

## ***"What can mines do to promote economic development in their localities?"***

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### **Introduction**

The Western Australian Aborigines Act 1905 stripped what rights remained for Aboriginal people to live as independent individuals, families, and communities. Involuntary removal from their traditional homelands to government regulated and deplorably resourced reserves and the resulting generations of rigorously enforced family and geographical separation, desocialisation and total state dependency had a disastrous and still largely unabated impact on their disadvantaged position in the broader community.

Other sectors of the Western Australian community, certainly grazing and mining businesses collaborated with Government to make use of land for pastoralism, mining and other exploits.

The current Native Title Act, 1993 now recognises a continued legal interest in traditional lands held by local Aborigines that survives the acquisition of land by the Crown at the time that the it acquired sovereignty of Australia.

Native Title can co-exist with non-Aboriginal proprietary rights and where appropriate several Aboriginal groups can concurrently exercise their native title over the same land. It is an example of two systems of law operating within the same geographic and jurisdictional space and operating as such is recognition by the common law of customary Aboriginal law.

Over the last 4-5 years, and very intensively over the last 2 years of the iron ore boom a number of large resource companies and multiple Aboriginal Communities in regional Australia have been at the leading edge of Aboriginal relations and agreement making. This has evolved from incidents in the mid1990s when Traditional Land Owners began to increasingly more effectively exert their rights under the Native Title Act.

National and international benchmarks had been achieved through enlightened agreement-making, on both sides of the bargaining table in Cape York and the East Kimberley, and it is on the basis of these earlier negotiating models that the larger land use agreements in Australia have taken shape.

In particular, the current development of the Pilbara region-wide Indigenous Land Use Agreements marks a unique direction for mining company Aboriginal relations compensation strategies and the collective bargaining of now legally astute Aboriginal Corporations and representative bodies. The agreements

either now signed or in the process of signing create an enduring foundation for industrial and infrastructural land users to more effectively negotiate with Traditional Owners, the community and government to create lasting regional benefits in the Pilbara Region of north-west Western Australia.

Operational life spans of up to 40 years with perhaps several decades longer of environmental and cultural site rehabilitation require the potential for sustained good relationships between miners and Traditional Owners and the negotiations leading to legally binding, long-term agreements have to be well-negotiated to last this distance.

A major consideration in success however has been the number of interested parties that legally and socially need to be involved in forming sustainable agreements.

For instance, the recent history of Aboriginal language-group relationships has been increasingly schismatic (both between and within regional communities) owing to indeterminate Native Title Claim disputes resulting from the prolonged lack of reactive ability of our national regulators to legally define multiple and complex Native Title claims. The compensation stakes are huge and the promise of wealth to currently largely disadvantaged Aboriginal communities has caused an unprecedented level of disharmony between and within language groups. Consequently there may be a confused level of representative authority within some of the Aboriginal negotiating groups.

The Australian Federal Government has in the last 12 months worked (stimulated financially by a mining company), to achieve title resolution through concentrated ethnographic research. For the Pilbara Region this will finally be largely defined this year. However relationships and hence negotiations are still hindered by this problem plus the resultant overlapping territorial claims. The region is also largely intersected by multiple mining leases requiring multiple company access to the one land claim area, which may be claimed by 3 or more communities.

Irrespective of the challenges however there is also immense opportunity for both industry and the Traditional Owners to work together. The monetary return alone to several thousand Aboriginal people who otherwise had limited opportunity to capitalise on traditional land ownership is in figures of billions of Australian dollars over the next few decades.

The agreements are designed to include immediate and long-term benefits through the establishment of charitable trusts managed by traditional owners

The regional development approach is on the cusp of delivering not only direct monetary returns to the communities but also strong community capacity development outcomes including access to traditional lands, infrastructure such as roads, power, water, housing, a skilled local workforce developed from

Aboriginal communities and preferential purchase from and facilitated business development for local Aboriginal providers of a broad range of goods and services. The approach also creates opportunity for Pilbara Aboriginal people to benefit from mining (directly and indirectly) both now and well into the future.

The new direction requires support and clear, consistent and constant communication to engage resource companies, their contractors, communities, government and individuals.

### **Agreement formation and structure.**

Owing to Australia's minerals boom unique opportunities have arisen for regional, sometimes very remote and traditional Aboriginal communities to participate within the mainstream economy and benefit from the wealth generated by mining on their traditional lands – both now and for generations to come.

