed by exploration and mining;
- Indigenous workers subjected to legislative restrictions and discrimination in all States and Territories that limited the kind of work they could do, their wages, and their access to accommodation and workers compensation; and
- a generic failure to recognise that Aboriginal people had inherent, existing rights and interests in land on which exploration and mining activities occurred.

## **2.3 Understanding the Importance of the Past**

Coming to terms with this history can be controversial and confronting to some people in the mining industry, but the legacy of the past must be acknowledged if companies are to develop lasting relationships with Aboriginal people. Historical events form part of the "landscape" of Indigenous communities and influence how Aboriginal people respond to the mining companies that seek to develop relationships with them. A shared history forms part of the social value set of every Indigenous community and influences the community's attitudes, concerns and interests. The development of any present-day relationship will depend on the ability of mining companies to address these interests and concerns.

It is important to Aboriginal people that there is an acknowledgement of this history and its impact on their lives. For instance, the loss of patrimony and other dislocations to family lines has frequently led to a loss of family cohesion. Similarly, when Aboriginal people lost wages and property through discriminatory treatment, or suffered the removal of their children, their future generations lost valuable social and financial capital they may otherwise have inherited. As a

consequence, it has become very difficult for some Indigenous communities to engage effectively with contemporary issues that impact on their communities, such as resource development proposals.

This history of discrimination shapes the attitudes and approaches that Aboriginal people bring to the table today. We are all the products of our past and mining companies need to understand the historical events that shape individual communities before they can develop progressive and sustainable relationships with those communities.

Many Indigenous leaders today are concerned that the burden of history does not cripple present and future generations of their people. They have adopted many initiatives in the areas of education, training, labour recruitment and supporting new business ventures to build pathways from poverty to full economic participation for their communities. The mining industry is increasingly involved in supporting many of these initiatives.

## **2.4 History of the Recognition of Indigenous Rights**

Over the past 40 years there has been a significant change in community attitudes, leading to some recognition of Indigenous rights in Australia. The most significant event was the legal recognition of native title rights in the 1992 Mabo High Court decision (see below). While the Mabo decision was a high point, and now has almost iconic status in the history of Indigenous land rights, it did not occur in a vacuum. The Mabo decision marked the culmination of a series of events that had been changing the relationship between Indigenous and non-Indigenous Australians, including Indigenous Australians and the minerals industry, for more than a quarter of a century.

Landmark events that occurred before 1993 included, *The Aboriginal Land Trust Act* (SA, 1966), the Gurundji Walk off at Wave Hill (1966), and the Gove Land rights case (1971). *The Aboriginal Land Trust Act* (SA, 1966) was the first land rights legislation in Australia. The Act vested ownership of Aboriginal reserves to Aboriginal people. The Gurundji Walk off at Wave Hill, which occurred in the same year, was a protest by Gurundji Traditional Owners who walked off Wave Hill cattle station in the Northern Territory in protest against appalling wages and conditions. In 1975 the Federal Government handed back 3236 square kilometres of Wave Hill station to the Gurundji Traditional Owners.

The Gove Land rights case (*Milirrpum v Nabalco Pty Ltd* 1971 17 FLR 141) was a legal case brought on by Yolgnu people, Traditional Owners of the Gove peninsula in Arnhem Land in the Northern Territory, who were deeply concerned with the proposed mine on their traditional land and challenged the Government's grant of a 42 year mining lease. Whilst the Traditional Owners were unsuccessful in seeking legal recognition and protection of their interests in the land, the Federal Government responded to the failure of Milirrpum litigation by passing land rights

legislation for the Northern Territory (*Aboriginal Land Rights (Northern Territory) Act 1976* (Cwth)). The failure to recognise native title rights was later overturned by the Mabo decision in 1992 (*Mabo V Queensland (No2)* (1992) 175 CLR 1 at 60-70).

Although the significance of the Mabo decision cannot be overstated, it is also important to acknowledge that these events and a raft of legislative changes prior to 1993 played an important role in changing the relationship between Indigenous and non-Indigenous Australians. Large parts of the Northern Territory, for example, are covered by Aboriginal freehold granted under the *Aboriginal Land Rights (Northern Territory) Act 1976* and parts of South Australia are covered by the *Pitjantjatjara Land Rights Act 1981* (SA). Similarly, the Aboriginal reserve system in Western Australia and the grant of 99 year leases to Indigenous land councils, provide some Indigenous control over exploration and mining on land. The legislation that impacts on agreement making between mining companies and Indigenous communities is described in detail in Chapter 5 of this report, on the Statutory and Institutional Environment.

## **2.5 Mabo and the Native Title Act**

Native title is the term used by Australia's High Court to describe the common law rights and interests of Aboriginal and Torres Strait Islander peoples in land according to their traditions, laws and customs. The High Court Mabo decision in 1992 reversed the longstanding legal fiction that the continent was terra nullius -- a land belonging to no-one. For the first time, the common law rights in land of Australia's Indigenous peoples were recognised.

The common law, originally founded on custom and tradition, is the British system of judge-made law, based on precedent. It is over 800 years old. Native title is not a new type of land grant, but a common law right that pre-dates the European settlement of Australia. Native title is held by Aboriginal and Torres Strait Islander peoples who have maintained a 'continuing connection' with their lands or waters, in accordance with their traditions (National Indigenous Working Group, 1996)<sup>1</sup>. The 1992 Mabo Decision stated that native title may exist over a variety of lands, including: vacant Crown land or other public land, national parks, public reserves, mining tenements, and waters.

## **2.6 The 1990s**

*The Native Title Act 1993* marked the recognition of Indigenous land rights at the national level. The strongest set of rights related to "future acts", which included the grant of mining interests.

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<sup>1</sup> National Indigenous Working Group Fact Sheets: Native Title, Reconciliation and Social Justice Library, accessed 30/4/07 <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/niwg/nt-1.html>)

Not surprisingly, given the complexities of enacting and understanding the implications of this legislation, the 1990s were a period of some turmoil for both Indigenous communities and mining companies.

From the Indigenous perspective, an important requirement of native title legislation was that Indigenous people were required to demonstrate a 'continuing connection' with their traditional lands and customs, before they could exercise the legal rights granted to them. For Indigenous people, trying to re-organise themselves after periods of great social dislocation, this represented an enormous challenge; as was the daunting task of meeting with mining companies wishing to negotiate with them.

From the perspective of the minerals industry, this was also a time of confusion and uncertainty. Mining cannot occur without access to land and security of tenure, and the advent of native title legislation changed the way that land access was negotiated. Until the mid 1990s, there had been no great commercial drivers for engagement with Aboriginal communities during the application for and grant of mining tenures. Mining depends on access to land through rights granted by the manager of land – the State. In most Australian jurisdictions the minerals beneath the land are owned by the Crown, in right of the State. This all changed with the advent of native title legislation, which gave Indigenous Australians legal rights and privileges with regard to their lands.

Under the terms of the legislation, the extent of native title 'accommodation' agreed between the mining applicant and the Indigenous party depends on the nature of the interest being sought by the mining applicant. The level of agreement ranges from comprehensive agreements, where native title rights might be recognised and variously "surrendered" or "frozen" with the exchange of compensation, through to notification rights for lower forms of impact. Government policy interpreting the legislation requires the applicant for the mining interest to demonstrate attempts at interaction or discussion with Indigenous people as a pre-condition of recommendation to the Minister. There are also regulations that prevent the grant of mining interests without mining companies conforming to a series of statutorily directed processes that protect the legal entitlements of Indigenous communities.

While the mining industry was trying to come to grips with the new laws and regulations and 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 Indigenous groups who were apposed to mining. When mining companies began to explore the reasons for this opposition, they discovered that many Aboriginal groups were not opposed to mining itself, but were concerned about the racist and inequitable situation of the past being replicated and consolidated in new ventures. They found that what Aboriginal people wanted was

guaranteed recognition of Aboriginal inherent rights and interests, and acceptable terms and conditions for their cultural, social and economic futures.

It also became clear that the mining industry had become the target for criticism about lack of education, training and health services in the areas where mines were operating, while Federal and State governments were escaping accountability for their responsibilities to provide these services.

The mining industry has responded positively to these messages and is now working actively with Indigenous communities to contribute to their social and economic development. This approach is gradually changing attitudes and many Aboriginal community leaders have begun to look to mining companies as potential employers and a route away from welfare dependency. Developing strong relationships with Indigenous communities and with government is now a key goal of the mining industry and a prerequisite for creating sustainable conditions for mining operations in Australia.

Industry commitment to best practice in this area is demonstrated by initiatives such as:

- the Minerals Council of Australia's *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development*;
- the Commonwealth Department of Industry, Tourism and Resources' *Guide for Investors*;
- the Ministerial Council for Minerals and Petroleum Resources' *Principles for Engagement with Communities and Stakeholders*; and
- the *Leading Practice Sustainable Development Program*, which sponsors this handbook and the others in this series.

## **2.7 Summary**

Dramatic improvements in the relationship between the mining industry and Indigenous communities have been made in recent times, and continue to develop. Leading practice requires a deliberate and dedicated effort by the industry to continue to engage with Indigenous communities to realise the mutual benefits of trusting and respectful relationships. This is not only a corporate, moral and social responsibility, it also "makes good business sense".

For industry practitioners who may have had little exposure to Indigenous engagement, and for those who are facing the challenge of "getting it right", the advice is simple – get experienced and expert assistance to develop strategies, plans and actions that will provide mutually beneficial outcomes for all concerned.

## **3.0 KNOWING OUR INDIGENOUS NEIGHBOURS**

As well as the historical context, it is also important to understand something of the social, economic and political forces that shape the landscape in which mining companies and Indigenous communities interact. With more than 60 per cent of Australian mines operating in close proximity to Indigenous communities, it is essential that the mining industry understands the importance of working closely with them to develop mutually beneficial relationships.

The main regions in Australia where mining operations neighbour Indigenous communities are; the Cape York Peninsular, the Gulf of Carpentaria, the Northern Territory, the Kimberley, the Pilbara, the goldfields region of Western Australia, parts of South Australia, and the coal mining districts in the Hunter Valley in New South Wales and in central Queensland. These regions are all in rural and remote areas, and the majority are located far from well resourced metropolitan centres such as Perth, Sydney or Melbourne.

### ***3.1 Indigenous Populations and Their Relationship to Mining Operations***

The Indigenous population differs in a significant number of ways from the non-Indigenous population. In particular, unlike non-Indigenous Australians, the majority of Indigenous people (69%) live outside the major urban centres (ABS, 2002). Some realities are:

- Indigenous populations are significant and rapidly growing majorities, ranging up to 90% in remote mining regions;
- While Indigenous populations are relatively small numerically, they may be larger than the permanent non-Indigenous population in mining regions. For example, in the East Pilbara statistical area on Census Night in 2001, Indigenous persons represented 13.9% of the total population counted. However, many of the non-Indigenous people included are not long-term residents and tend to leave the region after several years;
- The Indigenous population is characterised by a much larger majority of young people than the total Australian population. About 40% of the Indigenous population is under the age of 25; and
- It is predicted that increasing numbers of Aboriginal people will seek employment in and around mining operations as the population begins to grow.

### ***3.2 The Indigenous Land Estate***

The extent of the Indigenous land estate also impacts on the activities of mining operations. Approximately 18 per cent of Australia's land mass is held under a variety of statutory titles by

Aboriginal and Torres Strait Islander peoples (Pollack, 2000). Other large areas, especially unallocated Crown land have actual or potential native title if Aboriginal groups can prove they retain a special connection through descent, management and occupation (Tehan 2003).

A range of native title rights provide identified Indigenous groups with standing in development matters, including infrastructure development, exploration and mining. Permits to enter Aboriginal land are often required by law, and a range of restrictions on activities, such as possessing and transporting alcohol, entering and camping in certain areas, may apply.

### **3.3 *Levels of Indigenous Disadvantage***

Given the importance of Indigenous land holdings and the number of Indigenous people living in close proximity to mining operations, it is important to understand something of the socio-economic circumstances of Indigenous communities. Indigenous Australians remain the most disadvantaged and under-privileged sector of Australian society (Tiplady and Barclay, 2007). The Indigenous population:

- has a relatively low employment to population ratio;
- has greater dependence on government spending;
- has lower occupational status;
- has high levels of welfare dependence;
- relies primarily on the Community Development Employment Program (CDEP) scheme for employment generation, and
- has high levels of part-time employment.

(Taylor and Hunter 1998).

The high levels of poverty and disadvantage in Indigenous communities have long been recognised by mining industry personnel. The response has often been to assist with immediate needs such as emergency help or the provision of fuel. While short term assistance helps to mitigate the impacts of immediate crises, it does not enable Indigenous communities to build wealth-creating capacity. More recently, the industry has turned its attention to investing in initiatives that will build capacity and enable Indigenous communities to escape from the cycle of poverty and welfare dependence. The outlook for the future is cautiously optimistic, so long as recent industry initiatives in capacity building are continued and further developed.

### **3.4 *Indigenous Education and Employment Levels***

The links between education, health, employment, and economic well-being are widely reported and understood. Mining companies (and others) need to understand that the poor education

levels of the Indigenous communities with whom they seek to develop relationships, are serious matters that will need to be addressed to enable training, employment and development of businesses in regional economies.

