

# The Remote Community Mining Toolkit

A community toolkit to help influence decision-making  
for resource developments throughout their lifecycles



**NINTI**  
**ONE** **ERC** **REMOTE**  
**ECONOMIC**  
**PARTICIPATION**

## Acknowledgements and caveats

This toolkit is dedicated to the memory of its intellectual father, Dr Steve Blake, who passed away far too early in August 2016.

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While we have endeavoured to ensure the accuracy of information contained in the toolkit, circumstances can and do change. We wish to emphasise that the information provided here is general in nature and should not be construed as legal advice to be applied in specific situations. Further advice should be sought.

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# Contents

<b>Executive Summary .....</b>	<b>ix</b>
<b>Module 1: Introduction .....</b>	<b>1</b>
Introduction.....	1
Need .....	1
‘Community’ and its interaction with mining.....	2
Purpose .....	2
Audience.....	2
Scope.....	4
Tools.....	4
How to use this toolkit and additional resources.....	4
Approach .....	5
Critical design and outline of toolkit .....	5
An important caveat.....	5
<b>Module 2: The Mine Lifecycle, Actors and Tools .....</b>	<b>7</b>
Introduction.....	7
Stage 1: Mineral exploration (1–5 years, \$0.5m–\$3m, 10–20 people) .....	7
Stage 2: Project development (pre-construction) (2–8 years, \$20m–\$50m, 50–100 people).....	9
Stage 3: Construction (6–20 years, \$200m–\$1B, 200–2000+ people) .....	11
Stage 4: Project operations (2–60 years, 150–2000+ people; one-third construction workforce).....	12
Stage 5: Project closure (1–5 years/in perpetuity, skeleton rehabilitation, monitoring employment) ...	13
Conclusion.....	15
<b>Module 3: Decision-maker – the Company .....</b>	<b>17</b>
Introduction.....	17
Interests, character, behaviour and types.....	17
Key information, sources and questions .....	20



Decision-making hierarchy: where do negotiating individuals sit? .....	20
Corporate social responsibility employees of companies.....	21
The local mine operation's capacity to deliver ECVI to the local community .....	22
Past treatment of communities .....	22
Issues affecting Aboriginal and Torres Strait Islander people.....	24
Conclusion.....	24
<b>Module 4: Decision-maker – the State.....</b>	<b>27</b>
Introduction.....	27
Interests, character and likely behaviour.....	27
Decision-making hierarchy.....	29
Past relationships with communities .....	33
The courts and legal avenues .....	34
Issues affecting Aboriginal and Torres Strait Islander people.....	35
<b>Module 5: Decision Influencers – NGOs and Consultants .....</b>	<b>41</b>
Introduction.....	41
Defining NGOs in the mining landscape.....	41
Interests, character and likely behaviour.....	42
Decision-making hierarchy and processes.....	43
Benefits (and costs) from the project .....	45
Past relationships with communities or companies .....	45
Issues affecting Aboriginal and Torres Strait Islander people .....	46
Use and management of consultants .....	47
Conclusion.....	48
<b>Module 6: Decision Influencer – the Media .....</b>	<b>49</b>
Introduction.....	49
Decision-making hierarchy.....	49
Interests, character and likely behaviour.....	50
Gains (and losses) from the project .....	51
Engaging and retaining media attention.....	51
Issues affecting Aboriginal and Torres Strait Islander people.....	51
Conclusion.....	52
<b>Module 7: Tools to Influence Actors .....</b>	<b>55</b>
Introduction.....	55
Economic participation .....	55
Community ownership of a mine.....	57
Shareholder rights.....	57
The impact assessment (IA) law.....	57
Corporate social responsibility tools .....	59
Political support .....	61
The media.....	62
Non-cooperation and direct action .....	62





Tools specific to Aboriginal and Torres Strait Islander people.....	64
Summary and conclusion.....	65
<b>Module 8: Building Lasting Relationships Between Actors.....</b>	<b>67</b>
Introduction.....	67
Negotiating with resource companies and related agencies.....	67
Rights of Indigenous peoples – the international context.....	68
Aboriginal and Torres Strait Islander rights – the Australian context .....	71
Freedom to demand corporate social responsibility .....	72
Community goals, planning and politics.....	72
Unity within communities .....	73
Unity across communities.....	74
Preparing for negotiations .....	76
Conducting negotiations and reaching agreements.....	76
Implementing agreements and maintaining relationships.....	77
Troubleshooting: What to do when things go wrong.....	77
Conclusion.....	81
<b>Module 9: Case Studies for Creating ECVm .....</b>	<b>83</b>
Overview .....	83
Case study 1: Building Aboriginal and Torres Strait Islander business capacity to support enduring community development, South Australia .....	83
Case study 2: Facilitating community input into maximising benefits from mining – Central Eyre Iron Project Community Consultative Committee, South Australia .....	85
Case study 3: Protecting Country: Wiluna Traditional Owners get involved in environmental monitoring at the Toro Uranium Mine, Western Australia .....	87
Case study 4: Creating sustainable livelihoods for Martu Traditional Owners in Western Australia – the Indigenous Ranger Program .....	90
Case study 5: Establishing enduring value from biodiversity offsets: Great Victoria Desert Biodiversity Trust, Western Australia .....	92
Case study 6: Linking corporations with Indigenous land management – the Aboriginal Carbon Fund... .....	95
<b>Appendix A: Risk Assessment and Action Planning.....</b>	<b>99</b>
<b>Appendix B: Corporate Social Responsibility (CSR) and CSR Tools.....</b>	<b>109</b>
Introduction.....	109
Defining CSR .....	109
<b>Working Bibliography .....</b>	<b>119</b>
<b>References.....</b>	<b>121</b>



# Figures

Figure 1: Remote Australia infographic.....	3
Figure 2: Mine lifecycle in five stages.....	7
Figure 3: Typical company hierarchy .....	21
Figure 4: Company interaction with local community .....	23
Figure 5: Typical state hierarchy .....	31
Figure 6: Typical media company hierarchy .....	50
Figure 7: Walga Mining and Services' key management team .....	84
Figure 8: Last Nomads, Regina Ashwin .....	88
Figure 9: Jigalong rangers removing buffel grass.....	90
Figure 10: Sandhill dunnart.....	94
Figure A 1: Mine lifecycle .....	99
Figure A 2: Risk visualisation conceptual model during lifecycle stage 4: Mine operations .....	102
Figure A 3: Risk visualisation conceptual model by distance from mine (spatial) and through time (temporal: 20–80 years after mine lifecycle stages 4 and 5: Mine operations and closure) .....	102
Figure A 4: Ranger uranium mine from fence perimeter .....	103
Figure A 5: Photograph of Ranger uranium mine tailings wetland .....	104
Figure B 1: Sustainable livelihoods framework.....	111
Figure B 2: Capitals impact diagram.....	111

# Tables

Table 1: Stage 1, Exploration – key considerations and documents .....	9
Table 2: Stage 2, Project development – pre-construction; key considerations and documents.....	10
Table 3: Stage 3, Construction – key considerations and documents .....	12
Table 4: Stage 4, Project operations – key considerations and documents .....	12
Table 5: Stage 5, Mine closure – key considerations and documents .....	14
Table 6: Resource company types and typical characteristics .....	18
Table 7: Key information topics, sources and questions.....	20
Table 8: Leaders of various scales of formal government.....	29
Table 9: Decision-making powers at each level of formal government .....	30
Table 10: Key legislative frameworks for resource companies .....	37
Table 11: Adversarial NGO examples and their roles in the resource sector.....	43
Table 12: Cooperative NGOs and their role in the resource sector.....	43
Table 13: Community benefits and costs of dealing with NGOs in the resource sector.....	45
Table 14: IA stages, project approval milestones, community participation and necessary expertise .....	58
Table 15: Key industry organisations and strategy for the resource sector in Australia .....	62
Table 16: Key international guidelines and frameworks resource companies adopt.....	63
Table 17: Opportunity of successfully applying tool through lifecycle phases.....	65



Table 18: Information needs and sources to influence decision-makers .....	78
Table A 1: Example descriptions of likelihood .....	100
Table A 2: Generic risk matrix to attach risk to a hazard .....	100
Table A 3: Potential risk management actions.....	100
Table A 4: Consequence matrix for uranium mining: Contamination of surface water with radionuclides (e.g. uranium) .....	101
Table A 5: Example risk assessment matrix to assess risk to human health of ingesting/inhaling/being exposed to radon gas while uranium mine is in operation .....	101
Table A 6: Example risk assessment matrix to assess risk to human health of ingesting/inhaling/being exposed to radon gas 20–80 years after uranium mining began .....	101
Table A 7: Collated direct hazards of the Ranger mine .....	105
Table A 8: Collated indirect hazards of the Ranger mine .....	106

## Boxes

Box 1: Abandoned mines.....	15
Box 2: Key approaches for large companies .....	19
Box 3: Key approaches for medium-sized companies.....	19
Box 4: Key approaches for small-sized or junior companies.....	19
Box 5: Key questions to consider in assessing a company's capacity to deliver ECVI .....	22
Box 6: Explicit agency examples and what to expect.....	36
Box 7: Decision-making process in working with NGOs .....	44
Box 8: Key reflections from Module 8.....	48
Box 9: Questions communities can ask to find out more about company CSR policies .....	60
Box 10: Questions to identify community aspirations from CSR .....	60
Box 11: Examples of networking scale.....	68
Box 12: Signs of disunity and actions to help reunite .....	74
Box 13: Strategies to address the wider implications of agreements .....	75

## Maps

Map 1: Middleback Ranges, South Australia .....	84
Map 2: Central Eyre Iron Project .....	85
Map 3: Toro Energy's Wiluna Project .....	88
Map 4: Martu determination near Newman, Western Australia.....	90
Map 5: Tropicana Gold Project location.....	92
Map 6: Great Victoria Desert .....	93
Map 7: Aboriginal Carbon Fund projects, 21 April 2016 .....	95
Map A 1: Jabiru and Ranger related mining leases, Kakadu National Park, NT, Australia .....	103





# Shortened Forms

ABCD	asset-based community development
CRC-REP	Cooperative Research Centre for Remote Economic Participation
CSR	corporate social responsibility
DIDO	drive in, drive out
ECVM	enduring community value from mining
EIA	environmental impact assessment
FIFO	fly in, fly out
FPIC	free, prior informed consent
IA	impact assessment
IRR	internal rate of return
NGO	non-government organisation
NRM	natural resource management
SLO	social licence to operate





# Executive Summary

The Remote Community Mining Toolkit is designed to empower remote communities to gain a greater understanding of, prepare for and act to better manage the changing effects of a mine over its lifecycle. A key goal of the toolkit is to deliver enduring community value from mining (ECVM) – or long-term, lasting value to the community. The best way to do this is for the community to make decisions and act early so as to best influence the mining decision-makers: the company, the state and, in the Northern Territory, Traditional Owners who have the power to block mining development on Aboriginal land. This toolkit is provided for guidance purposes only and does not substitute for expert legal and other advice which should be sought early in the mine lifecycle and before any decision is made or action is taken.