There have been some great successes in companies working directly with Aboriginal people to achieve economic and social outcomes but despite these has been insignificant improvement in indicators such as education, employment, wealth generation, housing and tragically, the horrifying gap in incarceration and health and mortality between Aboriginal and non-Aboriginal people as evidenced by the Taylor and Scamby report and later 2006 ABS figures.

Of consequence the agreements are based on Pilbara regional social and economic improvements for **all** Pilbara Aboriginal people and consist generically of:

- the *individual claim ILUA*, Indigenous Land Use Agreements (individual negotiations for financial benefits related to the particular Native Title group signing the agreement),
- the *Regional Standards* negotiated for all groups collectively by Aboriginal controlled organisations such as Marnda Mia and Pilbara Native Title Service and include the:
  - standard for regional Aboriginal employment and work training, and
  - regional Aboriginal business development and contracting.
- The *individual implementation plans* of the Native Title holder and these are for:
  - life of mine planning,
  - land access,
  - Aboriginal cultural awareness training,
  - environmental management of Native Titled areas,
  - Aboriginal cultural heritage management of Native Titled areas.

Companies have financially and in other ways supported Traditional Owners during the agreement making process in terms of remuneration for their time,

independent legal and financial support, additional funding for their representative bodies, governance training and travel for community representatives to ensure knowledge of outcomes and informed consent of their communities. This has been a necessary but very costly requirement and industry has expended many millions of dollars in getting to the current stage of the agreements.

As the agreements are focused around the establishment of trusts managed directly by Aboriginal people, there has to be general agreement from the community as to how these are best legally set up and administered on their behalf. The companies in some instances support skills development in managing trusts so Aboriginal people can own, direct and manage the benefits from agreements.

Payments resulting from the agreements are directly linked to the financial success of the business (ore prices and volumes of ore extracted and/or areas of land disturbed so there is some variation in payments built into the agreements.

At least one agreement however is concerned entirely with land and lifestyles disturbed for the establishment of mining infrastructure (ports, railways, roads, pipelines, powerhouses etc) rather than extraction.

The agreements will deliver many billions of dollars and significant non-financial benefits to Aboriginal Traditional Owner groups over the life of our Pilbara mines. Rio Tinto has provided \$3 million to traditional owner groups during the agreement making processes covering legal, management and administration costs. Rio Tinto Iron Ore has supported the establishment of a representative body for Pilbara Traditional Owners (Marnda Mia Central Negotiating Committee) to better address regional needs in agreement negotiations. Generally speaking however companies recognise at least an initial responsibility to support Traditional Owners to self manage and invest the benefits of mining and mining infrastructure. The benefits from agreements must be trans-generational and this is captured in the structure of the trusts.

### **Training and Employment**

Industry, government and Aboriginal people have joint obligations to achieve employment outcomes. Government has joined the community and industry in partnerships related to employment (eg a memorandum of understanding between Rio Tinto Iron Ore and the Western Australian Department of Industry and Resources Office of Aboriginal Economic Development) and employment and Aboriginal business development (eg Regional Partnership Agreement Ashburton/Roebourne which includes many partners in community, government and mining sectors and contracts between the Indigenous Land Corporation, Rio Tinto and the Department of Agriculture and Food Western Australia for development of skills in Aboriginal trainees employed on Aboriginal pastoral leases).

Apart from being an agreement outcome sought by negotiating Aboriginal groups, the localisation of a workforce is a good business outcome for remotely located minerals companies struggling with employee housing and the many social problems engendered by fly in and fly out workforces.

Localised jobs mean a boost to Traditional Owner community sustainability particularly in the Pilbara where this segment of the total regional Aboriginal community is well under-represented in terms of total Aboriginal employment.

Providing support through mentoring and training (cultural security in the workplace) is essential for the long term of retaining Aboriginal employees in the workplace and particularly so in the advancement of Aboriginal employees to higher levels in organisations.

Creating employment opportunities includes working with communities and government to support pre-work orientation programs high in literacy and numeracy.