Among the outstanding issues that need to be appreciated are:

- The continuing educational gaps between the Indigenous and non-Indigenous population. One in four Indigenous children assessed at Year 3 and Year 5 failed to achieve levels of literacy and numeracy at the national standard;
- As a group, Indigenous students continue to experience much poorer educational outcomes than their non-Indigenous counterparts. The magnitude of this educational gap is clearly evident in a range of data sources and special reports published by the Australian Bureau of Statistics (ABS);
- Levels of attendance are lower for Indigenous students at every stage of schooling;
- Of particular concern are low literacy levels. Almost one quarter (22%) of Indigenous Year 3 students do not meet the national standard in reading, compared with 7.3% of all students (Ministerial Council on Education, Employment, Training and Youth Affairs, 2005);
- While the proportion of Indigenous people with post-school qualifications increased from 10 per cent in 1991 to 14 per cent in 1996, it is still well below the 35% of the total population possessing post-school qualifications; and
- On a more positive note, Indigenous enrolments in Vocational Education and Training (VET) doubled from 1994 to 2003 and Indigenous people are well represented in VET, relative to their proportion of the total Australian population. While Indigenous people comprise approximately two per cent of Australia's total population, around four per cent of all clients aged 15–64 undertaking publicly-funded vocational programmes are Indigenous.

#### **Case Study – BHP Billiton Iron Ore's Indigenous employment targets**

"This is how it should be – Native Title parties, mining companies and others working collaboratively to make sure we all benefit," says Charlie Smith, Banyjima spokesperson.

BHP Billiton Iron Ore's Investment in Aboriginal Relationships was launched in 2000 to build on existing initiatives to improve and develop its relationship with the Indigenous people of the Pilbara, Western Australia.

In the Pilbara, the company's challenge is to increase Indigenous employment to 12 per cent by 2010, reflecting Indigenous representation in the Pilbara population. Since the Investment program started, Indigenous employment has doubled from three per cent to six per cent. This has been achieved through a raft of initiatives including:

- agreements with all contractors that they follow BHPB Iron Ore's Indigenous employment targets
- identifying entry-level positions with first priority given to Indigenous applicants
- a commitment to offering other positions to Indigenous people wherever possible, and
- appointing employment officers to visit communities and encourage Indigenous people to apply for positions.

In addition, emphasis is now being placed on finding Indigenous applicants for jobs requiring tertiary qualifications.

### **Case Study – BHP Billiton Iron Ore and Education Partnerships**

In partnership with the Western Australia Department of Education and the Polly Farmer Foundation, BHP Billiton Iron Ore has initiated the Port Hedland Education Partnership to support and encourage school attendance and assist students achieve their potential.

The Learning Home for the Kids, known as Kurtakalku Maya, was established in South Hedland and provides an after-school home and work activity centre for 32 Indigenous students that offers tutoring, computer access, homework rooms and personal development programs close to local high schools.

To gain acceptance to the program, students must demonstrate academic promise, commitment to progress, family support and encouragement for their education, and a desire to progress to a career or tertiary education.

In 2004, a record 30 Indigenous students from Years 8 – 12, including eight students studying for their Year 12 Tertiary Entrance Rating (TER), applied for 13 places on the program.

Since the program's inception in 2001, 50 per cent of students attending the program improved their academic performance, 12 per cent excelled and the remainder maintained their existing levels. Four students have been voted onto their student councils, one of the first Year 12 graduates gained an electrical apprenticeship with BHP Billiton Iron Ore and positions in the program have become increasingly competitive. In addition, the students are becoming role models to their peers, family and the broader community.

In June 2004, the Newman Aboriginal Education Partnership program, modelled on the Port Hedland program was launched. Twenty-five students from Years 6 -12 were provided similar facilities and support as to the Port Hedland program. In addition, the Newman Aboriginal Education Partnership manages a daily school bus service for all Indigenous students. This service specifically targets Indigenous students from years 6 and 7, with the objective of enabling a more effective transition process from primary to secondary education.

### ***3.5 The Tyranny of Distance: The Urban/Rural Divide and Infrastructure***

Indigenous communities and neighbouring mining operations are often located in rural and remote areas, long distances from well resourced metropolitan centres such as Perth, Sydney or Melbourne. This means that the city/bush divide that is so much a part of Australian's cultural identity, disadvantages mining companies and Aboriginal people. People in capital cities who shape policy and administration in remote and rural areas often have a limited understanding of the conditions under which people live and work in remote areas.

For example, many essential services, such as educational and health facilities are deficient or non-existent in Indigenous communities. Other types of services that residents in urban communities take for granted, such as recreational and sporting amenities, are virtually non-existent in remote and rural communities. As a result, mine sites and mining towns have become, in many instances, centres on which local populations depend for the provision of essential and non-essential services. Electricity, all weather roads and other transport infrastructure, retail outlets, fuel supplies, and even recreational facilities and activities have become available in remote areas as a result of mining operations, although many mining towns were 'closed' to Aboriginal people until relatively recently.

Mine sites and towns have become hubs for regional populations where essential services such as health clinics, hospitals, schools, university and TAFE campuses, banks, government offices and airstrips are located. Weipa, Nhulunbuy, and Jabiru are three examples of this distinctive contribution of the mining industry to life in remote Australia.

### ***3.6 Indigenous Political Representation in Rural and Remote Australia***

In the cities, Indigenous people are generally perceived as tiny, marginalised minorities. In rural and remote areas, Indigenous leaders are often skilled and accomplished advocates for the critical challenges facing their constituencies, and enjoy strong representative status at formal and informal levels. As of 2006, there were six Indigenous members of the Northern Territory Parliament, one a Minister, and there were two Indigenous Members of Parliament in Western Australia.

Indigenous people are also well-represented in local government and on other important regional bodies. These include:

- Aboriginal land councils;
- native title representative bodies and services;
- a range of community councils and governments; and
- Aboriginal owned or controlled service providing agencies.

### ***3.7 Indigenous People's Connection to the Land***

Over the past two decades, the mining industry has developed a more detailed, sensitive and meaningful appreciation, understanding and respect for the ancient belief systems, strong spiritual connection and sense of belonging that Aboriginal people have for their land, people and environment, which includes plants, animals, waterways, sacred sites and other places of cultural significance and importance. Industry has also become more sensitive to the lore, customs, cultural practices, responsibilities and obligations of Aboriginal people.

Aboriginal beliefs are no different from the ancient beliefs of other cultures throughout the world in that they provide people with a sense of spiritual peace, happiness and harmony and therefore should be respected. Despite the impacts of colonisation, Aboriginal people remain connected to their stories and continue to acknowledge and accept their obligations and responsibilities for caring for their country.

At the heart of the Aboriginal belief system lie the ancestral beings that shaped the land and created the laws and customs to protect it. This ancient belief system, referred to as the dreamtime or dreaming, takes the form of time creation stories (see Baker R, 1999; Bird Rose D,

2000; and Neidjie, B, Davis, S and Fox, A, 1985). While the stories vary from community to community, they all describe how the ancestral beings, which appeared in half-human half-animal form, fought battles over many thousands of years. Eventually, some of the ancestors settled back into the land, creating geographical features such as mountains and waterways, while others are said to have settled in the sky, creating star formations to guide and support the people. These creation stories illustrate why Aboriginal people throughout Australia commonly revere the land. They look upon it as their mother, and this creates both a need and obligation to care for and protect it.

### **3.8 *The Impact of Colonisation***

In the process of engaging with Aboriginal communities, it is particularly important for mining companies to understand the impact of colonisation on the Indigenous way of life. Major factors that are likely to influence the ways that mining companies interact with Indigenous communities are listed below.

- Prior to the arrival of Europeans, Aboriginal people had survived for thousands of generations within a subsistence economy based on hunting and gathering and maintaining a balance with the land and the environment.
- Following the arrival of Europeans and subsequent impacts of colonisation (i.e. forced removal from traditional lands), Aboriginal people were forced to adapt to a new monetary economic system, where survival was dependent upon income generation and where opportunities to generate such income were limited.
- The traditional rights, interests, obligations and responsibilities of Aboriginal people in relation to their land need to be upheld and respected; regardless of where they currently reside.
- Aboriginal people, like other Australians today are entitled to enjoy the same prospects for employment, economic prosperity and quality of life.

### **3.9 *Summary***

People working with Indigenous communities near mining operations need to understand that Indigenous communities are substantially different from non-Indigenous communities in a number of significant ways.

- The proportion of Indigenous population to non-Indigenous population is much higher in remote and rural areas where most mining operations are located.

- Indigenous populations comprise a much larger proportion of younger people than non-Indigenous populations and these younger people will emerge as a significant employment challenge for the industry in the next 10 years.
- Indigenous educational achievements and employment levels are significantly lower than those of non-Indigenous Australians and they are significantly more likely to live in poverty.
- The creation of an educated and trained Indigenous workforce depends on broader capacity building within Indigenous communities.

By appreciating the presence of these factors and designing interactions that address them, mining companies and others will increase the opportunities to develop durable and sustainable regional development that delivers positive outcomes for all parties.

## **4.0 OPERATING ACROSS CULTURES**

One of the most important factors shaping the relationship between mining companies and Indigenous communities is the ability of the parties to communicate effectively with each other. Mining companies and Indigenous communities have their own unique cultures and building strong relationships between the groups is dependent on each party understanding that the other operates within a very different value system. Without this shared understanding, it is difficult to develop enduring relationships that will enable both cultures to coexist amicably, or to manage effectively the issues that arise when mining companies and Indigenous people are working together.

The development of enduring and sustainable agreements and relationships are dependant on both the mining industry and Indigenous people recognising the importance of cultural differences and exploring ways to adapt, modify, and change cultural practices. The challenge for mining companies and Indigenous communities is to change cultural practices in ways that meet the culturally important or critical needs of one party whilst accommodating (to the extent possible) the objectives of the other party.

### **4.1 *The Mining Culture***

The mining industry also has its own set of cultural values and attitudes that may impact on aspects of Indigenous culture. In particular, the mining industry exemplifies the Industrial culture, where the key focus is on efficiency and productivity. All employees are expected to adhere to strict time management principles, set shift structures, and stringent occupational health and safety regulations. Sometimes, this attitude to timing and efficiency can conflict with Indigenous attitudes to time, for example, 'sorry time', and to authority. This conflict is particularly apparent when the mining activity is occurring on land for which Indigenous people feel they have a high level of cultural and spiritual responsibility.

The mining industry is making significant changes towards bridging these gaps, particularly in the ways it manages and reports on environmental and cultural heritage issues and in the training it provides for Indigenous employees.

### **4.2 *Indigenous Culture***

Cultural practices and responsibilities in relation to land estates differ markedly between Indigenous communities across Australia. Mining companies preparing to work with Indigenous people for the first time will benefit from expert advice about those practices and responsibilities. One situation where advice may be particularly important is when it comes to negotiating land access. Mining companies need to ensure that they are talking to the "right" people, i.e. those with culturally appropriate responsibilities for country and with the authority to "talk for" country.

Often people will assert such authority when that authority has not yet been widely bestowed or acknowledged according to custom. Similarly, it is also important to understand that, in some parts of Australia, the people who own land according to culture may be different from the people who have management responsibilities for that land.

Apart from cultural norms relating to land ownership, management and access, there are many other Indigenous cultural beliefs and practices that may conflict with mining industry norms. It is important for mining companies to understand these cultural differences if companies are to engage successfully with Indigenous communities. For example, there are social customs that Aboriginal people cannot ignore, such as the need to attend funerals, even though their frequency and importance may be difficult for mining personnel to understand. Similarly, the need to avoid direct contact with some community members, designated by custom, may be required. While it is not necessary to understand in detail what these customary norms are, mining companies need to understand they exist and seek expert and local help to cater for them.

### ***4.3 Indigenous Cultural and Linguistic Diversity***

Indigenous populations in Australia, even at the local level, can be culturally and linguistically diverse. Many non-Indigenous Australians are unaware that there is not just one Aboriginal language. It is thought that, at the time of European settlement there were in excess of 600 individual Indigenous languages and dialects. Most Aboriginal people, especially in remote communities are fluent in their own language and probably fluent in the regional Kriol – a language which developed after white contact and allows people of different language groups in a region to communicate with each other. In the modern cultural setting, English is probably the third language learned or acquired by Aboriginal children – after their local language and the regional Kriol, so that many children are not fluent in standard English.

The implications of linguistic and cultural diversity for mining companies are particularly apparent in the Kimberly region of Western Australia. More than 27 Indigenous languages have been identified in the Kimberley region. In the area of the Argyle Diamond Mine alone, the local languages include Kitja, Wurla, Malngin, Miriwung, Gajirawung and Kriol. Aboriginal pupils of schools in the East Kimberley and Aboriginal employees at Argyle Mine live in multilingual families and communities, where the principal language spoken at home will be a combination of one or more Aboriginal languages and Kriol.

### ***4.4 The Importance of Language in Relationship Building***

The fact that English is likely to be a third language for many Aboriginal people creates special challenges for mining companies wishing to build relationships with Indigenous communities and recruit Indigenous employees. Cross cultural awareness training, for example, is an important tool for relationship building.

The purpose of cross cultural training in mining companies is to develop mutual respect and understanding between Indigenous and non-Indigenous employees. The most effective cross cultural training programs are run as part of the induction process for all new employees. For Indigenous recruits, cross cultural training introduces them to the expectations of the mining industry, especially in relation to:

- workplace health and safety;
- site entry requirements; and
- operational procedures and work expectations.

Cross cultural awareness training introduces non-Indigenous recruits to industry expectations with regard to:

- recognising and maintaining respectful relationships with Traditional Owners;
- protecting Aboriginal cultural heritage; and
- adhering to environmental regulations.

Coming together to learn about each other's cultures is one important way of building relationships between people from different cultural backgrounds.

## **4.5 Summary**

The mining industry, by its very nature, operates in a challenging environment that demands a unique approach to relationship building – on site, within the company and, perhaps more significantly, between a site and its neighbouring community. There are many cultural differences to be recognised and understood if a leading practice approach to engagement with Indigenous communities is to be achieved.

For mining companies to have successful relationships with local Indigenous communities, they need to identify and acknowledge the role of the area's Traditional Owners and to respect the cultural values of all Indigenous people who live in the region. If mining companies are to build capacity in Indigenous communities by advancing community development processes, developing training and employment programs and supporting business development initiatives, relationships based on mutual trust and respect must first exist.