The toolkit is structured into nine modules, which can be read in order as a whole or selectively as reference material. The following provides a summary of each module:

## **Module 1: Introduction**

Communities need a toolkit to provide information on the mine lifecycle to help them influence the decision-makers in the mining game: companies and the state and, in the Northern Territory, Traditional Owners of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*. By community, we mean predominantly remote and very remote small populations of Aboriginal and non-Aboriginal and Torres Strait Islander people across Australia. The toolkit is also useful to any

other communities in other locations that may wish to influence the lifecycle of a mine that affects them. With this toolkit, stakeholders can begin to work together to plan for enduring community value from a resource development. The toolkit provides detailed descriptions of each of the stakeholders, a list of tools that can be used to help decision-making and a set of six case studies to provide illustrative examples.

## **Module 2: The Mine Lifecycle, Actors and Tools**

Communities should prepare early – when prospecting has just begun – for the possibility of mining impacting their community. Key documents to read and consider are a company's mine lifecycle plan, the local government's community plan, the company's exploration licence and any government-related approvals. Knowing what lies ahead for the given possible mine will help remote communities ensure that mining delivers enduring value through jobs and business opportunities as well as through a range of other economic and community development opportunities. The five stages of a mine's lifecycle are (i) exploration (spanning 1–5 years with \$0.5m–\$3m spent and 10–20 people employed), (ii) project development – pre-construction (2–8 years, \$20m–\$50m, 50–100 people), (iii) construction (6–20 years, \$200m–\$1B, 200–2000+ people), (iv) project operations (2–60 years, 150–2000+ people but usually one-third of the size of the construction workforce), and (v) project closure (1–5 years/in perpetuity, small amount of rehabilitation and monitoring



employment). Communities that do not want mining or would like to influence its future must take action in stages (i) and (ii). The last chance to have a strong influence on the mine's future is before state/territory governments approve it and construction begins. The module tabulates for each stage of the mine lifecycle specific issues for stakeholders to consider along with the key actors and tools that are available. It is one of the most important modules for the reader to consider in detail.

### **Module 3: Decision-maker – the Company**

The company is profit-driven, and these profits may be traded off against benefits for the local community. The CEO of the company is the target decision-maker, but corporate social responsibility (CSR) employees may also be helpful to the community. The way the company behaves will depend on its size: in a small company, the ethics of the CEO tend to count; a large company is likely to have a formal CSR program with a community reference group, regional partnership or investment program through which the community can influence the company. Find out how the company has treated communities in the past and whether it can be trusted now.

### **Module 4: Decision-maker – the State**

The Crown, through the state, owns the resource. The Minister for Mines (administers approvals), the Minister for State Development (administers state agreements) and the Treasurer (administers royalties) are the key target decision-makers. Mining royalties are an important revenue for the state as well as for communities. Political parties can be funded by the resource industry, but elected representatives are accountable to their electorate. Determining how the state treated the community in the past is important to determining how they may treat the community in the future. In comparison, how have local government, regulators, natural resource management (NRM) boards, land councils and native title services treated communities in the past? Will they treat communities in a similar fashion in the future and why or why not? Aboriginal land rights Acts provide

rights over Aboriginal land – the Northern Territory is the only provincial jurisdiction where Traditional Owners have the power of veto (to stop a mine from proceeding for several years). In contrast, native title can provide a range of important rights that coexist with other land tenures, are extinguished by these tenures (e.g. where they are in conflict with pastoral lease rights) or provide exclusive possession to Aboriginal and Torres Strait Islander people. Native title claimants or holders also have the right to negotiate and have standing in legal proceedings, which non-Aboriginal or Torres Strait Islander members of the community do not. These various tools and instruments can be used to influence company and state decision-making.

### **Module 5: Decision Influencers – NGOs and Consultants**

NGOs have had constructive relationships with resource companies and helped improve outcomes of the mining process, but they also have helped to protect environmental values and the rights of communities. International NGOs may also be useful to a community in bringing international, in addition to domestic, influence to decisions about resource developments. NGOs can be broadly grouped into two types: adversarial or cooperative. Knowing the type of an NGO can help a community to determine if it will work with a given NGO given their own strategy in influencing resource developments. This module outlines a decision tree that communities can follow in choosing suitable NGOs. Where community and NGO sentiments align this can lead to extremely positive outcomes, including direct partnership with companies in resource and community development processes. Most CSR staff in companies see the value in forming cooperative partnerships, including with NGOs or government agencies and private consultants to build common benefits from mining. Where community aspirations can encourage the development of mutual benefit, the involvement of NGOs is likely to lead to better CSR outcomes, particularly those that secure alternative futures to mining beyond the life of the mine. Where an NGO does not exist, the community can create a new one, or government, a private consultant, or other organisations maybe be used by the community



to fill the void. The usefulness of a consultant will depend on who pays their fees, whether it is the community, the government or the mining company. The objectives of Aboriginal and Torres Strait Islander community members and of the NGO often do align but it is not always the case, so recognising the objectives of a given NGO before engaging with them is critical. The module details practical ways in which NGOs can benefit Aboriginal and Torres Strait Islander communities throughout the mine's lifecycle.

## **Module 6: Decision Influencer – the Media**

Mining companies, community groups and local government can all influence the media and its reports. Strong commercial industry interests may have greater influence over the media than small remote communities. The ABC or NITV are more likely to represent views of people who live remotely, and because of their public support they must present factual reports. The community should target program directors and leading journalists, particularly from publicly funded organisations, who can be trusted. When interviewed, individuals should prepare a strategy and script and hold firm to that script. Leveraging social media and international organisations is key to gaining media interest. Sustaining media attention is difficult, particularly for remote Aboriginal and Torres Strait Islander communities. Pooling resources between similarly concerned communities and using local government, land councils and local state and federal representatives to garner funding and policy to develop a media strategy can also help, as can using existing media organisations that represent community views. Funding for the arts from resource companies may help finance local media organisations that better promote the views of the community.

## **Module 7: Tools to Influence Decision-makers**

Key tools that influence decision-makers are economic participation and ownership, community ownership of the mine (including through shareholder rights), impact assessment law and community monitoring (including mine closure

planning and rehabilitation), risk assessment and action planning, CSR tools (including asset-based community development), national and international conventions, political support, the media, non-cooperation and direct action, and tools specific to Aboriginal and Torres Strait Islander people. Most tools are best applied early and late in the mine lifecycle: during the exploration phase and before the project is approved and then at closure. Impact assessment is an important tool in understanding the values held by the community for its future with the mine. Where unacceptable damage is being done to the community, environment or sacred sites, then exerting land, native title rights or connecting with others (virtual and real, locally to internationally) to garner community, political and media support may be successful. Continuing to monitor and assess impacts after the initial approval stage is important throughout the mine lifecycle to check performance.

## **Module 8: Building Lasting Relationships Between Actors**

Community representatives need to identify which actors are trustworthy, which are not and develop strategies to encourage preferred behaviour, such as that which builds trustworthy and lasting relationships. It is important to gain as much information as early as possible on all aspects of the proposed development. Being aware of the community's rights is critical to building lasting relationships with various actors. Community rights, including the right for good CSR, the right to refuse the mining company's social licence to operate or the right to not negotiate, are available to the community to use in order to influence decision-making. Having and maintaining unity within and between communities has also been shown to build power in negotiations. Once a decision to negotiate has been made, there are three distinct stages in negotiating: (i) preparing and taking a position, (ii) conducting negotiations and reaching agreements, and (iii) implementing agreements and maintaining relationships. When things go wrong, communities should try to remain united, seek legal advice early, know the community's and individual rights, and ensure agreements contain provisions that account for unforeseen circumstances, being very careful



not to waive the right for recourse (take legal action against any particular party). The greatest chance of achieving ECVI is through knowing what could occur at each stage of the mine lifecycle and what decisions need to be made, being equipped with the necessary documents and tools to influence decision-makers, being aware of the potential risks, and having an agreement in place to prevent, mitigate and rectify any ill effects.

## **Module 9: Case Studies for ECVI**

Six case studies provide examples of opportunities for delivering ECVI: (i) Aboriginal and Torres Strait Islander business capacity can be built to service mine and community common benefits, (ii) community consultative committees can be used by companies to help deliver maximum benefits from mining, (iii) Traditional Owners can get involved in environmental monitoring of mine operations, (iv) mining can help fund an Indigenous Ranger Program to care for country, (v) mining biodiversity offsets can help fund natural and cultural conservation efforts, and (vi) mining companies can support the Aboriginal Carbon Fund to leverage ECVI. A further case study is provided in [Appendix A](#) on a risk assessment for the Ranger uranium mine in the Northern Territory.