So high is the stimulus through agreement obligations and the need for localised workforces that there are offers being made to regional Aboriginal communities to:

- Provide any traditional owner who wants a job and can meet company occupational safety and health requirements, with a job,
- Work with communities and government to support employment (examples above),
- Be flexible to overcome barriers to Aboriginal employment and retention and where people cannot immediately qualify for employment, create and/or support those opportunities (pre-work orientation *Workstart/Workready* programs that reduce those barriers
- Provide any local Aboriginal person who finishes Year 10 with the opportunity for employment,
- Support scholarships for Aboriginal students who want to complete school and pursue further education and training,
- Support alternative employment and training pathways by supporting regional Aboriginal and non-Aboriginal businesses which employ Aborigines locally,
- Work with individuals to progress career opportunities.

Currently some larger companies operating in the Pilbara have around 9-10% Aboriginal employment (around 600 people for one company alone). The percentage of Aboriginal people in the regional population in this instance is

around 13-16%. The majority of Aboriginal employees are from external language groups who have relocated to follow mining and related employment (from more southern areas of Western Australia and from Queensland, Torres Strait islands, NSW and Victoria).

A 20% Aboriginal employment target is reasonable, as it accounts for population growth in local Aboriginal communities.

When one large Pilbara-based organisation alone reaches its target, reputedly Aboriginals working for that company in the Pilbara annually will earn more than \$180 million. Of 200 trainees and apprentices employed each year in that business, 50 (25%) are Aboriginal people. In 2007 it spent more than \$9 million on Aboriginal employment and training programs with an additional \$1.5 million on scholarships and education. Companies have or have had teams of (up to 25) dedicated mentors providing support for Aboriginal employees and guidance for prospective employees.

Outside of the public sector in Western Australia, mining is reputedly the largest employer of Aboriginal Australians.

There have been the initials of an *Aboriginal people with disabilities (or health affected lifestyles) employment program* developing in partnership with government (Disabilities Services Commission WA) and NGO's and larger contractors. One source indicated that up to 30% of people applying for jobs have some form of health problem.

Labour hire pools (one operated as a business venture by the Gobawarra Minduarra Yinhawanga people) also provide opportunities for flexible work periods for Aboriginal women who act as carers within their communities and/or have child rearing needs.

### **Aboriginal business development and contracting**

Many Aboriginal people want to run their own businesses or work for regional enterprises with little connection to mining (pastoralism and tourism for instance).

Not all Aboriginal people want to, or can for cultural, competing community and family demands, transport, accommodation and disabilities, work in the mining industry.

Aboriginal-owned businesses provide employment opportunities for Aboriginal people that may not want to work for the mining industry or have a preference to work for Aborigines.

Long term prosperity (life after mining) and diversified wealth generation can be achieved only through the development and support of Aboriginal owned businesses and this is recognised as being a major part of the immediate and long term benefit from mining industry agreements. To this effect several companies have set formal targets to preferentially contract Aboriginal businesses.

Mining companies directly, and indirectly their contractors and subcontractors through purchasing policies and tender requirements have had a leadership role in promoting the success of Aboriginal employment and engagement with Aboriginal-owned businesses and where needed work with Aboriginal businesses to support their sustained development.

This is highly significant when it is understood that regional spending on goods and services by the mining industry is in billions of dollars and only a limited number of Aboriginal owned enterprises currently have the bankability and the overall governance, financial, and process skills necessary for sustained operations and/or growth.

The industry works collectively and individually on various aspects of Aboriginal business development and in close collaboration with government and NGO business development providers (Indigenous Business Australia, Indigenous Coordinating Centres, Department of Industry and Resources, Pilbara Development Commission, Pilbara Area Consultative Committee, Small Business Centre West Pilbara and through the auspices of the Ashburton Roebourne Regional Partnership Agreement).

Individually, Rio Tinto Iron Ore is supporting the development of an Aboriginal Business Enterprise Centre in Roebourne. In part, this will actively support the development of alternative industries in the Pilbara such as construction, training, labour hire, transport and logistics, pastoralism, cultural training and recording, heritage evaluation, arts, hospitality and tourism.

### **Life of Mine Planning**

In the formation of the regional agreements Traditional Owners have asked mining businesses to work formally and more closely in planning processes for mines and mine related activities from exploration through to mine closure and rehabilitation.

It is understood that this obligation will be undertaken through an agreed structure of regional implementation committees comprising of industry and Traditional Owner representatives each with their own responsibilities.

The Life of Mine planning forums may include various collaborations on land related issues, mine planning matters, government approvals, community plans,

towns strategy, social and environmental assessments and closure and rehabilitation.