Recognition of the strong sense of culture and tradition amongst Aboriginal people is a pre-requisite to operating in regional and remote areas. Similarly, an understanding of what mining is actually about, what it involves, and what its key drivers are, is important for neighbouring communities to understand.

### **Case Study – Barrick Gold and Cross Cultural Training**

The Cowal Gold mine is located 47km north east of West Wyalong in New South Wales. Barrick has entered into an agreement with a Native Title Party representing the Wiradjuri people. As part of this agreement, the Wiradjuri Condobolin Corporation (WCC) was formed. It is a group with which Barrick has worked in partnership on a number of projects.

Two such projects are the Introduction to Mining Course and the Cross Cultural Training program

#### **Introduction to Mining Course**

In partnership with the Condobolin TAFE, the Wiradjuri Condobolin Corporation and Barrick, an Introduction to Mining Course was designed to train and prepare Indigenous people who wished to apply for positions on mining sites.

The course ran for five months. In this time, students received training in the following:

- Senior First Aid
- Occupational Health and Safety (OH&S) Green card
- WorkCover licenses for heavy equipment such as front end loader, forklift, skid steer and excavator
- Basic fire fighting skills
- Computer knowledge – Word, Access and Excel.
- Workplace safety, and
- Basic metal work.

During the course, the students attended the Lake Cowal mine site to complete a guided tour and on-site inductions. This gave them a first-hand understanding of what would be required of them if they were to obtain employment on-site.

At the completion of the first course the following results were achieved:

- Of 21 persons enrolled, 19 fully completed the course.
- Of the 19 that completed the course, eight obtained employment with Barrick and construction companies on site.

Some of the positions that were obtained were:

- Trade Assistants (Construction)
- Leading Hand (Construction)
- Field Assistants (Geology)
- Mining Operators
- Process Operators, and
- Laboratory Assistants (SGS – sample analysis).

#### **Cross Cultural Training**

As part of Barrick's working relationship with the Wiradjuri Condobolin Corporation the company carries out Cross Cultural Training for all employees on the mine site.

As part of the general inductions on-site employees receive the Cultural Heritage Induction from a representative of the Wiradjuri Condobolin Corporation.

Over 1550 Barrick employees and construction staff have received the Cultural Heritage Induction. This induction has provided a forum for the Wiradjuri Condobolin Corporation to give all employees a deeper understanding of the cultural significance that the Lake Cowal area holds for the Wiradjuri people.

## 5.0 THE STATUTORY AND INSTITUTIONAL ENVIRONMENT

Working with Indigenous communities requires an understanding of the laws and institutions that relate to the land rights and the protection of cultural heritage. This section discusses the main native title legislation that impacts on land access and the ability of mining companies to negotiate land access. Cultural heritage legislation is discussed in Chapter 8.

As described in Chapter 2, the *Native Title Act* (1993) is the primary piece of legislation protecting the rights and interests of Aboriginal and Torres Strait Islander people. The Act recognises the interests of Indigenous Australians in land and waters according to their traditional laws and customs, and defines the laws and practices that are recognised under Australian law. The purpose of the *Native Title Act* is to:

- validate those titles which may have been invalidated by the retrospective effect of the native title decision of the High Court;
- provide a system of recognition and protection of native title rights and an effective system of dealing with titles in which native title rights and interests may have survived; and
- provide for the establishment of the Indigenous Land Corporation, a statutory body set up to meet the needs of those Indigenous groups for whom success with native title claims would be elusive and who were also increasing the size of the Indigenous estate through sizeable land purchases.

### 5.1 Amendments to the Native Title Act

A number of amendments to the Act were passed 1998 to limit the impact of another decision of the High Court on native title, the Wik decision. In the Wik decision, the Court found that Indigenous rights to land could co-exist with pastoral leases issued in Western Cape York. The 1998 amendments to the Native Title Act identified a range of titles that were exempt from the Native Title provisions, including bowling greens and war graves. Other amendments enabled an enhanced procedure for negotiating agreements to enable parties to resolve native title issues that would be difficult and costly to resolve by litigation. These provisions relate to Consent Determinations, Indigenous Land Use Agreements, and Future Acts.

A Consent Determination is a decision by the Federal Court, High Court or a recognised body, in relation to native title rights and interests that reflects an agreement reached by the parties under the *Native Title Act*. The Act also gives persons who have been determined to hold native title, or are registered native title claimants a right to negotiate Indigenous Land Use Agreements

(ILUAs). Native title claimants have the right to be involved in discussions about - but not veto - proposed developments (such as mining) on areas of land or waters where native title exists.

Finally, the amendments to the *Native Title Act* include Future Act provisions. A Future Act is defined as a proposed activity or development on land and/or waters that may affect native title, by extinguishing it, or creating interests that are inconsistent with the existence or exercise of native title. Generally, rights to be informed and consulted about future acts are given to native title claimants. In the case of some Future Acts, including the grant of mining or exploration rights and some compulsory acquisitions of native title, the Future Act can not validly be done unless the right-to-negotiate process specified in the *Native Title Act* is followed.

The *Native Title Act* attempts to take into account the interests of State governments, the National Farmers' Federation, mining and exploration advocacy groups, environment and conservation advocacy groups, political parties and Aboriginal representative bodies. It has been criticised in some quarters on the grounds that it falls below the standards of the common law and international human rights law, and emphasises extinguishment of native title rather than protecting native title rights. However, it is essential for people working in the mining industry to understand the purpose and requirements of this Act because it establishes the legal framework for the relationship between mining companies and Indigenous communities.

[Further text will be added to this section on the 2007 amendments that are being made to the *Native Title Act*. ]

## **5.2 Indigenous Land Use Agreements**

The most beneficial aspect of the *Native Title Act* for the mining industry is its provisions for ILUAs, which are used to negotiate with Indigenous people with native title interests. Under the *Native Title Act*, a registered ILUA is legally binding on the people who are party to the agreement. The Act provides a safety net for negotiations and long-term protection for agreements through the registration process for ILUAs.

An ILUA can take the form of an Alternative Procedure Agreement, an Area Agreement or a Body Corporate Agreement:

- An Alternative Procedure Agreement can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area. However, there must be at least one registered native title body corporate or at least one representative Aboriginal/Torres Strait Islander body for part of the agreement area. The agreement must not provide for the extinguishment of any native title rights or interests.
- An Area Agreement can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area.

- Body Corporate Agreements are restricted to areas where one or more registered native title bodies corporate hold native title over the entire area subject to an agreement.

### **5.3 Administering the Native Title Act**

The National Native Title Tribunal is responsible for the management and administration of a range of matters relating to the *Native Title Act*. One of its key roles is the maintenance of the National Native Title Register. The Register contains information about every native title determination by the Federal Court or High Court, recognised state and territory bodies, and any other determinations relating to native title in decisions of courts or tribunals. Determinations are categorised as:

- determinations by consent, e.g. ILUAs;
- determinations by litigation: a litigated determination is a decision by a court or other recognised body, following a trial process, that native or traditional title does or does not exist in a particular area of land or waters; and
- unopposed determinations.

The Tribunal also deals with Future Acts as defined in the *Native Title Act*.

One of the difficulties for people negotiating ILUAs is the lengthy administration process. Some Native Title Representative Bodies receive large numbers of applications and, because of sometimes inadequate financial or human resources, there have been lengthy delays. Concerted efforts are now being made to streamline the agreement-making process and one innovation in this regard is the Template Agreement. Pro forma templates have been developed to assist resource companies and Indigenous communities in negotiations. Template agreements came about due to a shared interest in streamlining the Commonwealth's Native Title Act 'right to negotiate' process. They are an important development because they reduce time, cost, and uncertainty for all parties.

### **5.4 Other State and Territory Legislation**

While the *Native Title Act* is the overarching legislation that governs the relationship between mining companies and Indigenous communities in Australia, there are also State and Territory laws that impact on the activities of mining companies. These laws, which relate primarily to land rights and the identification and protection of cultural heritage, vary from State to State and from Federal legislation.

In South Australia there are three main Acts that provide for a form of Aboriginal freehold title and impose strict conditions on land access. These are the *Aboriginal Land Trust Act* 1966, the *Pitjantjatjara Land Rights Act* 1981 and the *Maralinga Tjarutja Land Rights Act* 1984. South

Australia was the first state to pass land rights legislation and its laws provide a higher standard of protection to Aboriginal people than that of any other jurisdiction.

In the Northern Territory, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) is the primary piece of legislation. Under its provisions, Aboriginal Land Trusts have been established to hold Aboriginal freehold title over two categories of land; former Reserves and lands approved for transfer by the Federal Minister. The Act sets out the processes for negotiation of exploration and mining agreements. The statutory Land Council negotiates mining and exploration applications on the behalf of Traditional Owners. Under the terms of the ALRA, the applicant for a mining interest must apply to the relevant Minister and to the Land Council for consent.

In Queensland, access to Aboriginal lands is granted under the *Mineral Resources Act 1989*, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. These Acts are administered by a system of community-level land trusts under a special form of title called a Deed of Grant in Trust (DOGIT). Each trust area becomes a local government area, with an incorporated Council. Council representatives, who are elected every three years, manage the community's affairs. The Councils have the authority to make by-laws and appoint community police, and are responsible for maintaining housing, infrastructure, the Community Development Employment Program (CDEP), and issuing licenses and hunting and camping permits.

In New South Wales, the *Aboriginal Land Rights Act 1983* (NSW) 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* (Tas).

## **5.5 The Institutional Environment**

As a result of this statutory environment, the mining industry comes into contact with a range of institutions with responsibilities under these statutes. They include:

- Native Title Representative Bodies (NTRB). A NTRB is a body recognised under the Native Title Act. A NTRB has the powers and functions set out in s203B of the Act including providing support to Indigenous people and native title holders when making various applications under the Native Title Act, including claimant, objection, future act and compensation applications, and to negotiate ILUAs on behalf of Indigenous parties;
- Statutory Land Councils, such as the Northern and Central Land Councils, the Tiwi Land Council and the Anandilyakwa Land Council established under the terms of the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- Statutory corporations such as the Pitjantjatjara Council and the Maralinga Tjarutja established under *Pitjantjatjara Land Rights Act 1981* (SA) and the *Maralinga Tjarutja Land*

*Rights Act 1984 (SA)*; these bodies 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 Deed of Grant in Trust lands and manage the trust functions;
- Aboriginal townships; and
- a variety of bodies with statutory roles under cultural heritage legislation. These include the Aboriginal Areas Protection Authority in the Northern Territory, and museums and other State agencies in other jurisdictions.

## **5.6 Summary**

The purpose of this chapter has been to describe the key legislation and institutions that establish the framework for negotiating land access agreements between mining companies and native title holders. As this brief section illustrates, negotiating land use agreements is a complex process. Mining companies may need to seek expert advice to clarify:

- the specific statutory and common law obligations that apply; and
- the respective roles and responsibilities of the various community organisations and statutory bodies that will be involved in the negotiation process.

In the design of any detailed engagement plan, the primary emphasis should be placed on the development of sustainable relations, on an institution-to-institution basis. It is important for project proponents to understand 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.

## **6.0 AGREEMENT MAKING**

*The following does not constitute legal or policy advice. Nor does it represent detailed instruction on how to negotiate agreements between mining companies and Indigenous people. Project proponents and affected Indigenous peoples should commission experienced advice to guide any agreement making process.*

Agreements between mining companies and Indigenous people with rights and interests in land and waters are the most practical approach to finding ways to accommodate each other's interests. Many companies now formalise their relationship with land connected to Indigenous people through agreement making, whether motivated by legislative requirement, enlightened self interest and/or risk management. The Commonwealth Government also strongly recommends negotiation of agreements over litigation as the way to resolve mining interface with native title and other Aboriginal land interests.

Different types of agreements may be made with, or without a court determination of native title or other land connection. For instance, where native title determinations are not possible in a timely way, parties may be willing to negotiate alternative outcomes to ensure that they reach solutions which meet their respective needs. Agreements provide mining companies with secure land access, which they need if they are to invest large sums in high risk, long term mining ventures. They 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 only survives in a limited way.

### **6.1 Agreement Making Process**

A critical first step in agreement making is to resolve how the process will be conducted. It is highly recommended that agreement making is approached with complete openness in an atmosphere of trust, mutual respect and recognition of each party's interests. By disclosing all matters that are not commercially confidential, each party can hope to gain a common understanding of each other's objectives. In the best working negotiations this can extend as far as joint decision making.

Indigenous people may or may not choose to be represented in negotiations by statutory representation bodies such as Native Title Representative Bodies (NTRB), locally constituted land councils or private lawyers. Mining companies may be asked to help resource such representation and should seek their own specific advice on the merits of this. In certain circumstances it may be necessary to work through NTRB, for example, to meet procedural and statutory requirements or secure access to government funding. Whatever the form of representation or method of funding, it is important to demonstrate procedural fairness,

transparency and parity to demonstrate that agreements were not reached through coercion or under duress.

It is of critical importance that mining companies do not approach agreement making with Indigenous people in the same way as they would approach commercial negotiation with another mining company. Indigenous people do not typically regard agreement making as a quick transactional way to protect assets or gain commercial advantage. Customary land connection, history and its consequences mean that most Aboriginal people do not regard land as a commodity to be bargained away. Accordingly, mining companies need to appreciate that the pace, tone and content of negotiations can be slow and do not follow the pattern of offer, counter offer and brinksmanship typically experienced elsewhere. That said, Aboriginal people and their representatives are commercially astute and will seek a fair deal.