We encourage readers to share their views on this toolkit so as to improve the body of knowledge and understanding of the role that communities can play in influencing decisions over mining. With this goal in mind, please visit the [toolkit website](#) or email your feedback to [boydbwell@gmail.com](mailto:boydbwell@gmail.com).





# Module 1: Introduction

## 1 Module One

### Introduction

Mining operations in Australia are carried out predominantly in the remote areas of the country, where communities are small and have little power compared to resource companies. People in remote areas may quite accurately feel that they do not know where to start with finding information that will help them to influence the decisions over mining that affect them. The Remote Community Mining Toolkit aims to provide a resource to communities that begins to fill this gap in information.

The toolkit is therefore designed to help remote communities better understand, prepare and act to influence the management of all stages of the mine lifecycle. A key goal of the toolkit is to deliver enduring community value from mining (ECVM) – or long-term, lasting community value. The best possible way to do this is to begin as early as possible in the mine lifecycle so as best to influence the mining decision-makers: the company, the state and, in the Northern Territory, Traditional Owners who have the power to block mining development on Aboriginal land. However, it is never too late to make preparations and gain more knowledge about mining and the benefits it may offer to the community.

This section of the toolkit provides an introduction and outlines:

- the need for the toolkit
- what we mean by 'community'
- the purpose, audience and scope of the toolkit

- the tools described by the toolkit
- guidance on how to use the toolkit, including additional resources
- the approach taken in preparation of the toolkit
- an outline of the modules in the toolkit
- an important caveat.

### Need

Resource companies and remote communities typically have little contact with each other until there is the prospect of a mine being opened in a remote location. At that time, the resource company may already be aware of the potential for profit from the resource in the world market, the usual process for negotiating with various communities that may be affected by such a development and what control the company will have over that process. This information about the resource, and therefore the power over it, is usually held by companies and governments. Communities, on the other hand, may only know that mines could mean jobs or that rents may become expensive and that the people in the community may not get any say in the consequences of a mine opening in their location. This imbalance in information creates an imbalance in power and influence over the development or otherwise of the resource. Also, it is well documented that local communities often bear the negative social, cultural economic and environmental consequences from resource development.<sup>1</sup> This imbalance in power is

<sup>1</sup> See, for example, Badeeb et al. (2017).



exacerbated by the lack of representation structures for people in very remote Australia.<sup>2</sup>

The extent and distribution of the potential costs and benefits from mining is very much influenced by state policies and corporate decisions, with most communities having only the ability to influence those policies and decisions. In the Northern Territory, however, Traditional Owners do have the power of veto for resource developments on Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*. This is a distinguishing feature of the Northern Territory relative to other state jurisdictions in Australia where exploration and mining is done on Aboriginal and Torres Strait Islander land.<sup>3</sup>

This toolkit is therefore designed to allow communities to be better informed about the stakeholders ('actors') in the mining process ('game'): who makes decisions, how these are made and how best to influence those decisions for the benefit of all parties in planning and managing the various stages of the mine lifecycle and its consequences for communities. For example, communities can use the toolkit to find out who to speak to and what arrangements need to be put in place before planning for major resource developments commences in earnest.

## **'Community' and its interaction with mining**

Throughout the toolkit we refer to the concept of 'community', but this is not an easily defined term and can mean different things in different situations. For this toolkit, we focus on a number of different types of remote communities, each having different groups of people:

- dispersed non-Aboriginal and Torres Strait Islander rural populations, predominantly in the pastoral industry
- discrete Aboriginal and Torres Strait Islander communities with their own local governance; these are typically remote or very remote
- Aboriginal and Torres Strait Islander small minorities within predominantly non-Aboriginal

and Torres Strait Islander towns with native title claimants, such as those in central Queensland or New South Wales that may be less rural and less remote.

These communities operate and interface with the mining industry in very different ways, each of them needing particular information to help develop ECVI for their community and circumstance. There are key differences in the status of Aboriginal and non-Aboriginal and Torres Strait Islander communities and the rights and opportunities they have to ECVI. Each module of the toolkit therefore has a specific section on Aboriginal and Torres Strait Islander issues. Most notable is the difference in land rights and native title legislation between the states and the Northern Territory; this is discussed in more detail in the modules about each of the actors, particularly [Module 4: Decision-maker – the State](#).

## **Purpose**

The main purposes of the toolkit are threefold:

- to provide a catalyst for remote resource development stakeholders to begin planning and working together early in the mine lifecycle to maximise opportunities to create long-lasting community benefits from resource development
- to enable communities to prepare and plan for the social, cultural and economic impacts of major resource developments, from start-up through to closure stages
- to provide a starting point for stakeholders to aid and support decision-making along with governments and the resources sector.

## **Audience**

The primary target audiences are:

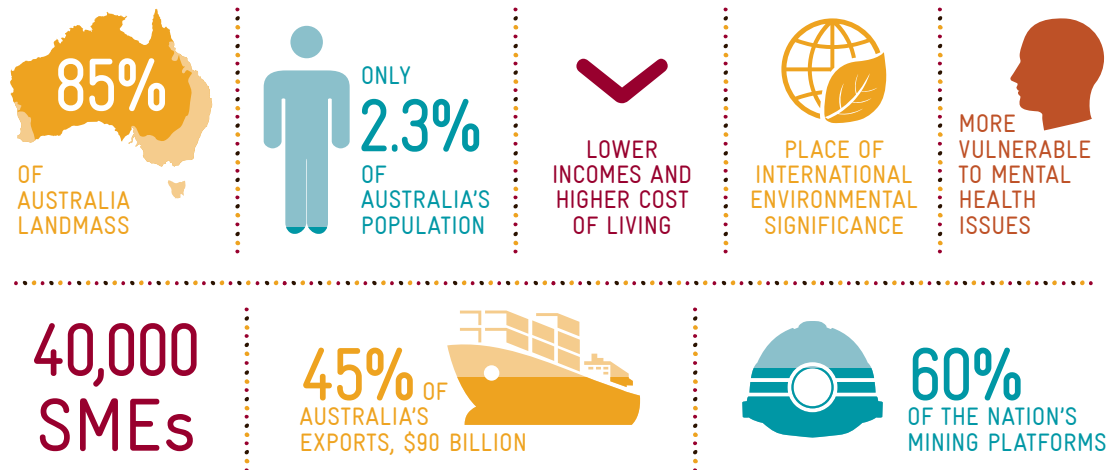
- small, remote, rural and regional communities (though the toolkit can also be used by larger and other communities)
- businesses in those communities
- Aboriginal corporations and organisations
- local government.

<sup>2</sup> For more discussion, see Blackwell (2012), Blackwell et al. (2015a)

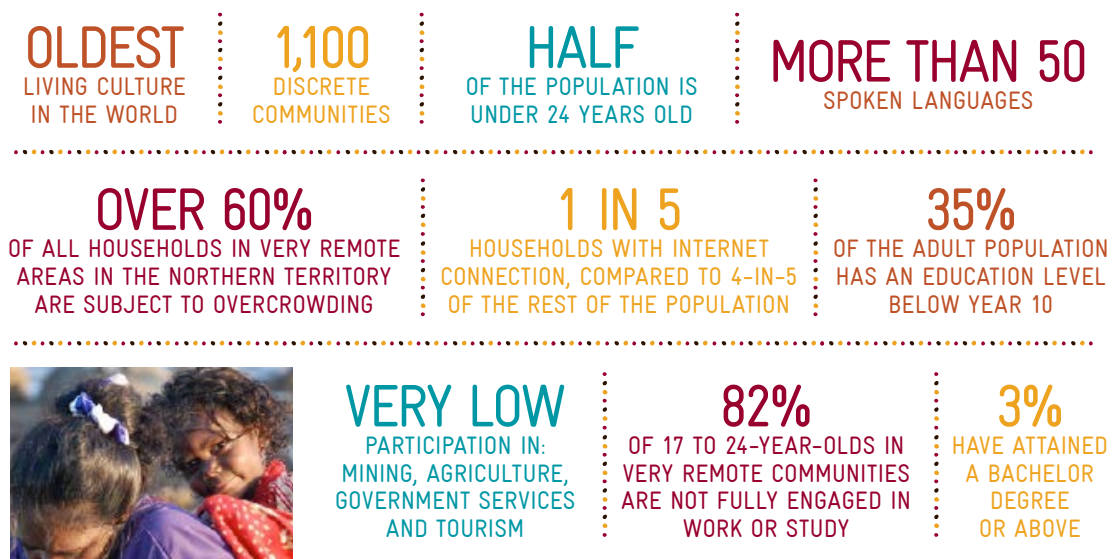
<sup>3</sup> Central Land Council (2017a)



# A SNAPSHOT OF REMOTE AUSTRALIA



## ABORIGINAL AND TORRES STRAIT ISLANDERS IN REMOTE AUSTRALIA:



Australian Government  
Department of Industry and Science

Business  
Cooperative Research  
Centres Programme

**NINTI ONE** **REMOTE ECONOMIC PARTICIPATION**

Figure 1: Remote Australia infographic

Remote Australia provides significant benefits to broader Australia; however, people living in remote Australia experience a number of significant challenges that the rest of Australia would not view as acceptable.

Source: Ninti One Limited (2015a)



The secondary target audiences are:

- extractive industries such as mining, oil and gas companies
- state/territory governments.

## Scope

The toolkit can be used by communities across remote Australia. It contains illustrated case studies from South Australia, the Northern Territory and Western Australia, reflecting the historical scope of research for the ECVM project and CRC-REP more generally.