Earlier understanding of the staged, long-term requirements of the mines by the Traditional Owners and a better initial understanding by the miners of Aboriginal community needs will create opportunities for more productive relationships through earlier problem intervention and in terms of Aboriginal wealth creation, opportunities to foresee related business opportunities and plan accordingly.

### **Aboriginal cultural heritage and cultural awareness programs**

Traditional Owners have complete rights over their cultural knowledge and now act with great determination to control and/or commercialise its distribution and use to third parties, including governments.

Under government regulations and in certain respects under land use agreements with Traditional Owners, mining companies must take all practicable measures to avoid impacting on the values of Aboriginal heritage sites and where this is not possible, miners must take steps to minimise or mitigate impacts in full consultation with the local Aboriginal traditional owners. To meet these requirements the miners either directly or indirectly employ ethnographers, archaeologists and field survey teams to provide the necessary field information and formulate and maintain a professional heritage management system operating to Cultural heritage Management Plans developed and adjudicated in consultation and agreement with the relevant traditional Owners.

These requirements have impacted positively on employment and business development over the last decade. The industry has hired traditional owners as heritage officers, monitors and as members of survey teams and the communities have in some cases developed their own heritage protection businesses. At the moment this provides a steady flow of income to the communities however once the planned expansion of mining abates this employment and business opportunity will diminish significantly unless alternative markets are realised.

Cultural awareness induction and refresher training is provided exclusively by Aboriginal owned businesses for all employees and long-term contractors in the larger mining businesses and this is a source of steady income for Traditional Owners. Several companies have provided support under their agreements for the development of cultural awareness training packages and training business expertise, cultural continuity projects including oral history recording, cultural centres, archaeological keeping places for artifacts, language projects, cultural research and the use of Aboriginal place names.

## **Access to traditional lands for cultural continuity**

Companies and their employees and contractors through cultural awareness programs now more often understand the importance of Traditional Owner access to country and where included in the land use agreements as a regional standard formally encourage it through direct relationships between Traditional Owners and operations site managers.

## **Environmental management**

Traditional Owners are involved in care for their country through input into environmental (eg water management) discussions as part of land use agreements AND various government legislative processes required for environmental permits. Maintain traditional owner access to country – limited only by situations where mining could be disrupted or there are safety concerns. Maintain a “Life of Mine Planning” approach where traditional owners collaborate in planning for mines and related activities. There are current and future (at the moment largely unrealised) opportunities for rehabilitation of mined lands by Aboriginal businesses with the required investment in capital and expertise.

## **Advocacy role and public resource leveraging**

The mining industry returns huge income to the state in royalties and acts to avoid its spending where there may be unnecessary duplication of public resource inputs into Aboriginal economic and social development.

In doing so it recognises that it has an important role to play in sharing the knowledge of how Aboriginal disadvantage impacts regional communities and particularly that knowledge pertinent to facilitating or optimising additional government inputs.

In developing the Pilbara therefore the companies as part of the Minerals Council of Australia regional partnership program to expand economic and job opportunities Aboriginal people in mining areas and other partnerships with communities and government can continue to contribute to closing the wide gap of disadvantage between Aboriginal and non-Aboriginal people (summarised in *Submissions to the Government Senate Select Committee on Regional and Remote Indigenous Communities* in 2007 and other reports), (Further Reading). In stating this however it is also important to note that the industry indicates that it provides in excess of 120 houses in the Pilbara alone at no cost to government and community workers each year and access to significant infrastructure such as towns, sewerage systems, power, water and playing fields and subsidised medical and educational programs.

## Conclusion

After generations of regulated and enforced exclusion from mainstream social and economic opportunities Australian Aboriginal people, particularly those with Native Title rights over lands in mining regions are in an exceptionally well-advantaged position to consider and benefit from agreements made directly with the mining industry.

The agreements need to maximise what in most cases will be a unique opportunity for these regional and remote communities to gain current and trans-generational advantage from Native Title and regain some of what they have lost in the past through neglect and generations of racial intolerance.

The agreements of consequence need to be enduring and the benefits under well-governanced management controlled by communities made familiar with the needs for informed consent and due diligence.

They need to be constructed to be able to leverage long term social benefit as well as direct monetary benefits and it is believed that the currently proposed regionally applicable Pilbara Indigenous Land Use Agreements meet these needs.

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