A staged approach to agreement making helps build confidence in the process and leads to long term sustainable outcomes. This can take considerable time and may not accord with the expectations of inexperienced negotiators or critical path timelines. While the number and designation of stages in the process varies considerably, according to the requirements of the negotiating parties, a common staged approach is described below.

### **6.1.1 Knowledge base**

Best practice mining companies prepare themselves for agreement making by gaining knowledge about the people they seek agreement with. This will usually require engaging consultants with local knowledge who can guide the process and ensure initial approaches are made according to locally correct custom and that the right people are contacted. Just as there are regulatory and policy frameworks to be followed to gain government consent to the grant of regulatory approvals, there is also a local Aboriginal context that needs to be addressed. This includes finding the answers to fairly simple but profound questions, such as whose traditional country the project will affect and how the right people for the right piece of country will be identified. A key component of establishing the necessary knowledge base will be to develop an appreciation and understanding of the local history from the perspective of local Aboriginal people. This context has a significant bearing on how different Aboriginal groups approach the agreement-making process.

The purpose of conducting this preliminary analysis is to:

- guide the company in determining how Aboriginal interests can be brought together to promote the company's overall objectives;
- develop a process that is acceptable to the Aboriginal parties and satisfies any government requirements;

- protect the company from future compensation claims, either directly or through the government; and
- ensure that a mutually beneficial working relationship is sustained for the duration of the company's interests in the project area.

### **6.1.2 Agreement making protocol**

The best way to get an agreement making process started, and to provide a basis for re-starting after the almost inevitable breakdowns that will occur, is to negotiate a formal engagement protocol, often called a "Framework" or "Protocol" agreement, that sets out the "what, how, who and where" of the agreement making process.

Things to consider as part of developing the protocol are:

- how to identify the right people with whom to engage in the agreement process;
- how decision making processes occur within the Aboriginal community;
- how Traditional Owners or native title claimants will be represented and resourced; and
- what some or all of the interests and issues are that the parties are likely to bring to the process, at what stage, and in broad terms, how the parties intend to work through those issues.

It is also a good idea to build into the agreement making framework the roles of any participants other than the parties. Potentially contentious issues include; what rights and/or interests do local Aboriginal community members who do not identify as native title claimants or Traditional Owner's have in the project area? And, how will they be included in the process and outcomes?

Developing an agreement making protocol is an important capacity building step, and an important part of building trust between the parties. The principal objectives are to ensure that each of the parties understands:

- what the agreement making process involves;
- the roles of all the parties to the agreement making process;
- how the process will be structured and conducted;
- the nature of financial or other resource commitments;
- meeting dates; and
- broad joint objectives.

### **6.1.3 In-principle agreement**

The in-principle agreement is the formal stage in 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 will depend greatly on the scope and scale of the proposed project and the specific concerns of Aboriginal people. For example, a simple once-only compensation payment might suffice to satisfy concerns about permanent extinguishment of native title in an urban setting. Generally however, long life mines and long resident Aboriginal peoples will benefit from comprehensive agreements that provide for permanent coexistence and mutual support. The types of issues that might be considered and agreed in comprehensive agreements are:

- amount and type of benefits and compensation to be paid to affected Aboriginal groups;
- how to provide for intergenerational benefits for long life operations;
- governance structures, caveats and linkages of benefits management;
- joint management arrangements for the land;
- Aboriginal cultural site protection and heritage clearance;
- initiatives to maintain and promote Indigenous cultural heritage;
- training and employment programs for direct Aboriginal participation;
- business development opportunities associated with an operation;
- cross cultural training for all mine employees and contractors;
- Traditional Owner access to non operational areas of the mine lease;
- Traditional Owner land management inspection of operational lands and waters;
- Traditional Owner participation in planning eventual closure and decommissioning and input into closure planning; and
- guaranteed Indigenous community consent and on-going support for the mine.

The parties also need to agree to what kind of legal agreement they will enter into, for instance, will it be a simple non-binding Memorandum of Understanding, a common law contract or an ILUA.

### **6.1.4 Formal agreement**

This is the stage in which agreements are legally documented and formally authorised by each of the parties and other formal steps taken. This involves; drafting and exchanging drafts of the Agreement, settling contentious issues, and agreeing, authorising and signing the detailed and complex legal documents. At this stage, lawyers become increasingly involved and the process can take many months or even years if difficult and detailed issues are confronted. This is where a previously agreed protocol can be invaluable and where demonstrated leadership from the

mining company and the Aboriginal parties is essential. On occasions, external mediation may be required to keep the agreement making process alive.

There is often a high risk of the process failing at this stage. For example, the persons who worked on the agreement may become nervous about their ability to “sell” it to the group they represented in initial discussions; legal representatives often demonstrate a desire to re-write the form of words in the draft agreement and tensions emerge between negotiators focused on reconciling interests and lawyers focused on risk minimisation. At this stage, a number of “new” faces can commonly appear as representatives of the parties.

### ***6.1.5 Agreement registration***

There are many kinds of agreements that can be made between mining companies and Indigenous people, any of which can lead to creative and flexible solutions that deliver benefits that may be related, but not confined, to native title. However, in a contemporary native title context companies may want to achieve certainty beyond that provided by contract law by considering an ILUA under the Native Title Act. An ILUA can be a stepping stone on the way to a native title determination or it may suit the parties better than a native title determination. For example, an ILUA may deal with matters such as the coexistence of specific rights and interests and future developments where a formal determination does not exist.

An ILUA, once registered, is binding on all deemed native title holders of the area covered by the agreement, whether or not they are parties to the agreement. For long life operations, ILUA's provide for intergenerational security in a way that a common contract law cannot. The advantage of an ILUA is its flexibility — it can be tailored to suit the needs of the people involved and their particular land use issues. Courts are not involved in the ILUA process — it is conducted between the parties who wish to negotiate the agreement. However, to gain statutory recognition, ILUAs must be registered by the Native Title Registrar and this is a final step in the agreement making process before implementation.

## ***6.2 Potential Pitfalls in Agreement Making***

Significant progress has occurred in Indigenous negotiation and agreements practice over the last 20 years – much of it informed by developments in the United States, Canada and New Zealand, as well as Australia. Indigenous peoples world wide are extensively networked and good practice and reputations are globally communicated.

While many pitfalls exist and agreement making can break down or fail at any stage of the negotiation process, failure to progress to a satisfactory outcome can usually be ascribed to the manner in which agreement making has been approached. One common pitfall is where the party with the most power determines the conduct of negotiations by dictating items such as the timing

of meetings; the number of meetings; who can attend meetings; the matters that can be discussed at meetings; the level of resources to be made available; the time available within which to reach an agreement, etc. While this approach can arrive at an agreement, it is usually not a sustainable one. The pressure asserted during this approach means that there is no true equality in the agreement making process. In these circumstances, the weaker party may sign under duress and may be unwilling or unable to achieve implementation of the agreement. Agreements signed under duress can also be challenged legally.

Another common pitfall is where one party – again, usually the one seeing itself as having the most powerful position - opens the negotiations with what it says is its “bottom line” position and announces that it will not agree to anything else. If any change is made to the opening position it is done so grudgingly and only in response to significant concessions by the other party. This is described as positional bargaining. Agreements can be reached in this way, but often at the expense of developing a long-term working relationship. This in turn can affect the sustainability of the agreement.

A third common pitfall is where one party insists that the discussions must result in an agreement that recognises its rights. This approach is often used because of the recent recognition of rights (including the right to negotiate) for land connected to Indigenous people in certain circumstances. While the incorporation of recognised rights in an agreement is important, there is a risk that by focusing the negotiations primarily on rights, the parties miss the opportunity to widen the discussion to include broader issues such as regional development. This narrow rights-based approach is often taken when lawyers overly dominate the process. The most important right granted in recent times to Indigenous people is the right, in certain circumstances, to have a seat at the negotiating table. The challenge then becomes to formulate and agree a sustainable working relationship for the life of the mine and beyond. While companies who anticipate having only one interaction with local Indigenous communities may consider a positional approach, those with longer term interests in an area are advised to adopt an interest-based approach to negotiation.

### **6.3 Conclusion**

There are a number of possible approaches to agreement making. Progressive mining companies seek to ensure that agreements with Indigenous peoples are based on sound relationships, not litigation. They feel that interest-based negotiation is essential to building and developing a sustainable basis for working together.

Achieving this depends on all parties moving beyond their respective power bases, positions and rights to explore underlying issues and interests. In this way, when parties have openly and frankly exchanged their views, they can start to work together to formulate solutions that satisfy

each other's interests. Agreements concluded in this manner, where the components of the agreement are collectively "built", tend to be much more sustainable. All parties feel a sense of "ownership" of the end agreement and are reluctant to allow it to fail during the implementation phase, which is described in the following section.

#### **Case Study – Brambles Industrial Services**

This case study provides an outline of the working relationships and formal agreements developed between Brambles Monadelphous Joint Venture (BMJV) and the Ngarluma and Yindjibarndi Foundation Ltd (NYFL) and its community.

Brambles Industrial Services (BIS) had a long history of working with Aboriginal people both in the metropolitan area as well as the more remote regions. This past experience was to prove invaluable in the longer-term negotiations with the NYFL, particularly in avoiding "cultural" errors.

A great deal of time and energy was expended on building a relationship of trust with the Elders of the Ngarluma and Yindjibarndi communities during the agreement-making process. The outcome of this approach was the development, acceptance and signing of two Memorandums of Understanding with the Community.

The first Memorandum was an Agreement between the Ngarluma and Yindjibarndi Foundation and the Brambles Monadelphous Joint Venture, relating to operations on the Woodside LNG4 Expansion Progra.

This Agreement has at its core the following commitments:

- the support of Aboriginal business opportunities;
- provision of employment and training opportunities for Aboriginal community members during the construction period of the contract;
- the provision and funding of suitable work experience for Aboriginal people who lack iworkplace experience;
- ensuring direct communication links between the BMJV Project Manager and the Chief Executive Officer of the NYFL are established and maintained;
- the appointment of a Representative Steering Committee to monitor the performance of the Agreement and to report as appropriate; and
- appointment and funding of an Aboriginal liaison representative. The second Agreement between the Ngarluma and Yindjibarndi communities and BIS was designed to extend the relationship beyond BIS's commitments on the Woodside LNG4 Contract..

As part of its commitment to the local communities, BIS has undertaken to:

- support and foster local Aboriginal businesses and business opportunities within the Pilbara region;
- appoint an effective steering committee to set policies and procedures, to implement the agreement, to monitor and report on its performance;
- publish a newsletter to communicate information about the operation and special events to members of the local community as well as the Brambles community;
- have a significant role in the development of a comprehensive recording of the history and culture of the Ngarluma and Yindjibarndi people. This is a major cultural undertaking and requires considerable funding and academic support in conjunction with input from the community;
- assist with crane hire to construct the proposed World Class Cultural – Tourism Centre to be built in the Roebourne Shire;
- employ two Ngarluma and Yindjibarndi people to train as operators at BIS's Dampier Supply Base; and
- initiate the Brambles Remote Area Education Scholarship, which will be offered on an annual basis to promising remote area students. BIS and the NYFL have agreed to contribute a total amount of \$10,000 per year to fund this scholarship.

There have been many rewarding aspects to come out of the Agreements for all parties. These include:

- non-Aboriginal employees gaining a clearer understanding of the traditional culture of the local Aboriginal community;
- Aboriginal employees gaining an understanding of the requirements needed to maintain satisfactory performance in the "whitefella" working environment;
- the satisfaction of providing opportunities that can make a difference in the lives of members of the community;
- greater levels of acceptance and tolerance of Aboriginal culture within the industry and in the workforce;
- the satisfaction derived from the development of trust and friendship with people from another culture; and
- demonstrable evidence on the effectiveness of Aboriginal mentors in the workplace.

## **7.0 IMPLEMENTATION OF AGREEMENTS**

Once an agreement has been signed, the journey for the parties has only just begun. Using the metaphor of a “journey” is appropriate, because to fully realise the potential of an agreement the parties need to implement it successfully. This requires:

- good planning;
- adequate resources;
- the partners taking responsibility for their part of the agreement and for helping each other; and
- serious commitment by all parties to the venture.

Unfortunately, the history of agreement making between mining companies and Indigenous parties is littered with failures due to failed implementation. Many agreements are wonderfully constructed documents that are the product of significant thought and effort – yet they have failed to work in practice.

Too often in the past, a company’s cash benefit and/or program support contribution to an agreement was seen as all the company had to do. Frequently, agreements either did not include, or vastly underestimated, the real costs of implementation. For cost management purposes, there was often a tendency to limit the implementation budget. Experience shows this is false economy - the “invested” value of an agreement needs nurturing with on-going management time and expenditure to ensure its full potential is realised.

### ***7.1 Responsibilities of the Parties***

In any agreement all parties have responsibilities. There are explicit responsibilities (or commitments) which are detailed within the agreement itself and usually listed as “things that the parties are legally required to do”. For example, the company may be required to provide cash benefits into trusts and the Indigenous people may be required to allow mining to occur. These responsibilities are “what” the parties must do and are usually clear and straightforward.

There also exists a more subtle set of implicit responsibilities which shape “how” an agreement is implemented. This involves tangible things like 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.

There is one critical overarching responsibility which belongs to the company and its staff, and that is that they must commit substantively to the intent, requirements and spirit of the agreement. Intangible expectations include commitment by all parties to the spirit of the agreement, adopting

a position of shared responsibility and mutual obligation, demonstrating leadership, managing relationships and adopting participative decision making processes.

The success of an agreement depends on the way that a company goes about its implementation, particularly in the first year (Crooke et al 2006<sup>2</sup>; Martin et al 2004<sup>3</sup>) The Indigenous parties gauge the extent of a company's commitment by its ability to deliver "on the ground". There is no doubt that the manner in which the implementation is approached, and therefore its success or failure, is determined by the company's actions.