Remote Australia plays an important role in the wellbeing of all Australians. For example, 45% of export earnings and 60% of mining's platform are based in remote Australia (Figure 1). Also, 16% of agricultural jobs are based in remote Australia.<sup>4</sup> A single mining project is therefore critical to a local remote economy; it is more important than the same single mining project in a more highly populated region and economy.<sup>5</sup>

The mechanisms for measuring and estimating ECVM are well described.<sup>6</sup> Mining (and other industries) can deliver enduring community value through the following avenues:

- employment of people in remote Australia
- allocation of mining profits to remote communities through royalties (government and private agreements)
- investment in infrastructure such as communication, transport, power and emergency service networks
- local supply of goods and services that support the mining industry
- social and cultural networks, endeavour and human capital that rely on mining funding.

## Tools

A range of tools are available to help communities find out all the avenues they can use to have control over what happens in their region. These tools cover a range of instruments and include but are not limited to:

- negotiated agreements in a statutory framework
- voluntary negotiated agreements based on 'good neighbour' or corporate social responsibility (CSR) policies
- project conditions imposed by the state as part of impact assessment and project approval processes
- unilateral action taken by communities to put them in a better position to benefit from projects (e.g. training and small business development initiatives).

These tools can be used separately or together. In combination, they constitute a 'landscape' within which communities will need to locate themselves to understand what is possible and what suits their given circumstances.

## How to use this toolkit and additional resources

The toolkit is designed to be practical and useful. It provides a link between the detailed analyses and policy prescriptions arising from the ECVM projects of the CRC-REP<sup>7</sup> and a high-level checklist.

The modules are written so they can be used individually or read together as a whole and in the order they are presented. Alternatively, the toolkit can be used as a reference piece, with particular sections referred to as the need arises.

Supporting these materials are three short films<sup>8</sup> (available here: [www.nintione.com.au/miningtoolkit/](http://www.nintione.com.au/miningtoolkit/)) that deliver some of the key messages for communities and engage with the next generation of remote community leaders and members.

<sup>4</sup> Blackwell (2016a), McFarlane & Blackwell (2016)

<sup>5</sup> Blackwell et al. (2017), Blackwell et al. (2018)

<sup>6</sup> See the following for examples of measuring and estimating ECVM: Blackwell & Dollery (2013a), Blackwell & Dollery (2014), Blackwell et al. (2014a), Blackwell et al. (2015b), Blackwell & Robertson (2016).

<sup>7</sup> For a full list of outputs from the project, see [crc-rep.com/research/regional-economies/enduring-community-value-mining](http://crc-rep.com/research/regional-economies/enduring-community-value-mining).

<sup>8</sup> Urquhart (2017a, 2017b, 2017c).





## Approach

This toolkit was developed iteratively through a series of workshops drawing on guidance from:

- Ninti One Ltd
- CRC-REP ECVI doctoral and postdoctoral students and the Principal Research Leader
- CRC-REP ECVI Industry Advisory Group
- the ANZSEE 2017 Conference Toolkit workshop
- Latin American Industry Australian Fellows ECVI workshop
- ECVI Toolkit Community Reference Group.

## Critical design and outline of toolkit

The toolkit begins by describing the mine lifecycle, actors and tools in [Module 2](#). Then, across modules 3–6, it provides more detail of each of the main actors in the mining process. Decision-making actors include mining companies, governments and, in the Northern Territory, Aboriginal and Torres Strait Islander people. Other actors may only be able to influence decision-making; these are non-government organisations (NGOs), consultants and the media. These modules help readers readily identify all the actors who have a stake in a proposed resource development and also how people in communities may best influence decision-making over resource development and during the mine lifecycle. Next, in [Module 7](#), the toolkit provides an outline of the tools available to communities to gain ECVI throughout the mine lifecycle. [Module 8](#) describes how to build relationships and negotiate with the mining industry and what to do if things go wrong. Finally, [Module 9](#) outlines six case studies that provide practical examples of how communities or people have gained ECVI from mining at various stages of the mine lifecycle.

Modules 3–7 each have a special section on relevant Aboriginal and Torres Strait Islander issues because populations in remote Australia, where the majority of mine operations in Australia are based, have significant representation of Aboriginal and Torres Strait Islander people.<sup>9</sup>

<sup>9</sup> Blackwell et al. (2014a)

## An important caveat

One final caveat of this toolkit is that it provides guidance. The current game of mining will change in the future, as may the role of its actors in being decision-makers and influencers. This toolkit will therefore require updates from time to time to take account of these changes, and the [website](#) should be checked for these. The advice given in the toolkit is general in nature, and readers should read widely and seek independent specialist advice when making choices about resource development.







# Module 2: The Mine Lifecycle, Actors and Tools

## 2 Module Two

### Introduction

In this module,<sup>10,11</sup> we consider the various stages of the mine lifecycle in detail as depicted in [Figure 2](#).



**Figure 2: Mine lifecycle in five stages**

Source: Ninti One Limited (2015b)

The lifecycle of a mine can be summarised by five specific stages: 1. mineral exploration, 2. project development, 3. construction, 4. project operations, and 5. project closure, which feed from one to the next. There may be a 'trip back' loop if one stage is hindered or stalled, so a project could move to care and maintenance in stage 5 while commodity prices are very low, with a subsequent return to operations once higher prices return, that is, an anticlockwise movement from stage 5 to stage 4. This means the mining project can be suspended and halted for a period of time or terminated and brought to an end.

In the section below, the heading of each stage provides an indicative measure of the time, investment and employment usual in each of the stages. This measure is indicative only; impacts associated with any phase of the lifecycle can vary considerably from case to case.

### Stage 1: Mineral exploration (1–5 years, \$0.5m–\$3m, 10–20 people)

The first stage of the mine lifecycle involves the company deciding where the mine will be and what the investment will be. It includes either greenfield or brownfield exploration.<sup>12</sup> Greenfield exploration occurs in new areas, while brownfield exploration occurs near old discoveries or current mining operations. The potential for large body discoveries is less likely for brownfield sites than for greenfield sites, but as brownfield sites are near current

<sup>10</sup> In addition to this module, readers are directed to ECVM's previous work on planning for the mine lifecycle and community development, including that from Robertson (2016), Robertson & Blackwell (2014), Robertson & Blackwell (2015), Blackwell & Robertson (2016), Robertson & Argent (2016).

<sup>11</sup> We also draw on the Canadian Toolkit, by Gibson & O'Faircheallaigh (2015)

<sup>12</sup> Gibson & O'Faircheallaigh (2015)





deposits, there are potential savings in proving and accessing the resource.

This first stage of the mine lifecycle usually involves initial exploration occurring over 1–5 years, costing between \$0.5 million and \$3 million and involving the employment of 10–20 people.<sup>13,14</sup>

Before a company begins exploration efforts, it will attempt to identify locations where the geology and political climate are ideal. If these factors are not encouraging, a company will typically go no further.

Where these factors are encouraging, then the company may invest in prospecting or geological surveys. Typically, early geological exploration involves small groups of specialist contactors or geologists doing helicopter or aeroplane mapping, and this will be the first sign to a community that there is interest in an underground resource. The workers live in temporary camps, and more permanent camps are established and more people arrive if minerals are found.<sup>15</sup> Drones (remotely controlled aircraft) and other remote sensing technology can be used in the early stages as well, with no human presence.<sup>16</sup> It is important to note that most exploration projects do not become full-scale mines.<sup>17</sup>

At this point, social risks may prevent a company from investing further, even where the geological survey is promising. Therefore, it is important for communities to begin their homework on the prospective mining company and start to prepare how they will gather support of others for these negotiations, including the state, NGOs, consultants and the media. More details for these steps is provided in [Module 3: Decision-maker – the Company](#) and [Module 7: Tools to Influence Actors](#).

The community should have at least some basic plans for the future of their community, including an economic development plan and/or a community plan. If they are in a position to negotiate with companies, at this point in the mine lifecycle it may be important to share any such

plans the community would have for a given mine, subject to necessary legal and expert advice. If, after advice, a community does begin to negotiate with a company, the community could request that the company in its impact assessment work consider, at possibly little extra cost to the company, extending these assessments to include a matter of social, cultural or community concern (see points in italics in [Table 1](#)). This may create good relations between a prospective company and the community.

The company at this stage has likely begun to prepare a plan for the full lifecycle of the mine, as well as a Proposed mine feasibility study which describes the mine's size, lifetime, infrastructure and employment requirements. If the community can obtain these documents, they would be useful for beginning negotiations and checking any divergence between community and mining company expectations, and the expectations of other actors such as the various levels of government throughout the mine lifecycle. However, if there is insufficient information available from the company at the exploration stage on these issues, they may have to be addressed in Stage 2.

[Table 1](#) outlines some of the key considerations that mining companies will consider during this phase.

Two areas where there is an obvious role for community is in early engagement between Traditional Owners, the prospective mining company, local community representatives and government; and in consideration of the community's plans for accommodating any future mine, particularly in relation to whether workers are accommodated at or near the site or in town, what component will be fly in, fly out (FIFO) or drive in, drive out (DIDO) and what consequences this will have for infrastructure and services in the local town and more broadly across the region, state or nation.

Are the plans of the mining company consistent with local community desires, or does the community wish to limit any negative risks by ensuring a majority of workers are FIFO or DIDO, staying for only short periods near the mine and not in town accommodation? Does the community want local people to be employed at the mine, including throughout the lifecycle, with a transfer

13 All monetary values represent those at time of writing. Values will naturally change with time.

14 Gibson & O'Faircheallaigh (2015), pp. 18–19.

15 *ibid.* p. 18.

16 Blackwell (2012)

17 Gibson & O'Faircheallaigh (2015)





of skills, experience and knowledge that can be used after the mine is closed? Alternatively, does the community want miners and their families (where applicable) to move to town and become part of the community? In this case, how will the community deal with the consequences for the community from any downturn, planned closure or care-and-maintenance period of the mine?

**Table 1: Stage 1, Exploration – key considerations and documents**

<b>Considerations (key documents: Proposed mine feasibility study, Mine lifecycle plan, Community plan)</b>
1. Resource – what's its extent and where is it located?
2. Land ownership – who owns the land? How will the company gain access?
3. Companies likely to mine the resource – who are the competitors?
4. Are there any tenure issues?
5. Who's in government at state and local levels? What about at federal level, for various <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC) triggers?
6. What departments are involved?
7. What are the scale and duration of the expected mine operation?
8. What are the social impacts (positive and negative) on, for example, the workforce? <i>Can the company, for little extra cost, extend the impact assessments to meet the community's goals?</i>
9. What are the environmental impacts (positive and negative)? <i>Can the company extend assessments?</i>
10. What are the economic impacts (positive and negative) on, for example, the workforce? <i>Can the company extend assessments? Employ/contract locals?</i>
11. What are the likely long-term local community impacts on, for example, the workforce? <i>Can the company extend assessments? Employ/contract locals?</i>
<b>12. CSR, social licence to operate (SLO) – Early engagement between Traditional Owners, the mining company, local community and government</b>
<b>13. Develop community plan for mine, including possibility for community ownership and associated risks</b>
<i>14. Develop mine lifecycle plan</i>

Notes: Text in bold is an obvious role for the community's involvement. Text in italics is an activity that is less obvious, but community may be able to have a positive influence.

## Stage 2: Project development (pre-construction) (2–8 years, \$20m–\$50m, 50–100 people)

This stage of the mine lifecycle involves developing the project further from the preliminary exploration stage. More advanced exploration or deposit delineation occurs, usually involving drilling, and brings with it a marked increase in the number

of people involved in the project (from 10–20, to 50–100 people into a permanent camp in the advanced drilling stage).<sup>18</sup> Drilling is usually noisier; there is more ground and air transport and drilling equipment and trucks. Noticeable changes to the landscape include temporary or permanent camps near the mine site, new access roads and clearings or raised foundations. An important potential community benefit at this stage is that there may be seasonal or full-time jobs for local people at the site.

More advanced exploration and proving of reserves will involve engineers taking over the leadership of the project from the geologists. Activities will include the building of a pilot plant to determine the ideal mine process system, wildlife and land management, and identifying water processing needs to estimate likely costs and environmental impact of the project.

All aspects of the Proposed mine feasibility study should be tested and be able to be presented with greater certainty by the development company. For this reason, as noted in [Table 2](#), the key considerations – including further assessments and planning for the project – are undertaken in earnest. At this stage it is important for the community to find out with greater certainty the extent of the resource, who is funding the project, what is the market for the resource (coking coal, thermal coal, coal seam gas, etc.), the scale of the mining operation including project life, and when the extraction of the resource would commence. What is the level of required investment? Who will provide the funding for this investment? How will it be funded (through debt – lending or via equity through private share issue – or through a stock exchange)? Who will be the business partners in the project? Is there an option for community shareholding (see [Module 7: Tools to Influence Actors](#))? Who are the stakeholders in the project, including the less obvious stakeholders such as NGOs and consultants (see [Module 5](#)), and can they be drawn on to lend weight to influencing the company to meet community goals?

What is the governance structure that provides the institutional setting for the resource development?

<sup>18</sup> *ibid.* p. 19.



What will be the corporate structure of the company? What are its values and ethics, and – importantly for the community if it is not a new company – what is its track record? How has it treated communities in the past? (See [Module 3](#): Decision-maker – the Company for detail about these questions.)

**Table 2: Stage 2, Project development – pre-construction; key considerations and documents**

**Considerations (key documents: Project business case, Impact assessments, Approvals, Regional partnerships\*)**

1. What is the resource and who is funding the project?
2. What is the market?
3. What is the scale of the operation?
4. What are the projected life time lines (e.g. when will it start?)
5. What is the level of investment?
6. Partnerships:
  - a. Who are the business partners (or is there an equity issue on the stock market)?
  - b. *Who are the stakeholder partners?*
7. Governance:
  - a. Corporate structures/values/ethics/track record
  - b. Regulation/legal: approvals and *buy-in to social/ economic approvals*
  - c. *Legislated requirement of rehabilitation and insurance funds – risk implications for community ownership and legacy to rehabilitate?*
8. Local business – procurement: use or create local businesses?
  - a. *Business opportunities*
  - b. *Business risks*
9. Workforce planning and procurement. *Employ locals?*
  - a. Residential?
  - b. FIFO?
- 10. Coherence of community**
- 11. Contact liaison officers**
12. Impacts:
  - a. Housing
  - b. Land availability
  - c. Infrastructure
  - d. Headworks, utilities
  - e. Transport networks

Notes: \*Proposed mine feasibility study, Mine lifecycle plan and Community plan from [Table 1](#) should also be revisited because a number of assumptions would now be known with greater certainty. Text in bold is an obvious role for the community's involvement. Text in italics is an activity that is less obvious but community may be able to have a positive influence.

At this stage of the project, the company will apply for a mining licence and works approval. Thus, the community needs to have done its homework on the mine by considering its likely impacts for the community and by working through the points in [Table 1](#) and [Table 2](#). This will include knowing in what form the community would support a mine, because any objections to the mine need to be made by the community representatives at this stage. Once government provides the approvals, it will be difficult to overturn them if an adverse situation arises for the community. Any opportunities for building local businesses and for procurement, jobs and training should now be more certain than during Stage 1. Where communities have sought expert and legal advice, negotiating these arrangements with the company, including through government and other stakeholders, will be critical at this stage for setting a vision for the role played by local business, workers and NGOs and the media. The outcomes from these negotiations should be documented, such as they are sometimes in Regional Partnership Agreements. The company will act through its CSR offices and community liaison personnel to see if the community is united in its view on the mining. These positions in CSR and liaison could be ideal for community representatives to hold, providing a trusted person within the corporation.

Prior to approvals during this stage, a number of impact assessments will have been prepared, as noted in [Module 7](#): Tools to Influence Actors. It may not be too costly for a company to extend their analysis to include a broader social and environmental assessment that meets the goals and builds on the concurrent development of a community plan, where one does not currently exist. As noted in [Table 2](#), there will be assessments undertaken on housing, land availability, infrastructure, headworks (e.g. power and water) and transport and communication networks. These all present opportunities for local government to have a range of planning and impact assessments done, which they may otherwise not be able to afford in remote Australia, but which are required to assess the impacts of the mining project. In such cases, having these impact assessments undertaken independently will be critical to ensuring the risks to communities are limited and mitigated.



### Stage 3: Construction (6–20 years, \$200m–\$1B, 200–2000+ people)

In this stage construction of a full-capacity mine begins. This is the stage where the mine, particularly on site, employs the greatest numbers of people; therefore, this is the most expensive stage for mine investors. The engineers are supplemented by construction personnel, most of which are specialised contractors, and the landscape of the site changes most markedly with the overburden (the dirt and other waste material above the ore body) being removed, making the site look like a full-scale mine operation.<sup>19</sup> Both office accommodation and living accommodation will be constructed; the mine shaft or open cut will begin; construction will include mineral processing plants and access roads; equipment, conveyor belts and other machinery will be installed.

This is a critical time for local people, including for Aboriginal and Torres Strait Islander people, to gain training and skills that will be needed for operating the mine, including building certification and developing critical problem-solving skills.<sup>20</sup> Also, in Stages 1–3, the mining company will try to reduce the time taken to begin operating so that costs are kept low and income is earned as soon as possible. Local communities can use this pressure to their negotiating advantage (see [Module 8: Building Lasting Relationships Between Actors](#) for more detail).

While it is a time of great optimism due to the increased business, jobs, experience and skills acquisition, it is also a time when local people's rights may be most impinged through environmental impacts such as air, noise, water and soil pollution. This is therefore a good time to revisit any impact studies and mitigation plans to ensure that the company is following the agreed plans at each stage.

[Table 4](#) outlines the key considerations and documents for Stage 3. This is a key stage where local business, workers and people can gain the most in income, skills and experience acquisition and training, and additional resourcing. The

company provides a new stream of potential revenue for rates and other funding support due to the likely increased pressure on key infrastructure, including community facilities and services that may not be directly related to mining.<sup>21</sup> In certain situations, a Regional Partnership Agreement may be made between the mining company, the Australian Government, state and local governments, NGOs and local community groups, and land councils (for Aboriginal and Torres Strait Islander people).

As can be seen in [Table 3](#), a multitude of opportunities exist for the community to participate in the mine economy, building common benefits and working towards delivering enduring value for the remote community from mining being part of the local and regional economy. In the case where a community is resisting a mine's construction, Stage 3 is the final period when a mine can be prevented from going ahead. Revisiting approval documents such as licences, permits and impact mitigation agreements by legal and scientific experts (from NGOs or consultants) will be critical where a community group wishes to try and prevent the mine from going ahead. This may also be one of the last opportunities where such groups can undertake protests or blockades as part of a campaign to build public and political support (see [Module 7](#) for more discussion of such tools available to the community).



<sup>19</sup> *ibid.* p. 22.