It is the responsibility of the mining company to take the lead in demonstrating commitment to the agreement, its intent and outcomes and to carry out specific obligations with good intent. It is the responsibility of governments to provide any necessary support to mining companies and Indigenous parties to assist them in carrying out their specific obligations with good intent.

## **7.2 Agreement Success Factors**

Based on a review of agreements in Australia and Canada (O'Faircheallaigh, 2003<sup>4</sup>) a number of factors appear to be crucial to sustainable agreement implementation. These include:

- allocating adequate and appropriate resources;
- understanding the socioeconomic context in which the agreement will operate;
- clear lines of responsibility;
- clear but flexible goals; and
- the support of key political actors.

In Australia, practitioners experienced in the art of agreement implementation have identified a number of issues that impact directly on the likely success of the implementation process. These include:

- the capacity of the Indigenous party to perform its obligations under the agreement;
- the provision of ongoing financial and other support, such as governance and mentoring for the Indigenous party;

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<sup>2</sup> Crooke, P. Harvey, B. and Langton, M. 2006 *Implementing and Monitoring Indigenous Land Use Agreements in the Minerals Industry* – The Western Cape Communities Agreement. Chapter 5, 'Settling with Indigenous People', Federation Press

<sup>3</sup> Martin, D, Hondros, J., and Scambary, B. 2004. *Enhancing Indigenous social sustainability through agreements with resource developers*. paper presented at the Minerals Council Australia Annual Sustainable Development Conference, Melbourne 25-29 October, 2004 [http://www.minerals.org.au/\\_data/assets/pdf\\_file/6039/8B-1MartinDavid.pdf](http://www.minerals.org.au/_data/assets/pdf_file/6039/8B-1MartinDavid.pdf)

<sup>4</sup> O'Faircheallaigh, C. (2003). *Implementing Agreements Between Indigenous Peoples and Resource Developers in Australia and Canada*. Aboriginal Politics and Public Sector Management Research Paper No 13 January 2003. Centre for Australian Public Sector Management, Griffith University.

- charging a qualified individual in a position of authority in the company with the responsibility for ensuring the successful implementation of the agreement;
- developing effective two-way consultative mechanisms;
- recognising that, as the Indigenous party becomes more empowered, it may become more demanding;
- overseeing the successful transition of the agreement from the negotiation team to site operations;
- providing adequate training for mining company and community people; and
- ensuring the effective integration of programs established under the agreement with other site, corporate, State and Federal Government programs.

Agreement implementation should not occur under operational budget constraints; rather it should be linked to five year strategic planning with key performance indicators (KPIs) at business, site and key personnel level.

### ***7.3 Agreement Implementation Tools***

Tools or systems can assist with guiding the implementation of an agreement. These can include:

- Guidance notes and checklists for the agreement implementation team.
- An agreed approach to implementation, signed off and supported at site management and corporate level.
- A site based implementation team with competencies in Indigenous relations, economic development and line management.
- A clear set of reporting criteria and mechanisms.
- A set of review mechanisms against which management can report on the implementation of the agreement on a regular basis.

### **Case Study – Zinifex Century Mine and the Gulf Communities Agreement**

Zinifex Century Mine is a zinc, lead and silver mine located 250 kms north west of Mount Isa. An associated port and dewatering facility is located at Karumba on the coast of the Gulf of Carpentaria, and the two sites are connected by a 304 km underground pipeline. The mine is projected to operate until 2017.

The Gulf Communities Agreement (GCA) was negotiated between Pasminco Century Mine Limited (now Zinifex Century Limited), the Queensland Government and four native title groups—the Waanyi, Mingginda, and Gkuthaarn and Kukatj—under the right to negotiate provisions of the Native Title Act 1993.

The Agreement was signed in February 1997 and came into effect in September 1 of that year when Pasminco purchased the Century Mine project from Rio Tinto.

The GCA includes provisions for:

- employment and training
- business development
- cultural and environmental protection
- transfer of pastoral properties.

The Agreement is seen as a strategic alliance that forms the basis for working together to achieve benefits for all parties.

Under the GCA various trusts and committees with distinct roles and responsibilities were established to represent the native title eligible bodies and their communities. Each of these entities has a majority local Aboriginal representation and is a strong voice in determining the success of delivering the intentions of the Agreement. Their various roles and responsibilities are outlined below.

The Gulf Aboriginal Development Corporation (GADC) is a company with its secretariat based in Mount Isa. The GADC was established under the Agreement at the request of the native title parties, as a group that would represent their interests during the implementation phase and through the life of the Agreement. The GADC plays an important coordination and facilitation role in the continuing operation of the Agreement and manages the direct compensation payment to the native title eligible bodies, which amounts to \$10 million over 20 years.

The Century Environment Committee (CEC) was established to monitor all environmental issues related to the operation, including the review of all environmental regulatory requirements, as well as providing advice to Zinifex Century Mine on environmental programs and strategies. The CEC is also responsible for acting as a formal link with the local community share information and identify important issues. The committee meets every twelve weeks or as required, and has developed a sound understanding of the impact of mining operations on the environment and the control measures in place to minimise that impact.

Committee members receive training in environmental practices and this, combined with their Indigenous knowledge of the land, enables them to fulfil their responsibilities to the communities and the native title eligible bodies. Century Mine funds a full-time local Aboriginal Environmental Liaison Officer who reports directly to the CEC. The liaison officer works with the site environmental team and regularly visits the communities.

### **Case Study – Zinifex Century Mine and the Gulf Communities Agreement (cont'd)**

The Century Employment and Training Committee (CETC) was established to deliver a wide range of commitments from the Agreement. They include: the development, implementation and monitoring of the Employment and Training Plan; skills auditing; provision of education, employment and training advice; employment of support personnel; the establishment of regional infrastructure; and communications with the communities about the progress of Century Mine in the Gulf region. The CETC monitors and guides Century Mine's annual expenditure of \$2.5 million on local Aboriginal employment and training. The committee will manage \$20 million over 20 years for employment and training initiatives.

The Aboriginal Development Benefits Trust (ADBT) is a trust company established to manage Century Mine's contribution to business development over the life of the mine. The Trust is a legal entity consisting primarily of local Aboriginal community members. It has established protocols and procedures for managing the contributed funds. The ADBT manages a fund of \$20 million over 20 years for local Gulf Aboriginal business development, contributed by Century Mine at a rate of approximately \$1 million per annum. The Trust's current strategy is to invest one third of the contributed funds in long-term investments, with a focus on sustainability and growth. The remainder of the funds is available for business development loans.

Zinifex Century Mine's GCA Support department assists in activities related to Aboriginal employees and Aboriginal communities. A range of Aboriginal support personnel have been appointed to positions that include:

- Community Liaison Officers, who are employed from their respective communities and operate in their communities
- GCA Superintendent
- Community Relations Adviser
- Environmental Liaison Officer.

Since the start of the Century Mine project, over \$21 million dollars has been paid directly as wages to the local workforce. The project has employed around 700 local people since construction began, of whom the majority are local Indigenous people. As at 1 June 2005, 142 Indigenous people were employed either directly or as contractors. Six local businesses have been established on site employing more than 35 local people, while other businesses have been established off site. Transfer of pastoral interests is on schedule with the establishment of the Lawn Hill Riversleigh Pastoral Holding Company. Turn-Off Lagoons Pastoral lease has been handed back to the Indigenous owners, while the Pendine and Konka leases are in the process of transfer on the establishment of an owners' representative body.

## **7.4 Summary**

There is clear benefit to mining companies and local Indigenous communities in ensuring that agreements are properly implemented. From the perspective of native title representatives, Indigenous community leaders and government stakeholders, a clear understanding of the

implementation process is one way of ensuring that expectations in the local Indigenous community are managed. An agreed implementation process with goals and timelines can be communicated back to community members.

From the perspective of mining companies, there are clear benefits to developing and managing an agreed implementation process. First, failed agreements impact significantly on a company's reputation and may undermine its abilities to expand its business activities or negotiate new agreements. Second, there are clear financial benefits to companies in not having to commit substantial resources to fixing problems that were created by ineffective implementation in the first place. Failed agreements cost time and money and damage stakeholder relationships.

Key points to remember in agreement making are:

- Relationships and agreement making should not be fostered only when the business requires something;
- Recognise and celebrate success – even the small steps;
- Design the implementation of an agreement into the agreement itself; and
- Signing an agreement is just the beginning – implementation is the fundamental element that will underpin long-term success.

## **8.0 CULTURAL HERITAGE**

Cultural heritage places are integral to Indigenous Australians' connection with their traditional lands. Therefore any successful relationship between a mining company and an Indigenous community will include recognition and respect for the communities' cultural heritage.

Cultural heritage legislation in Australia has developed in two main phases. During the 1960s and 1970s, cultural heritage legislation was primarily aimed at protecting Indigenous archaeological and cultural heritage sites. This protective legislation emerged out of lobbying by the archaeological community, who regarded themselves as stewards and interpreters of Australia's pre-European past. As a result, most legislation focused on archaeological sites, rather than contemporary cultural sites.

More recently, Indigenous involvement in archaeological and cultural heritage research reflects an acknowledgement that Indigenous Australians are important stakeholders in cultural heritage matters and the most recent legislation recognises Indigenous ownership and/or rights in relation to heritage places. The cultural heritage management model that has emerged is based on the idea that consultation between Indigenous peoples, cultural heritage professionals, archaeologists and developers should be egalitarian, a dialogue between equals. The aim of this 'interest group' model is to enable open communication and consultation between all interested parties.

### **8.1 *Who Owns the Culture?***

The interest group model fails to take into account two key issues. First, there is often a power differential between stakeholders that leaves Indigenous people at a disadvantage. Second, Indigenous peoples are not merely stakeholders in their heritage – they own that heritage and have the customary and moral right to control if and how it is managed, protected, researched and so on.

Developers, mining companies, researchers and cultural heritage managers need to consider replacing this 'interest group' model with a host-guest model which sees Indigenous people not as equal stakeholders but 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 a voice in the manner in which such activities take place. The host-guest model provides for this.

### **8.2 *The Statutory Regimes***

Indigenous cultural heritage, physical-sites, narrative or story sites, artefacts and remains are protected by various Federal and State legislation. The Commonwealth also has specific

Indigenous heritage legislation, the *Aboriginal and Torres Straits Heritage Protection Act 1984*, which can be used by Indigenous individuals or groups where they believe the relevant State processes have not adequately protected heritage places of significance to them.

The older and more conservative legislation regards Indigenous cultural heritage as part of Australia's heritage. Oral-tradition, narrative or story and ceremonial sites, where covered by this type of legislation, are viewed as 'relics'. This is largely true of the cultural heritage legislation in New South Wales, Tasmania (currently under review) and Western Australia. There is very little recognition given to the rights of Indigenous people to control their cultural heritage, rather control rests in the hands of Government Ministers and/or senior public servants under Ministerial control.

In recent years there has been a shift away from this conservative approach to Indigenous cultural heritage. The Commonwealth Government, along with the Governments of South Australia, Queensland, the Northern Territory and Victoria have now established cultural heritage legislation that operates from a fundamentally different philosophical position. The legislation of these jurisdictions establishes Indigenous people as beneficiaries of the legislation and acknowledges continuing interest in places deemed significant to Indigenous tradition, culture, history and heritage more generally. These rights, with respect to Indigenous cultural places and objects, operate regardless of underlying land tenure.

The most recent legislation, in Queensland and Victoria, recognises the native title context and formalises the role of native title parties within the statutory heritage process. Increasingly, this means that decisions about the management of heritage sites are determined by negotiations between community(s) and developers.

However, this does not mean that Indigenous people have complete or total control. In most instances, it remains the case that where a mining company or other third party have competing interests, it is a Government Minister or body that has ultimate say over whether or not Indigenous sites, artefacts, remains and objects are preserved, conserved, protected or are allowed to be damaged, destroyed or relocated.

There are a number of sources of information that can assist companies in meeting heritage legislative requirements. Guidelines are available from the relevant State heritage authorities on working with their legislation, training courses and workshops are provided by heritage consultants in most States and professional heritage bodies can also provide assistance.

### **8.3 Important Principles of Cultural Heritage Engagement**

Mining companies who consider the three principles set out below should achieve good engagement with Indigenous communities on cultural heritage management and will not need to resort to Government intervention to achieve project approvals.

1. There is a need to acknowledge not merely the legal rights of the community with respect to their cultural heritage but also their customary and moral rights. This can best be achieved by negotiating and agreeing upon a heritage protocol, potentially as part of a broader land use agreement, that sets out the heritage process that will be followed for any project development, including the rights and mutual accountabilities of all parties. Reaching this form of heritage agreement will potentially be a legislative requirement, depending upon the native title status of a project area, or the State heritage legislation.
2. Cultural heritage considerations need to be built into the earliest planning stages of any project and be reassessed as the project develops. Sites, artefacts and locations of significance need to be respected and every effort made to protect them. Proactive planning and management can in most cases allow for the avoidance of heritage sites of significance. In the case of unavoidable damage or destruction to sites, an appropriate mitigation program should be agreed with the relevant Indigenous community(s). Mitigation options will depend upon the nature and significance of a site, and can range from destruction with minimal recording; to relocation; to detailed high level archaeological research and the development of interpretive publications and displays.
3. Proactive cultural heritage programs should be recognised as a potentially high value component of any company's engagement with Indigenous communities. These programs should occur in partnership with a community, and can include educational opportunities for local Indigenous community members, such as training in the areas of artefact identification, site recording, site management, site protection and lab-based analytical techniques.

## **8.4 Summary**

There are significant dangers to mining companies who seek to adopt a minimalist approach to cultural heritage issues. Mining companies are faced with an increasingly broader (and stricter) legislative regime that acknowledges that Indigenous people actually own their culture – both physical and metaphysical.