<sup>20</sup> *ibid.*



Table 3: Stage 3, Construction – key considerations and documents

Considerations (key documents: Mine workforce plan, Impact assessments, approvals (licences and permits), Regional Partnerships*)
1. Accommodation
2. Housing
3. Social makeup (locals + FIFO + specialists)
4. Skills development
5. Business winners and losers (links to business procurement in <a href="#">Table 2</a> , point 9)
6. Population pressure <ul style="list-style-type: none"> <li>a. on services</li> <li>b. infrastructure</li> </ul>
<b>7. Industry and government liaison officers</b>
8. Need for expansion of local government
9. Transitioning workforce
10. Opportunities for revisiting agreements <ul style="list-style-type: none"> <li>a. Capacity to spend locally</li> <li>b. Opportunity to spend locally</li> <li>c. Capacity in town people increased (new skills/volunteering/sharing)</li> <li>d. Protection/mitigation of negative impacts on local people (e.g. sacred sites)</li> <li>e. Royalty arrangements; regulated and private</li> </ul>
<b>11. Rosters and workforce arrangements</b>
12. Making the new population welcome
13. Mixed economy transition
<b>14. Multicultural feel (ethnic relations)</b>
15. Revisit community and mine lifecycle plans

Notes: \*Project business case and Community and Mine lifecycle plans should also be revisited because a number of assumptions would now be known with greater certainty. Text in bold is an obvious role for the community's involvement. Text in italics is an activity that is less obvious, but community may be able to have a positive influence.

## Stage 4: Project operations (2–60 years, 150–2000+ people; one-third construction workforce)

As noted in [Table 4](#), during this stage it is critical for communities to revisit the Mine lifecycle and Community plans and the Regional Partnership Agreements, as well as prepare or revisit the regional economic development plan, including action plans for delivering ECVI. The community can ask the company to help with funding elements of these plans, such as conducting regional

Table 4: Stage 4, Project operations – key considerations and documents

Considerations (Key documents: Mine lifecycle plan, Community plan, Regional Partnership Agreement, Royalty Agreements, Impact and mitigation plans, Regional economic development strategy)
1. Population contraction with periodic labour troughs and shutdowns, including increasing use of remote control centres of operations in capital cities (e.g. Perth and Brisbane for BHP).
2. Churn – hard to manage (making new mining populations welcome)
3. Housing prices (more affordable following peak of employment during construction)
<b>4. Revisit agreements</b>
5. Develop a more stable community (different types of people)
6. Management income equity issues (variable incomes: mining/non-mining = uneven buying power and associated perceptions)
7. Part usage of mining village
<b>8. Industry/government liaison officers</b>
9. Diverse population mix: international
<b>10. Management of royalty income</b>
11. Secondary service opportunities around main operation
12. Issues specific to Aboriginal and Torres Strait Islander people e.g. roster swings, culture
13. Work readiness of Aboriginal and Torres Strait Islander people new to workforce
14. Work readiness and induction for families
15. Ongoing support for people new to workforce
16. Alcohol and drug use – related issues as per other stages
17. Deferred benefit payments to employees to keep them with the mine
18. Positives from mine development: security, quality of home life, maintaining local population
19. Integrate skills: volunteering, diversity, vibrancy, critical mass for services with other government programs, e.g. libraries, recreational facilities, pools
<b>20. Regularly revisit community and mine lifecycle plans</b>

Notes: Text in bold is an obvious role for the community's involvement. Text in italics is an activity that is less obvious, but community may be able to have a positive influence.

economic and demographic profiling<sup>22</sup> which may not cost the company too much extra as they are doing their ongoing assessment and monitoring work and it may be of interest to them for their CSR program.

<sup>22</sup> For examples of these in remote Northern Territory Local Government Areas and in the Central West region of NSW, respectively, see Blackwell et al. (2017) and McFarlane et al. (2016).





Being able to build diversity and resilience into the local economy and community from mining will be critical at this stage. This will involve transferring benefits via the land, labour and capital streams identified in [Module 7: Tools to Influence Actors](#), particularly the management and investment of royalty streams that may or may not provide enduring benefit to the community depending on how these are managed and spent.<sup>23</sup>

The business development and employment, skills and experience gained by local people during Stages 1–4 can now begin to be transferred to other industries and business pursuits that broaden the economy, though some employees in the mine operation will have delayed payments to encourage them to stay with the mining company. Volunteering by mine staff can also help build community skills and experience, such as where a mine emergency response officer trains people across the community in first aid and resuscitation or helps with the development of sports clubs.

Stage 4 is not always a good period for business, employees and the local economy because the mine operation activity will oscillate as international commodity prices peak and trough. Therefore the community should prepare for any phase that is included in possible closure as outlined in the following stage. However, given the significant investment in construction of the mine, companies have a strong incentive to extend the life of the mine as much as possible, including by exploring nearby areas for additional resources and making claims.<sup>24</sup> For this reason, the actual mine lifecycle often extends beyond that first envisaged by expanding operations into nearby areas; communities should be aware of this in negotiations with companies and governments.

### **Stage 5: Project closure (1–5 years/ in perpetuity, skeleton rehabilitation, monitoring employment)**

At the end of Stage 4, there are various elements to consider for Stage 5, as summarised in [Table 5](#). In the final stage, a mine may or may not close

depending on the economics of the profitability of extracting the mineral. The substages are (5.1) planned closure; (5.2) a downturn in production, meaning less mining activity may occur; and (5.3) care and maintenance, where the mine is temporarily closed and there is a higher degree of uncertainty over the future of the mine and therefore its subsequent effects. An example of the uncertainty associated with care and maintenance is the likely effects on house and property prices from depopulation of the community and resulting financial distress.

This stage is where the benefits of a FIFO workforce are felt, because the contraction of the population and workforce is not as large as it would have been with a resident workforce. The effects on local property demand and prices may also be less. There may also be less of a concern over how community services will continue to be provided as a result of a lesser fall in the local population. However, local governments will experience a fall in their rate base in relation to the mining company's land access. Also, the company may have built and serviced key infrastructure such as airports, power generation and supply and communication networks. Without the company, these assets will need to be maintained if they are to continue providing services to the local population. In such situations, community plans for taking over and maintaining key services provided (or shared) by mining companies will need to be implemented. The experience of the recent Leigh Creek coal mine closure is an example where there was no mine lifecycle planning and poor community planning.<sup>25</sup> However, the recent review and request for information by the South Australian Government has provided a ready action plan to maintain essential community services going forward.<sup>26</sup>

There is a vast literature on mine closure and mine rehabilitation as outlined by Robertson and Blackwell.<sup>27</sup> Companies under Australian state and territory laws must return the land (and waters) to the way they were prior to mining. Achieving such an outcome in reality is very difficult, particularly

23 For a discussion of royalties in remote communities see Blackwell & Dollery (2013b).

24 Gibson & O'Faircheallaigh (2015)

25 Robertson & Blackwell (2015), Blackwell & Robertson (2016), Robertson et al. (2017).

26 Lomax-Smith & Heneker (2016)

27 Robertson & Blackwell (2014)



Table 5: Stage 5, Mine closure – key considerations and documents

Considerations (key documents: Mine lifecycle and Community plans, Regional economic development strategy)	5.1 Planned	5.2 Downturn	5.3 Care & maintenance
1. Plan for it! Revisit Community and Mine lifecycle plans	✓	✓	✓
2. Conceptualise future change	✓	✓	✓
3. Business opportunities: a. rehabilitation b. monitoring c. etc.	✓	n/a	✓
4. Planned future for assets: a. company intentions b. community expectations c. role of government	✓	n/a	✓
5. Maintaining existing infrastructure	✓	✓	✓
6. Monitoring agreements (see item 3)	✓	✓	✓
7. Environmental rehabilitation: a. How usable? b. Water quality?	✓	✓	✓
8. Regional economic development strategies (holistic government approach)	✓	✓	✓
9. Regional services (post-withdrawal of main employer)	✓ (e.g. Stawell, Vic.)	✓ (e.g. Leigh Creek, SA)	✓
10. Anxiety	?	✓	✓ Major
11. Community liveability a. sense of belonging b. sense of community	✓	✓	✓ (e.g. Boddington, WA, early 2000s)
12. Depopulation (services and schools)	?	✓	✓ Rapid
13. FIFO alternative	✓ (e.g. Stawell, Vic.)	✓ (e.g. Leigh Creek, SA)	✓ (e.g. Boddington, WA, early 2000s)
14. Uncertainty – house prices	?	✓	✓ Major
15. Financial distress	?	✓	✓ (e.g. Ravensthorpe, WA)

Notes: Text in bold is an obvious role for the community's involvement. Text in italics is an activity that is less obvious, but community may be able to have a positive influence.

in the case of abandoned mines). By this stage, there should be sound arrangements in place for ensuring that companies have sufficient funds to correct any environmental damage done – though in some cases, no amount of funds can rehabilitate irreversible damage (e.g. where radioactive substances have leaked into waterways and soils at very high levels – see [Module 7: Tools to Influence Actors – Risk assessment and action planning](#)). Some states have rehabilitation and insurance

funds to help ensure that companies have sufficient funds to meet required rehabilitation costs. At this stage, if the community has taken on some form of ownership in the mine it will also bear the risk and cost of having to rehabilitate the site. Being aware of this when negotiating ownership arrangements in Stage 1 and 2 is critical.



## Conclusion

This module has provided detail on the key considerations for communities and the key documents to prepare or refer to in readying for the five main stages of the mine lifecycle. After having read this module, communities will have some anticipation of likely impacts, positive and negative, and how these can be planned for. Importantly, communities should prepare early and read all suggestions for the various stages of the mine lifecycle when prospecting has just begun. Being prepared for what lies ahead is crucial to ensuring that mining provides lasting value to associated remote communities.

Communities that do not see the benefit of mining can be better equipped with the knowledge of when they need to intercept and take action against mining plans, most notably in Stage 1, Mineral

exploration and Stage 2, Project development (pre-construction). The last chance to reject a mine is in Stage 3, during the construction phase, though it will be very difficult if left until then because most of the approvals will have already been made. Tools for rejecting a mining project are outlined later in [Module 7: Tools to Influence Actors](#).