In addition, failure to deal in a respectful manner that recognises the importance of cultural heritage issues to Indigenous people can impact on negotiations that need to occur under other statutory or policy regimes – e.g. native title and the right to negotiate process.

Overall, there are significant benefits to a mining company in having successful heritage partnerships with Indigenous groups and effective cultural heritage management systems.

### **Case Study – Anglo Coal Australia**

Anglo Coal Australia Pty Ltd operates coal mines in Queensland and New South Wales and is developing plans for a coal to liquid fuels plant in Victoria. The company produces about 27 million tonnes of coal a year and employs more than 2100 Australians.

Anglo Coal's relationship with Aboriginal people has developed over the past fifteen years in the course of consultation over plans for developing and expanding coal mines and managing their impact on cultural heritage values.

The company established two completely new mines, at Dartbrook and Moranbah North during the 1990's and has subsequently embarked on an active program of continuing development and expansion at all of its other mines - Callide, German Creek, Drayton and Moura. The cooperative relationships established during the planning and cultural assessments for Dartbrook and Moranbah North in the early 1990's set the pattern for the development of comparable relationships and practices at Anglo Coal's other mines.

For each new mine and expansion project, Anglo Coal and the local traditional land owners have worked together to identify potential cultural heritage issues and devise appropriate cultural heritage management plans. Those practices have now been formalised in voluntary cultural heritage management agreements with the traditional owner groups in whose country Anglo Coal's mines are located. All of the company's Queensland operations are covered by formal cultural heritage management agreements.

The formal policy guiding Anglo Coal's relationship with Aboriginal People distils the learning from the early years of consultation. Based on recognition and respect, the aim of the policy is for the company to work in partnership with the Traditional Owners to achieve goals that meet the needs of both parties.

Although the policy and its underpinning principles were established well before any need arose to extend consultation to native title matters, in recent years they have provided a good platform for cooperative approach to native title negotiations as well.

At Moranbah North mine for example, a native title negotiation with two claimant groups was successfully completed in just a few months in 2003, largely because of the cooperative relationships that had developed between the Traditional Owners and company employees over the preceding decade.

Anglo Coal is convinced that the development of cooperative relationships with Traditional Owners, based on respect and recognition, is by far the most effective way for mining companies to resolve cultural heritage and native title issues. The Company, and all of its mine sites, have therefore embraced a commitment to the ongoing development of relationships and opportunities with Traditional Owners.

## **9.0 ENVIRONMENTAL CO-MANAGEMENT**

Attention to environmental impacts is now a significant aspect of management responsibility for all mining operations. Protection of the environment has become an important social, scientific and political issue over the last 25 years and government policy is changing constantly in response to pressure from the public, industry and the international community. This raises a number of challenges for the mining industry; in particular, ensuring that effective systems are in place to monitor compliance with environmental legislation and that site-level management practices address local environmental concerns that impact on a company's social license to operate.

### **9.1 Environmental Legislation**

The overarching framework for environmental legislation in Australia is provided by the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999 (Cth)*. The Act has two main objectives – to identify and approve matters of national environmental significance and to put in place biodiversity provisions to protect Australia's native species – and is firmly grounded in the principles of sustainable development. While the EPBC Act focuses on matters of national interest, ensuring compliance with anti-pollution legislation is the province of state and local laws. State legislation deals primarily with pollution matters in three main categories:

- air, water and noise pollution
- site contamination
- waste.

In those states with overarching environmental protection acts, these matters are generally covered under one Act. In other states, there are separate pieces of legislation covering the different categories. From a compliance perspective, it is essential for mining companies to be familiar with the relevant legislation because they are liable for the costs associated with cleaning up after any pollution incident.

### **9.2 Land Use Agreements**

Sixty percent of mining in Australia occurs on or near Indigenous land that is subject to native title and many of the new mines likely to be developed in the future are expected to be on land subject to native title (Tiplady and Barclay, 2007). This means that, as well as legislative requirements, many mining companies are also signatories to land use agreements that require them to take environmental considerations into account. However, while these agreements provide for joint decision making with local Indigenous communities on some or all environmental matters, it is estimated that more than half of these agreements either contain no environmental provisions at all, or only commit the company to abide by the existing legislation (O'Faircheallaigh

and Corbett 2005)<sup>5</sup>. So, while Indigenous parties may have standing for legal action if there is a breach of environmental legislation, these agreements do not help to protect the environment. There is a big gulf between seeking recompense for environmental damage and encouraging mining companies to engage in environmentally friendly management practices. One way of tackling this problem is by introducing environmental co-management practices.

### **9.3 Environmental Co-Management**

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 the relationship between a mine site and the communities affected by its operations. One approach adopted by leading companies to manage environmental impacts and build relationships with Indigenous communities is called environmental 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, government, researchers and NGOs. Partners share the authority and responsibility for the management of the environment in and around the mine site.

Effective environmental co-management programs lead to strong partnerships and achieve high standards of environmental management on work sites and in the local region. They have significant benefits for Indigenous communities and for mining companies.

#### ***Benefits for Indigenous communities***

Environmental co-management programs respect Indigenous knowledge, build Indigenous communities by supporting the local economy and enhance the confidence and skills of the Indigenous workforce. By partnering with mining companies to adopt environmental co-management practices, Indigenous communities are able to:

- maintain the contemporary relevance and transmission of traditional knowledge and skills
- gain a focus for trusted relationships and power sharing
- develop pride, confidence, work habits and a lifelong learning culture to support younger generations
- increase opportunities for sustainable livelihoods and economic development on Indigenous lands, and

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<sup>5</sup> O'Faircheallaigh and Corbett's (2005) correct reference

- build resilience.

The Argyle Diamonds case study below illustrates the benefits of the partnering approach for land rehabilitation and community capacity building.

**Case study: Argyle Diamonds: Beyond rehabilitation to sustainable community development**

When initiating the latest phase of its rehabilitation program in 1999 Argyle Diamonds decided to go beyond what was 'expected' and incorporated social and economic as well as environmental aspects into its design. This entailed inviting members of the Warmun and Glen Hill Communities, who are some of the Traditional Owners of the land where Argyle Diamonds is situated, to work in partnership with Argyle Diamonds staff to ensure that the rehabilitation program acknowledged and supported the cultural and economic needs of the local Aboriginal Communities.

**Background**

The main ore body is located in the saddle referred to as Barramundi Gap by its Traditional Owners. Diamonds are also found in the alluvial deposits of two creek systems (Limestone Creek and Smoke Creek) as they capture the erosion products of the diamond-bearing saddle. Since 1982 over 1,400 ha of the alluvial terraces have been mined for diamonds. The eucalypt woodland and adjacent vegetation associated with the creek systems play an important role in the life of the Traditional Owners. Several plant species found in these areas have a wide range of uses as food sources, traditional herbal medicines, raw materials for production of boomerangs, didgeridoos and spears and use in smoking ceremonies.

**Partnership Outcomes**

By adopting the principles of environmental co-management, the rehabilitation program has led to:

- the introduction (into the rehabilitation areas) of plant species of significant importance to local people
- the development of a small-business enterprise within the two Aboriginal Communities that provides seed and raise seedlings for the rehabilitation process
- employment opportunities (in horticulture-related activities) for elderly people and women with children who are not in a position to gain employment outside the Community
- employment opportunities for some Community members within Argyle operations

Argyle Diamonds also continues to support scientific research into the functioning of ecosystems in the area and provides training to Community members to develop their skills in plant identification, seed collection and crop production.

***Benefits for mining companies***

There are also benefits for mining companies in using Indigenous employees as part of their environmental management programs. One direct benefit is that, by 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, mining companies can offset the environmental impacts of their operations.

Even more important than direct benefits are the indirect ones that flow from a cooperative approach to environmental management. A major contribution that Indigenous people bring to environmental co-management partnerships is an accumulation of ecosystem knowledge and understanding. Indigenous ecological knowledge has many potential applications, for example:

- contributing to environmental assessment and monitoring programs at mine sites
- involvement in rehabilitation programs
- involvement in the management of pastoral leasehold lands, in cases where mining companies are major landowners. Ecological management is an important issue for mining companies with pastoral leases in central South Australia and the Western Australian Goldfields.

#### **9.4 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. It is work that is valued by others in the Indigenous community, as well as outside the community. It gives Aboriginal people the opportunity to use the observational skills and environmental knowledge that they developed as young people growing up in bush settlements and on outstations.

Working in environmental management develops pride in young people, and motivates them to become more actively involved in the work. In particular, young people working as a group motivate each other, laughing and swapping yarns. They become more confident as they gain an understanding of work habits and gain more experience.

Mining companies can encourage Aboriginal people by awarding contracts for environmental management tasks at mine sites - such as rehabilitation, weed control or fire management - to Indigenous organisations. Community ranger groups are a growing force in remote Australia and some are well placed to provide environmental services to the mining industry. For example, the Wulaign rangers in the Northern Territory conduct the weed control programs at Newmont's Tanami mine.

The following case study demonstrates the extent of Indigenous ecological knowledge and its potential application to the mining industry.

#### **Case study: Indigenous ecological knowledge**

In 2006 a pilot pastoral lease assessment undertaken as part of a formal assessment of land condition undertaken under Section 25 of the *Pastoral Land Management and Conservation Act 1989* (SA), incorporated Aboriginal perspectives for the first time. This initiative by the Aboriginal Legal Rights Movement's Native Title Unit (ALRM NTU) secured the support of the SA Pastoral Board, a pastoral lessee and a native title claim group. It brought together scientists and Aboriginal people in a process that was extremely positive and beneficial for all parties.

In the pilot, two Aboriginal assessors worked alongside scientists and independently. They identified 19 indicators for the health of plants and animals, landscapes and issues of importance to traditional owners. There turned out to be considerable overlap between the indicators of environmental health identified by the Aboriginal assessors and the indicators used by the scientists. There were also unique insights provided through the Aboriginal assessors' traditional and historic environmental knowledge.

The success of this program suggests that it may have applications for the mining industry. Partnerships that bring together scientific knowledge, new technologies and Indigenous expertise, are likely to lead to the best environmental outcomes and demonstrate the effectiveness of the environmental co-management approach.

## **9.5 Adaptive Co-Management**

A recent development in the field of environmental management is the concept of adaptive co-management. Adaptive co-management systems are '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, Folke and Berkes, 2004; p.75) <sup>6</sup>. The attraction of adaptive co-management systems is that they contribute to the resilience of social and environmental systems because they combine dynamic learning with the partnership aspect of collaborative management

The key factors that enable adaptive environmental co-management to emerge are:

- enabling legislation and agreements that create space for collaboration in ecosystem management
- adequate funding to respond to environmental change, and allow for remedial action
- the importance of monitoring, including local people's involvement in monitoring
- consulting a variety of data sources to gain the most accurate information
- good information flow and social networks involving all people connected with ecosystem management

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<sup>6</sup> Olsson, P., Folke, C. and Berkes, F. 2004. Adaptive comanagement for building resilience in social-ecological systems. *Environmental Management* **34**(1): 75-90.

- strong values and a vision for ecosystem management, and
- opportunities for collaborative learning (Olsson et al. 2004.)

This is an exciting new area of research that may ultimately lead to stronger provisions for environmental co-management being included in future land use agreements, as mining companies and Aboriginal groups become more aware of its potential. An example of how adaptive co-management can work is illustrated in the Tanami case study.

#### **Case study - 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. Mines, water extraction and exploration interests extend over 45,000 km<sup>2</sup> and the company has 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, aimed at minimising impacts by applying best practice principles. However, both Newmont and CLC grappled with how to understand the cumulative impacts of exploration and mining on the region. Despite Newmont collecting environmental data over many years it was difficult to quantify impacts.

The Tanami Biodiversity Strategy developed after a meeting between 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.

The Tanami Biodiversity strategy involved the selection of nearly 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 there is a field program that provides paid work for the ranger groups involved. These ranger groups have been developed by the Warlpiri people over several years, with support from the CLC, the National Heritage Trust and CDEP programs.

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

Source: Stoll et al. 2005, Nic Gambold, CLC pers com 2006.

## **9.6 Summary**

Environmental protection legislation and land use agreements provide the statutory framework for monitoring and managing the environmental impacts of mining operations on Indigenous communities. Leading practice companies are moving beyond the compliance model of environmental management and are increasingly embracing the principle of environmental co-management. Environmental co-management incorporates Indigenous knowledge of country and is based on the development of ongoing relationships built with Indigenous communities. It is based on a partnership concept, where the parties learn from each other and share experiences.

Environmental co-management provides benefits for mining companies and Indigenous communities. It enables mining companies to incorporate local Indigenous knowledge about the environment into site level management practices and, by engaging with community members, develops trust between the site and the people who are most directly affected by its operations. Environmental co-management also provides new business and employment opportunities for Indigenous communities that can enable them to become more economically self-sufficient.

## **10.0 EMPLOYMENT, TRAINING & HUMAN RESOURCE ISSUES**

The poor participation rates of Indigenous people in the Australian workforce and the socio-economic factors that contribute to them are well-documented. In 2002, Indigenous people made up 4.6% of the mining industry workforce (Tedesco et al 2003) and, although some advances have been made - a more recent study (Tiplady and Barclay, 2007). suggests the employment rate has increased to 8% - Indigenous unemployment rates remain very high. In the remote and rural mining regions where mining companies operate, Aboriginal people are often a major proportion of the permanent local population and workforce participation rates are often worse than the national average.

This situation represents both a threat and an opportunity for mining companies. First, the inherent instability of an unemployed and dissatisfied local workforce represents a business risk. Recognising this, responsible mining companies have developed dedicated Aboriginal employment programs to mitigate the risk. The mining industry continues to find new and innovative ways to engage and work with governments and Indigenous communities to progress initiatives to produce mutually beneficial outcomes. One such example is the current Memorandum of Understanding on Indigenous Employment and Enterprise Development Opportunities between the Minerals Council of Australia and the Australian Government (see *case study in the Community Engagement and Development handbook as part of this program series*).