Finally, this module has not covered all the issues that communities should consider at each stage of the mine lifecycle, but provides an initial set of considerations. Further considerations can be obtained by seeking additional sources of information such as those provided at the end of the toolkit or by contacting the authors directly.

### Box 1: Abandoned mines

According to the Australian Government<sup>1</sup>: 'In Australia, legacy or abandoned mines are broadly defined as: "mines where mining leases or titles no longer exist, and responsibility for rehabilitation cannot be allocated to any individual, company or organisation responsible for the original mining activities". The size and complexity of sites classified as legacy mines vary significantly, e.g. from an individual shaft to a significant underground or open cut mine and require varying degrees of resources to manage safety and environmental liabilities.'

Mostly through the Land Access for Resources Working Group (LARWG) under the Council of Australian Government (COAG) Energy Council, the Australian Government is working with state and territory governments to help improve the management of legacy mines. This includes reviewing the *2010 Strategic Framework for Managing Abandoned Mines*, endorsed by the Resources Minister in 2010.

On 10 May 2016, the LARWG held an 'Abandoned Mines and Mine Rehabilitation Workshop' to harness opportunities for better managing abandoned mines and mine rehabilitation as part of the review of the strategic framework. The Workshop considered the Canadian model, which has made significant advancements in the management of abandoned mines since the establishment of the National Orphaned/Abandoned Mines Initiative (NOAMI).

Following the Workshop, 'LARWG established a Legacy Mines Leading Practice (LeaP) subgroup comprised of key officials from each state and territory government. The subgroup will meet for three (non-consecutive) facilitated workshops in 2016-2017 to compare and assess current practices; consider international approaches to the management of legacy mines; and review of leading practice approaches to data collection & management, risk assessment, site prioritisation and risk mitigation plans, in order to advance the implementation of these elements of the *Strategic Framework for Managing Abandoned Mines* and to enable reporting on these issues at a national level. The Workshops will also involve relevant stakeholders from industry, academia and community groups.'

These activities signify a problem with the current governing framework over abandoned mines as confirmed in the literature by 50,000 abandoned mines in existence in Australia.<sup>2</sup> Lessons can be learned from the Canadian framework. A related problem is where the securities posted over the mine and its rehabilitation are insufficient to meet the cost of rehabilitation. Communities should be aware of these risks, particularly in this final phase of the mine lifecycle, and ensure these risks are sufficiently addressed early in the mine lifecycle, that is:

1. how uncertainty and impact will be reduced
2. how any abandoned mine will be managed following mine closure.

Not addressing these risks can leave an enduring cost for communities long after the mining company has gone.

<sup>1</sup> Australian Government Department of Industry, Innovation and Science (2017)

<sup>2</sup> Unger (2014)









# Module 3: Decision-maker – the Company

## 3 Module Three

### Introduction

In this module, we provide an overview of mining companies, of how they tend to behave as decision-makers in the mining process and how communities can best influence companies' decision-making processes. Influencing companies is critical to influencing the consequences for a community from a mine. Establishing an early relationship with a mining company is required to build trust and understanding, identify areas of common interest, share information and find opportunities for mutual gain.

Each company is different. While all are ultimately driven by the need to generate a level of profit acceptable to their owners, they vary enormously in terms of their size, range of interests, organisational culture and structure and decision-making processes. Some companies have a reputation for treating their employees and communities well, while others are less reputable. The same company, or its subsidiaries, may behave differently depending on prevailing economic conditions and on the local context. For example, some leading Australian companies severely cut their community engagement budgets when mineral prices plunged after the global financial crisis in 2008, and local communities in the Kimberley or Cape York may be treated differently from how communities in the Hunter Valley or Central Queensland are treated. Knowing that this type of variation exists within single companies and across the range of resource companies helps communities prepare to develop a relationship.

Perhaps the single most important message of this module is that communities need to invest time and effort in understanding the particular company or subsidiary they are dealing with.

The remainder of this module provides a discussion of:

- mining company interests, character, behaviour and types
- the sorts of information communities will need to collect
- a typical company decision-making hierarchy and where the individuals a community deals with are likely to sit within this hierarchy
- company employees responsible for community engagement (CSR employees)
- the capacity of a local mine's operation to deliver ECVm to the local community
- treatment of communities in the past
- issues affecting Aboriginal and Torres Strait Islander people.

### Interests, character, behaviour and types

All mining companies operating in Australia share one very important feature: the profit motive is at the heart of how they operate. Their owners are usually shareholders, ranging from individuals to large institutional investors such as superannuation funds. Activities that detract from their profits are typically given less attention, because if employees or managers do not deliver profits they may be sacked or demoted. If a company is unable to



**Table 6: Resource company types and typical characteristics**

Type of company	Large with global reach	Medium-sized, locally focused	Small/junior exploration
Typical market capitalisation (\$m)	>500	100–500	<100
Stock exchange	Likely to be multiple (e.g. Melbourne/London; Toronto/New York)	Australian	Australian
CSR policy	Highly structured policies linking corporate goals to site-based policies	Less structured but often specific policies developed for engaging local communities	No CSR policies; relies on company culture and leadership
Social licence to operate	Focused on reputation/integrity at international level and minimising bad news	Focused on local community engagement and providing value for local communities	Focused on gaining access to land
Obligations	Typically claim to meet international and national industry standards and human rights obligations	National and state industry standards	None or state level
CSR staff	Typically have a substantial number of professional staff but may be difficult to access given company size	Staff may often have non-CSR backgrounds (e.g. geologists) but have good linkages and networks to local communities. Staff may be allowed a degree of working autonomy in company	Often no separate CSR staff; community engagement is through a whole-of-company approach

maintain profits and assets, they are likely to be swallowed by a rival company or go out of business entirely.

It follows that companies will not necessarily behave in the interests of society. Indeed at some point, it is inevitable that the goals associated with the profit motive will diverge from those of society or a particular local community. This does not mean that companies have no interest in creating benefits for communities affected by their operations. Many companies now have employees and sections (such as community relations or CSR offices) that pursue wider social, cultural and environmental objectives. However, the important point is that companies will not allow profitability to be undermined by meeting community needs; especially in hard economic times, they will do what they can to minimise the cost of community engagement. This is why communities themselves must be vigilant and work hard to ensure that their own interests are protected.

In Australia, mining companies can be classified broadly into three types, as indicated in [Table 6](#). This is only a broad classification and inevitably involves considerable generalisation; there is no substitute for developing a specific understanding of the individual company. Communities can identify which type of company they are dealing with to get

insight into how the company is likely to behave and how best to engage with it.

### Large companies with global reach

These companies are typically big financial players in the industry, have extensive global experience and are attuned to the need to work cooperatively with communities.<sup>28</sup> Also, they are much more likely to be members of international industry bodies such as the International Council of Mining and Metals and to have committed themselves to international human rights principles such as the right of Free Prior Informed Consent (FPIC).<sup>29</sup>

Such companies typically have well-resourced community relations departments, though these may be vulnerable to cuts during economic downturns. They will have substantial CSR programs and community relations CSR staff employed to help deliver policies on the ground by engaging with communities. These companies will also be more likely to support activities that do not have a direct business benefit but focus on wider social and environmental goals.<sup>30</sup>

One challenge of working with such companies is that they may be more focused on processes and

<sup>28</sup> Fordham (forthcoming)

<sup>29</sup> Fontana & Grugel (2016)

<sup>30</sup> Fordham (forthcoming)



policy obligations rather than direct engagement, making it difficult for communities to gain access to the company and especially to the company's senior decision-makers. It may also be more difficult to access information about what the company is doing because of their complex organisational structures and the fact that many of their operations will be overseas.

A summary of some key preparations for communities to undertake before approaching large companies is provided in [Box 2](#).

### Medium-sized companies, typically Australian-owned

Medium-sized companies are often Australian-owned and 'home grown' and, as a result, often have good connections to local communities. They are less likely than large companies to have well-defined CSR policies, but they are typically focused on local issues such as employment, procurement and business development. They may therefore be better at securing local involvement in a mine's operational phase. Medium-sized companies are more likely to look to national and state industry standards for guidance.

CSR staff in medium-sized companies often engage with the local community and are approachable and willing to cooperate with local groups to pursue outcomes. A summary of key preparations for communities in approaching medium-sized companies is outlined in [Box 3](#).

### Small or 'junior' companies

Small companies, also called 'juniors', are often relatively inexperienced in community relations and are typically active at the exploration stage. Their main focus is to get a solid business case for a mine proposal, which means gaining access to land and possibly also a social licence to operate (SLO) in the form of community support for a project.

These companies generally do not have specific, written CSR policies. Such policies are usually developed as the need arises in response to issues the company faces on the ground. Many small company representatives might not be able to articulate a position on their CSR or on the provision of community benefits and may bring an

#### Box 2: Key approaches for large companies

1. Find out what industry standards and international rights (see Module 7 for examples) the company has committed to and which of these align with the community's interests.
2. Look to establish formal processes of engagement with the company such as community consultative committees to ensure that engagement occurs and company activities are transparent.
3. Find out how to access the company's community investment programs.

#### Box 3: Key approaches for medium-sized companies

1. Approach the CSR staff member to discuss locally based CSR policies, how the company connects to the community and what can be done to work collaboratively.
2. Check whether they have a community investment program.
3. Find out how to facilitate local involvement in the exploration or mining project, for example through small business development opportunities. The community may need to form partnerships with existing, experienced businesses to do this.

#### Box 4: Key approaches for small-sized or junior companies

Find out if the culture of the company is supportive or non-supportive of community desires.