In the process, they have identified a number of potential advantages to employing a local Indigenous workforce. These include:

- having a pool of local employees who can move between projects and operations as demand and fortunes change;
- a stable workforce of local employees who are not intent on leaving the region to pursue careers elsewhere; and
- a stable, mature workforce living 'at home' and participating in the activities of strong local community groups and civic institutions.

### ***10.1 Improving the Indigenous Employment Rate***

Strong executive leadership and organisational commitment are required to improve Indigenous employment rates. This includes:

- providing adequate resources in terms of human resource (HR) and community development professionals; and

- requiring all employees to have accountability for supporting Aboriginal employees, particularly in their first year of employment. Cultural awareness training for all mine site employees, Indigenous and non-Indigenous, is vital in this regard.

Companies that have mutual obligation provisions in Aboriginal land use and mine development agreements are amongst the most successful employers. Codes of conduct covering such things as cultural respect, racism, alcohol management in the community and use of local language and translation services ensure that all employees understand their behavioural obligations.

## ***10.2 Impediments to Building an Indigenous Workforce***

The external impediments to building and retaining an Indigenous workforce are significant. These include:

- poor education levels;
- cultural differences;
- language and communication difficulties;
- family issues;
- health and social issues; and
- social and geographical isolation.

Amongst these, poor education levels are the greatest obstacle. Progressive companies have adopted far-sighted HR and training practices to compensate. In particular, partnering with local schools and TAFE colleges, government, local community members and organisations to increase the level of education outcome is vital. Students often require considerable mentoring to remain at school and those who graduate Year 10 can then attend pre-employment programs to prepare for recruitment. Pre-employment programs can involve such things as school and community centred mentoring, reinforcing personal communication on drug and alcohol testing and assistance with gaining driving licences.

## ***10.3 Accessible Recruitment Processes***

Recruitment is the next of many hurdles. Affirmative selection strategies based on Equal Opportunity legislation are often required, with entry level jobs being reserved for local Aboriginal employees. Conventional HR practice involving newspaper advertisements and websites will not reach many Aboriginal candidates. Written letters of application, standard forms, resumes, standard psychometric testing and standard interview techniques are not suitable for Aboriginal people raised in a strong cultural context.

Good recruitment practices include:

- face-to-face communication at community level;
- the use of extended Aboriginal family networks to identify potential candidates;
- provision of assistance to prepare application forms;
- confidential medical advice; and
- preliminary advice on the importance of Occupational Health and Safety issues and zero tolerance policies in relation to alcohol and drug use at the mine site. The extent to which a potential employee appears receptive to these messages can be a valuable screening process when selecting potential employees.

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 one-to-four-day residential workshop with other candidates. Company people participate in the workshop and observe candidates as they undertake classroom activities, practical outdoor and indoor exercises, site visits and social activities. The skills being assessed include how effectively an applicant can carry out practical tasks, solve problems, understand safety measures, work interpersonally, understand and take instruction, and work in a team cooperatively.

#### ***10.4 Recruitment and Retention Strategies***

Most Indigenous recruitment initiatives include work-readiness training, traineeships and apprenticeships but all need to incorporate life skills training and mentoring as major components. Life skills training:

- reinforces work habits of attendance and punctuality;
- helps trainees to manage family/work obligations; and
- may include providing assistance with personal financial management.

If Aboriginal employees can remain in employment for 12 months their long-term retention potential improves dramatically. Strategies to improve retention rates include:

- family support mechanisms;
- flexible work rosters;
- career development opportunities; and
- addressing racism in the workplace.

Aboriginal customary obligations, such as attending frequent funerals, can usually be accommodated within normal workplace practices and policies, such as bereavement leave, holiday leave and leave without pay.

Finally, successful Indigenous employment programs are comprehensive in scope. This includes:

- requiring contractors to meet the same employment obligations as the client company;
- offering cadetships and vacation employment for tertiary enrolled Indigenous students to encourage the development of Indigenous employees as technical specialists and managers; and
- focusing on employment strategies for Aboriginal women, who appear to adapt particularly successfully to the demands of the mining workplace.

### **10.5 Summary**

There are many challenges associated with employing Aboriginal people in the mining industry. However, there are also many examples of positive outcomes that can be achieved when Indigenous communities and mining companies work together to improve Indigenous employment outcomes. Strategies that improve Indigenous employment rates include:

- demonstrated organisational commitment to improving Indigenous employment outcomes – at the corporate level and at the site level;
- providing pre-employment or pre-vocational training, that prepares Indigenous employees for life in the mining industry workforce. This includes life skills training and a sustained mentoring program;
- adopting recruitment strategies that focus on personal communication and the opportunity to demonstrate skills and abilities; and
- developing company policies that encourage Indigenous employees to remain in the workforce. This may include flexible leave and roster arrangements and ongoing mentoring, to assist employees in managing family demands and financial problems.

Whilst negotiations for land access and ILUAs focus on relationships and social and economic outcomes for Traditional Owners, “Impacted communities” will also consist of groups not necessarily connected by Traditional Ownership or genealogy. All communities within the stakeholder footprint are key participants in the “sustainability story” of a mining operation and it is reasonable that they will have expectations of social and economic opportunities as a direct result of those operations. Local employment is one key strategy through which mining can have a direct impact on a regional economy. Aboriginal employment is not exclusive of negotiated agreement; it is a clear business and regional economic advantage to recruit within the threshold of a mining operation.

### **Case Study -Roche Mining and employee development**

Roche Mining is one of Australia's leading providers of engineering, mining and mine development services, employing employ over 150 Aboriginal people across 25 locations.

In 2004 Roche and client Newcrest Mining looked at ways of providing employment opportunities for the local Traditional Owner groups, the Wullli Wullli & Iman peoples, at the Cracow Underground Gold Mine in Queensland.

A joint recruitment process was established after consultation with Traditional Owners and two, one-day selection centre workshops were held, using culturally appropriate methodologies. From these workshops five trainees were selected, one of whom was Celeste Williams.

#### **Celeste's story**

Celeste Williams is a Wullli Wullli woman from Eidsvold Queensland. She commenced with Roche as an administration trainee at Cracow in December 2004 and in May 2006 was appointed to the position of Site Clerk. Celeste describes her journey:

*The recruitment process was planned really well. We had staff from Roche & Newcrest talk about the industry and their roles – and I think it made it a lot easier getting to know them and know what would be required in the job. I never thought I would end up in the Mining Industry and at Cracow. The job has special significance for me because this is where my Grandfather comes from; he is a Wullli Wullli Elder. This area and its history is a piece of the jigsaw that makes me who I am. Me working here means a lot to my Grandfather and Mother.*

*My family is really proud of me especially my daughter. She asks me lots of questions about what I do at the mine. My parents are both over the moon about me finishing my Certificate 3 in Business Administration and becoming a site clerk. I started at the bottom as a trainee, at first it was hard because I wasn't used to leaving my daughter who was three at the time but we both got used to it. She is four now and my parents help out as much as they can. Roche is pretty good and are understanding if any problems arise.*

*The difference from a Trainee to a Site Clerk is huge. I have many key responsibilities now and I am relied on to make certain things are done and managed. This opportunity has changed a lot of things in my life. Now I have responsibility at home and at work. I feel as though I know where I am going in life and know what I'm doing now. I have learnt a lot and am still learning. The message I have for other Aboriginal young people is to get in there and have a go, If you want to make something of your life you have to give it a go or you will never know.*

#### **The management perspective**

Project Manager at Cracow, Geoff Crooks, said Celeste was an asset to the site, having risen to her new role of Site Clerk with enthusiasm, confidence and commitment.

*Celeste's appointment demonstrates that managers shouldn't assume because individuals come with a 'trainee' title, that is all you can expect from them...sometimes you need to dig a bit deeper.*

*At Cracow we have had two indigenous trainees on site during the past 12 months; both have excelled in their chosen career paths and both have exciting prospects ahead of them with Roche, said Geoff*

### **Case Study – Woodside Energy**

Woodside Energy Ltd has a significant interest in the North West Shelf (NWS) Venture, which is Australia's largest resource development. It supplies pipeline gas to the domestic market in Western Australia and exports liquefied natural gas (LNG) to Japan. In addition, it produces condensate (light crude oil), LPG (butane and propane) and crude oil (Cossack crude).

In the Pilbara region of Western Australia, Woodside has developed programs for indigenous communities associated with the Burrup Peninsula and in Roebourne and Karratha. A number of Indigenous peoples live in these areas, including Ngarluma, Yaburara, Yindjibarndi, Coastal Mardudhunera, Banjima, Kurama, and others.

Over the past decade, Woodside and regional Indigenous communities have undertaken discussions regarding the NWS Venture, and subsequently formalised agreements, to the benefit of both parties. Benefits for Woodside include;

- access to land for current and future operations
- land needs for the life of the project

Benefits for regional Indigenous communities include:

- education, training, employment and business enterprise initiatives
- support for social, cultural and economic well being.

Woodside Energy and other operators in the area currently operate two programs from Roebourne. These programs aim to increase both the education standard of indigenous people, and opportunities for employment located in the Pilbara region. These two programs are:

#### **1. Gumala Mirnuwarni – ‘Coming together to learn’**

The aim of the program is to improve the educational outcomes of indigenous students within the Shire of Roebourne.

Partners in the program include: Woodside; Hamersley Iron; Dampier Salt; WA Department of Education; Polly Farmer Foundation; Australian Government Department of Education, Science and Training.

The program provides: Education enrichment centres in Karratha and Roebourne for homework and individual tutoring; school based mentors, extra curricular activities, cultural awareness programs for teaching staff and support for families.

Achievements to date include:

- A total of 82 students have been involved in the project – 47 females and 35 males
- 55 students have previously been involved
- 26 students plus three on trial are currently involved
- 8 previous students are studying at universities in Perth
- 1 previous student is attending TAFE
- 8 gained traineeships after graduating from year 12
- 9 gained traineeships after graduating from year 11

#### **2. Warrgamugardi Yirdiyabura – ‘Pathways to employment’**

The aim of this program, is to improve the training and employment opportunities for the Indigenous people within the Shire of Roebourne.

Partners in the program include: Woodside; Minurmaghali Mia; Australian Government Department of Employment and Workplace Relations; Ngarliyarndu Bindirri (Corporate CDEP) Aboriginal Corporation; Roebourne, Pilbara TAFE, and members of the local community.

Achievements to date include:

- 97 local people have participated in the program.
- 55 per cent of program graduates have gained full time employment.
- 47 program participants are currently employed on the Train 4 Project, with 22 being local residents.

## **11.0 INDIGENOUS BUSINESS DEVELOPMENT**

Indigenous business development is just part of a wider framework of economic engagement by Indigenous people which includes;

- welfare (unemployment benefits or work for the dole);
- employment (direct, contracting or consulting);
- business ownership; and,
- equity ownership.

Creating and running a business is a relatively complicated form of economic engagement. It requires people with relatively high skill levels who are motivated, educated and have had previous work experience. It is also important to identify genuine business opportunities. However, the average capabilities in Indigenous communities for creating and running a business are low due to poor business skills, limited formal education, and lack of experience in the workforce. Frequently, individuals who show aptitude and/or are relatively more capable are quickly employed in the few mainstream roles available.

It is usually within this environment that a mining company will enter, with a “commitment” to local Indigenous business development and an unclear understanding of the broader requirements. An adequate strategy and focus on long term sustainable solutions is necessary for success. This section describes those strategies for success.

### ***11.1 Characteristics Contributing to Successful Indigenous Business Activities***

Despite the barriers and limitations, Indigenous businesses do exist and many operate successfully. Recent national and international studies of Indigenous businesses have identified particular characteristics that contribute to successful Indigenous enterprises. These characteristics relate to the business itself, to the individuals who run the business and to the broader business environment. These characteristics are:

- involvement of youth;
- robust business 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; and

- links to external support systems, such as financial advice and services.

In order for Indigenous businesses to come into existence and grow, there are also other regional and community considerations including:

- a supporting community where vision and needs are expressed and understood;
- business skills capacity within communities;
- developed regional economic capacity and hard and soft infrastructure;
- recognition that there is no single approach to business development; and
- the provision and availability of business opportunities provided by the mining companies.

By contributing to these requirements and attending to broader considerations, mining companies sow the seeds for sustainable Indigenous business development.

## **11.2 Business Development Support Organisations**

There are a number of enterprise development and support organisations within Australia that are able to provide assistance and support for community groups and companies. By linking potential business opportunities and proponents with these support groups, operations remove themselves from the difficult position of being both a business mentor and contract manager.

Such organisations include;

- Indigenous Community Volunteers – <http://www.icv.com.au/>
- Department of Employment & Workplace Relations (DEWR) - NEIS Program–  
<http://www.nna.asn.au/NEIS.htm>
- Indigenous Stock Exchange - <http://www.isx.org.au/>
- Indigenous Business Australia - <http://www.iba.gov.au>
- DEWR - IBDP - <http://www.ausindustry.gov.au/>
- Indigenous Self Employment Programme -  
<http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/IndigenousSelfEmploymentProgramme/SEP.htm>
- Small Business Development Corporation - <http://www.sbdc.com.au/>
- Dept Industry & Resources - Aboriginal Economic Development -  
<http://www.doir.wa.gov.au/businessandindustry/>

### **11.3 Business Financing**

The, financing of Indigenous businesses (through investments, loans or grants) has traditionally been problematic. Factors such as lack of collateral, welfare dependency, long term unemployment and poor credit ratings, combine to make financing institutions wary of lending to Indigenous ventures.

However, financing mechanisms do exist, including some innovative solutions. These include:

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

By linking opportunities with the right type of funding, there is a higher probability of success.

### **11.4 The Role of Industry**

A key question for a mining company or operation to ask itself is

*How, where and when can it most effectively and appropriately be involved in fostering Indigenous business?*

This is a hard question for a company as the temptation is to dive in and use its skills to set up Indigenous businesses. However, the entrepreneurial nature of small to medium business means that the primary business risk must be taken by the proponent. This means that it is inappropriate for companies to “set up” new Indigenous businesses. In a practical sense, however, there is a balance to be achieved, and there are occasions where a company may take more of a “hands on” role to support the establishment of a business.

The most effective way for a company to support and develop an Indigenous business is to focus on supporting the characteristics identified above. Another way is to foster Indigenous business by directly employing Indigenous people who, after several years in employment, will have acquired the business skills and confidence to leave the company and pursue self employment.

Overall, mining companies can contribute best to Indigenous business development by recognising that the company itself is part of the wider developing economic framework and that considerable social, educational and business support is necessary for success.

## 11.5 Summary

Successful and sustainable Indigenous businesses provide benefits to individuals, mining companies and to the local economy. Mining companies can play an active role in the success of these businesses by recognising where they can best provide support. This includes:

- providing real and meaningful business opportunities;
- focusing on practical programs that address the key business success characteristics; and
- assisting in the establishment of partnerships with support agencies.

### Case Study – AngloGold Ashanti Australia and Carey Mining

Sunrise Dam Gold Mine (SDGM) is located in Western Australia's north-eastern Goldfields, 220 km north-north-east of Kalgoorlie. The mine poured its first gold in March 1997 and, following several expansions, produces approximately 460,000 ounces of gold per annum. In 2005, Sunrise Dam had a remaining mine life of at least 7 years. AngloGold Ashanti Australia acquired the mine in December 1999 through the successful takeover of Acacia Resources Ltd.

AngloGold Ashanti Australia is committed to fostering long-term relationships with communities in the areas in which it operates. This frequently includes local Indigenous communities. Programs include training, employment and business support initiatives, which can provide much-needed employment opportunities for Indigenous people living in remote areas. To heighten consciousness of Indigenous traditions, employees undergo cross-cultural training.

AngloGold Ashanti Australia's working partnership with Carey Mining began in 1995 when the company (then Acacia Resources) was developing the Sunrise Dam mine and negotiating with native title claimants in the area. Whilst traditional settlements were sought by some of the claimants, Daniel Tucker, managing director of Carey Mining, had a different vision – he wanted to establish a sustainable business for Indigenous people.

Carey Mining's vision was to create a financially robust and successful enterprise focused on delivering and achieving business excellence and committed to providing employment and training opportunities for Indigenous people. This vision meshed with AngloGold Ashanti's desire to provide an opportunity for local Indigenous people to establish a sustainable, long term business, capable of thriving beyond the life of the mine.

With these shared views, Carey Mining and AngloGold Ashanti Australia reached an agreement whereby when AngloGold Ashanti Australia awarded the mining contract at SDGM, Carey would have the option to participate. AngloGold Ashanti Australia subsequently awarded the contract to AWP (now Roche Mining) and then facilitated joint venture negotiations between the contractor and Carey Mining as well as funding negotiations with banks.

The formation of Carey Mining took persistence, perseverance and time. It involved dealing with paradigms unheard of in WA's Goldfields – an Indigenous company as a contractor to the mining industry was something new. There were skeptics who doubted the venture was possible.

The establishment of Carey Mining required the new team to develop a business plan, make funding arrangements and negotiate a joint venture. Carey Mining is now generating a healthy cash flow and has, over the past 10 years, built a reputation as a reliable service provider to the mining industry .

Through current strategic alliances with various mining contractors, Carey now provides contract mining services to companies including WMC Resources, St. Barbara Mines, Lionore Mining International and Placer Dome. It has also operated stand-alone projects for clients including Anaconda Nickel Ltd and Barrick Gold Corporation. *(need to update)*

Besides building a successful business, Carey Mining has also been committed to providing employment and training opportunities for Indigenous people. The company currently employs 51 Indigenous people who have, along with others in the past, been fully trained. They have then achieved practical full time employment and work experience, enabling them to utilise their skills in other sectors of the mining industry.

Carey Mining sees its strength in this area as a beacon of hope and encouragement to other Indigenous people – hope for those seeking employment and encouragement for those seeking to develop businesses in the mining industry.

As the experience gained from the partnership with AngloGold Ashanti has grown, Carey has been able to use its competencies to advise and assist other Indigenous business start-ups, as well as assisting other mining companies with local Indigenous participation.

Positive working relationships with AngloGold and strong joint venture partnerships have enabled Carey Mining to achieve its vision. The SDGM partnership has enabled the contractor to build a robust business and to provide opportunities and support for other Indigenous people. It has also sent a message to the mining industry that these types of arrangements can work, creating a win-win situation for all parties.

Carey Mining has expanded beyond SDGM and its aim is to continue to improve its business and further develop new opportunities. It will do this by forming strong alliances with mining companies and companies delivering services to the mining industry. Carey Mining has moved beyond the mining industry to carry out numerous civil contracting ventures that are aligned with its vision and which meet its investment criteria. AngloGold and Carey have maintained a joint working relationship, together with the Art Gallery of Western Australia, an innovative way of building on their unique partnership. This involves cooperation to enhance the preservation and propagation of Indigenous art and culture.

The Carey Mining/AngloGold Ashanti Australia initiative provides encouragement for, and a sound example of, a partnership that could be followed to bring benefits to Indigenous communities elsewhere.

## **12.0 CONCLUSION**

The information and ideas incorporated in this handbook are based on the premise that the sustainable development of mining operations in Australia must involve establishing, maintaining and improving relationships with local Indigenous communities, recognised in corporate policy and integrated into decision making processes.

Chapter by chapter, it lays out a framework and a guide to assist mining companies and Indigenous communities to work together more effectively to develop enduring and mutually beneficial relationships.

### **12.1 *The Main Messages***

#### ***Understanding the Landscape – History***

Strong relationships depend upon understanding the factors that influence and affect each party. It is vitally important that mining companies do not dismiss the impact that history and its legacy may have on a particular Indigenous group with whom they wish to engage. Failing to understand the broad impacts and listen to Indigenous peoples' perspectives usually means the relationship cannot move forward.

Aboriginal people are the fastest growing sector of the Australian population, particularly in remote and rural regions where many mines are located. They will form the majority demographic in regions of future resource development and expect to participate in that development, socially and economically. It is in the best interests of mining companies to work together with Indigenous communities to ensure that mining operations provide benefits to both parties.

#### ***Understanding the Landscape – Education and Poverty***

As part of understanding the Indigenous social landscape, mining companies need to appreciate that a number of constant factors are present and need to be dealt with. These include low levels of educational attainment and employment and relative poverty. By appreciating the presence of these factors and designing interactions that address them, mining companies will increase the likelihood of sustainable agreements that deliver smooth development consents and positive outcomes for all parties.

#### ***Understanding the Landscape – Language and Culture***

Another constant factor is culture and language. Mining companies need to understand that English is not the first or second language for many rural and remote Aboriginal people. This means mining companies need to design and undertake engagement and information sharing in a way that takes into account low levels of literacy and English comprehension.

In addition it is critical that mining companies understand that cultural behavioural differences exist. It is particularly important that cultural practices and responsibilities in relation to land estates be properly understood. These differ markedly from place to place and the management of 'cultural fit' appropriate to context is critical to the development of any successful relationship.

Mining companies need to also understand that mining has its own culture and that Indigenous employees need training to understand it, just as non-Indigenous employees need to learn about Indigenous habits and customs by undertaking cultural awareness training.

### ***Understanding the Landscape – Statutory Frameworks***

A lot of the contact and agreement making between mining companies and Indigenous people happens within a statutory and institutional framework. Needless to say, mining companies have to understand the relevant legislation, but not simply the Native Title legislation. Cultural heritage legislation at the State and Territory level, in particular, will be very important in the next ten years. Mining companies need to remember that engagement on cultural heritage issues is frequently the first point of working together for industry and Indigenous people and that it sets the tone for the subsequent relationship. When mining companies pay attention to what is important to Indigenous people, they can expect reciprocating respect.

### ***Negotiation Models that Build the Relationship***

Constructive relationships between mining companies and land connected Aboriginal people are increasingly being formalised in agreements with mutual obligation provisions. Progressive mining companies further understand the difference between negotiation and agreement making and the importance of designing an engagement process in a considered and well researched manner. To work well, a continuum of engagement is required, involving information gathering and giving, direct engagement, capacity building and development, exploration of respective interests, issues and options, the reaching of in-principle agreement, and finally a registered agreement. Governments also recognise the advantage of this approach and recommend negotiation over litigation for resolving land use and development consents.

Successful mining companies have moved beyond crude positional bargaining to an interest-based model of agreement making, with the aim of developing enduring relationships with local indigenous communities. This approach is adopted by companies thinking strategically about regional development and about ensuring support in the event of future mine developments.

### ***The Importance of Implementation Design***

Designing agreements for successful implementation is vital. Many agreements executed over the years have failed to deliver satisfactory outcomes for mining companies or for the Aboriginal community because of ineffective implementation. Effective implementation requires good

planning, adequate resources, the partners taking responsibility for their part of the agreement and for helping each other, and serious commitment by all parties to the venture.

### ***Employment and Enterprise Development***

To foster regional development and economic participation by Aboriginal people the first step by the mining industry is to target employment and training outcomes, recognising the current low Indigenous workforce participation rates relative to population base.

Broader enterprise development and participation by Aboriginal people in mining regions is also highly desirable and goes hand in hand with direct employment. Contract provisions and support for small business are two ways in which mining companies can support the local Aboriginal economy. Companies that have mutual obligation provisions in Aboriginal land use and mine development agreements are amongst the most successful direct and indirect local employers and ablest navigators of Aboriginal consent pathways.

### ***12.2 The Future***

The relationship between mining companies and Indigenous communities has improved enormously in recent years. Increasingly, negotiations are focused on mutually beneficial outcomes and the development of sustainable relationships. Both parties have developed new competences in negotiation and engagement and are increasingly focused on developing agreements that will enhance the ability of Indigenous communities to participate in the economic life of the region.

## FURTHER READING AND WEBSITES

LPSDP

Enduring Value

Native Title Legislation

Etc. etc.

Harvey, B and Brereton, D 2005, "*Emerging Models of Community Engagement in the Australian Minerals Industry*" United Nations Engaging Communities Conference  
[http://www.riotinto.com/media/downloads/speeches/UN%20Conference%20on%20Community%20Engagement\\_BH\\_150805.pdf](http://www.riotinto.com/media/downloads/speeches/UN%20Conference%20on%20Community%20Engagement_BH_150805.pdf)

Taylor, J and Hunter, B. 1998, "*The Job Still Ahead Economic costs of continuing Indigenous employment disparity*" Centre for Aboriginal Economic Policy Research for the Aboriginal and Torres Strait Islander Commission, Canberra.

Tedesco, L., Fainstein, M., and L.Hogan 2003. "*Indigenous People in Mining*", ABARE Report 03.19. Canberra: Commonwealth of Australia. [http://www.abareconomics.com/publications/html/minerals/minerals\\_03/er03\\_Indigenous.pdf](http://www.abareconomics.com/publications/html/minerals/minerals_03/er03_Indigenous.pdf)

Tehan, M 2003, "A Hope Disillusioned, An Opportunity Lost?' Reflections on Common Law Native Title and Ten Years of the Native Title Act", *Melbourne University Law Review* vol 27,

Tiplady, T., and Barclay, M A. 2007. "*Indigenous Employment in the Australian Minerals Industry*", Centre for Socially Responsible Mining: Brisbane

# GLOSSARY OF TERMS

(yet to be completed)

## **Collaboration**

Working together to share expertise and ownership of outcomes; joint engagement in projects and activities.

## **Community**

There are many ways to define 'community'. In mining industry terms, community is generally applied to the inhabitants of immediate and surrounding areas who are affected by a company's activities. 'Local community' usually indicates a community in which operations are located and may include Indigenous or non-Indigenous people. 'Host community' is sometimes used to place emphasis on the fact that it is the community that accommodates or 'hosts' a company's operation until resources are depleted.

## **Consultation**

The act of providing information or advice on, and seeking responses to, an actual or proposed event, activity or process.

## **Consultation fatigue**

This phenomenon can occur when there are frequent or overlapping consultation initiatives in a community, either from different areas of the same company or operation, or from a different organisation, including government agencies.

## **Development**

Community development encompasses economic development, social development and cultural development — that is, all aspects of human life and well-being. It is the process whereby people increase the strength and effectiveness of their communities, improve their quality of life, and enable themselves and others to participate meaningfully in decision-making and to achieve greater long-term control over their lives.

## **Engagement**

At its simplest, engagement is communicating effectively with the people who affect, and are affected by, a company's activities (its stakeholders). A good engagement process typically involves identifying and prioritising stakeholders, conducting a dialogue with them to understand their interest in an issue and any concerns they may have, exploring with them ways to address these issues, and providing feedback to stakeholders on actions taken. At a more complex level, engagement is a means of negotiating agreed outcomes over issues of concern or mutual interest.

## **Social licence to operate**

The social licence is the recognition and acceptance of a company's contribution to the community in which it operates, moving beyond meeting basic legal requirements towards developing and maintaining the constructive stakeholder relationships necessary for business to be sustainable. Overall it comes from striving for relationships based on honesty and mutual respect.

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- Community Engagement and Development – *October 2006*
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- Mine Rehabilitation – *October 2006*
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- Managing Acid and Metalliferous Drainage – *February 2007*
- Working with Indigenous Communities – *October 2007*

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- Water Management
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