Option 1: If it has a supportive community culture:

- a. Try to meet with the CEO or senior staff to discuss potentially linkages to the community.
- b. Take some ideas from the community about how the company's activities could be conducted to provide mutual benefit for the community and the company.
- c. Find out what activities the company is planning and whether the community can help. Canvas the potential idea of a community consultative committee.

Option 2: If it does not have a supportive community culture:

- a. Appeal to the company's desire to avoid community opposition.
- b. Try to engage with the company directly and form a relationship that may lead to productive discussions and a change in company attitude.
- c. Be sure to understand the company's legal obligations and whether these provide any leverage to the community.



Table 7: Key information topics, sources and questions

Information topic	Sources	Questions
<ul style="list-style-type: none"> <li>• CEO history</li> <li>• Board of Directors: skills; past project management; number of people</li> <li>• Personnel dedicated to the project</li> <li>• History of community relations with developer</li> <li>• Relationship to shareholders</li> <li>• Corporate financial records</li> <li>• Project financing</li> <li>• Corporate structure</li> <li>• Nature of company (junior, major)</li> <li>• Structure of the corporation – relationships or existence of subsidiaries and holding companies</li> <li>• Relationship to other companies</li> <li>• Commitment of resources</li> <li>• Other agreements</li> <li>• Corporate behaviour towards other Indigenous people or communities</li> <li>• Historical behaviour of company</li> <li>• Adherence to guidelines and standards (e.g. International Finance Corporation, World Bank Group, Global Reporting Initiative)</li> </ul>	<ul style="list-style-type: none"> <li>• Press releases</li> <li>• Corporate website</li> <li>• Other communities</li> <li>• Corporate annual reports</li> <li>• Annual mining meetings (such as the Minerals Council of Australia)</li> <li>• Corporate consultation</li> <li>• Courses for mining investors: Understanding the legal structure of a mining company and identifying its management, shareholders and relationship with the financial markets*</li> <li>• Past interactions with the community</li> </ul>	<ul style="list-style-type: none"> <li>• Who is the current contact person?</li> <li>• What has the history of this company been?</li> <li>• How diversified is this company, and therefore how stretched to deliver CSR might they be? Or how committed might they be?</li> <li>• What kind of company are they?</li> <li>• What structure of financing is in place? How much debt, how much equity?</li> <li>• How do the site's staff and operation relate to the parent company?</li> <li>• Where in order of extraction is this deposit compared with other deposits they are currently exploring?</li> <li>• How have they negotiated with local people in the past?</li> <li>• What are the guidelines that the company adheres to? Can they be used to strengthen the community position?</li> </ul>

\* Kuyek (2007)

outside expert to help with this. Small companies tend to fall at two ends of the spectrum in terms of their approach to community relations:<sup>31</sup>

1. Companies that have enlightened leaders who, because they have complete control of the business, can go beyond conventional approaches to deal with community impacts and create community benefit
2. Companies that are run purely on business lines and show no interest in communities.

An ideal situation is where a company has a good culture and few bureaucratic structures so it can be flexible, innovative and willing to listen to community ideas and work with communities to develop mutual benefits. A summary of key points for communities to consider in approaching small companies is outlined in [Box 4](#).

## Key information, sources and questions

Regardless of the broad type of company involved, a community needs to develop a detailed

understanding of the specifics of the company it is dealing with. [Table 7](#), drawn from the *IBA Community Toolkit*,<sup>32</sup> can serve as a guide, indicating some key information topics, relevant sources of information and critical questions to consider.

Four specific aspects of a company deserve particular attention: its decision-making hierarchy, its community relations or CSR employees, the capacity of the mining operation relative to the parent mining company to deliver ECVI, and its past treatment of communities.

## Decision-making hierarchy: where do negotiating individuals sit?

A simplified hierarchy of a company is presented in [Figure 3](#). The very high-level corporate strategy, vision, objectives and major investment decisions are determined by the company's board, often chaired by an independent director and including the Chief Executive Officer (CEO) or Managing Director (MD). The operations of the company are overseen by the CEO and undertaken by

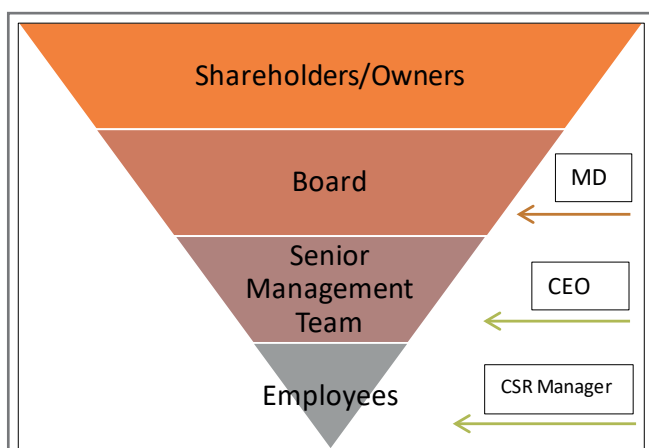
<sup>31</sup> *ibid.*

<sup>32</sup> Gibson & O'Faircheallaigh (2015)





salaried managers and employees. A management team, including in large companies the head of community relations or CSR program, supports the CEO. The head of CSR is one among many managers who help determine decisions about a resource development. There may be a head of exploration, of operations, of marketing and of finance, who will also influence decisions, and the head of community relations may have their decisions overridden by other managers or the CEO. The key person for communities to influence, therefore, is the CEO, whose salary and share options are tied to the company's profit. This creates two issues for communities. The first is the difficulty of getting access to a CEO, who is often located far from the community and has many conflicting demands on their time. The second is that the CEO's primary interests are in line with those of the company.



**Figure 3: Typical company hierarchy**

Company hierarchy consists of four main levels: shareholders or owners, a board (led by the MD), senior managers led by a CEO (usually also a member of the board) and company employees. The triangle is inverted to represent where the power to ultimately control the company rests. In theory, owners have the greatest power; in practice, boards, the CEO and senior managers can usually exercise considerable discretion. Because a community is unlikely to have any contact with a company board, let alone with shareholders, focus should be on influencing senior managers and the CEO, while not ignoring the potential for board members or shareholders to become aware of community issues and start asking questions of the CEO.

## Corporate social responsibility employees of companies

A community is most likely to have contact with a company's community relations or CSR employees. These employees have many different titles, such as CSR manager, Community Relations Advisor or

Community Engagement Manager. Their role is to be a point of contact with community members, extend the company's influence into the wider community and ensure that the company has support from, or at least is not opposed by, the community. They can pursue a wide range of strategies, from what are largely public relations exercises to genuine and sustained attempts to ensure that the positive impacts of a project outweigh the negative ones.

In principle, the role of community relations staff is to be aware of the social risks to a company and to anticipate and minimise such risks by reducing negative community impacts and increasing benefits to the community.<sup>33</sup> The skills, values and experience community relations staff bring to the task can vary greatly, as can their professional backgrounds. Until recently, very few had professional training in community relations and were often recruited because they worked in roles that involved contact with communities, such as exploration geologists, environmental scientists or government service delivery personnel. More recently, the larger companies have been more inclined to hire staff with relevant professional qualifications or to invest in upgrading the professional skill of existing staff. Community relations staff capacity to influence the way their company deals with a community also varies. In the Pilbara, mining company community relations staff were often referred to as 'barbecue men', because the only power they had was to put on a barbecue for community members. In other cases, community relations staff have been given access to substantial resources and the discretion to use them in ways that have been negotiated with affected communities.

Given this diversity, it is particularly important for community members to share information about their experiences with company staff, to reach their own assessment about the merit of the people involved and to develop strategies for targeting company employees further up the hierarchy. This is particularly so if community relations staff are not addressing community issues in a serious and substantial way.

<sup>33</sup> Fordham (forthcoming)



All community relations staff have to operate within core business objectives (i.e. maintaining profits) and within specific regulatory, legislative and company policy frameworks. Despite these constraints, company staff who are committed to local communities can help ensure that substantial benefits accrue to communities from the resource development.<sup>34</sup> They can do this not only by influencing company decisions but also by helping communities connect to or develop wider social, financial and organisational networks to help them access opportunities generated by mining projects.

## The local mine operation's capacity to deliver ECVM to the local community

The factors that contribute to creating opportunities for a local mining operation to provide benefit to a local community are depicted in [Figure 4](#). Profit, shown just to the right of the top of the circle in [Figure 4](#), will affect all the other factors. Any given mine's return in a company's portfolio of projects will add to the overall company's profit. The degree to which the project contributes to the company's profit will depend on the size of the operation, with larger operations providing opportunities for greater profit contribution, and smaller operations providing smaller contribution – yet still a contribution. Therefore, the resources available to manage local social or environmental impacts is only a proportional subset of those available to the entire company. Having said this, the resources (equipment, labour and land/resource wealth<sup>35</sup>) of a local operation can dwarf those of a remote town, which still presents an opportunity for achieving ECVM.

Other factors that can contribute to the capacity of the company to achieve ECVM are also shown in [Figure 4](#). Company assets (power generation, transport and communication networks, accommodation facilities, etc.), further processing of the ore, distance to market, commodity type and extent of resources, extent of equipment investment, employee numbers and policies, the operation's financing (debt and equity), CSR and

cultural awareness programs, dispute resolution processes, royalties and regional partnerships all determine the extent to which there will be resources available locally to deliver ECVM. The relative size of these factors to those of the parent company and to those of the community will determine the capacity for delivering ECVM. Key questions to ask are given in [Box 5](#).

### Box 5: Key questions to consider in assessing a company's capacity to deliver ECVM

1. What is the relative size of the local mine's resources to those of the parent company – in both profits and assets?
2. How does this relative size of the local mine's operation to that of the parent company compare to the resources of the local community? (In most cases for remote communities, the relative resources of the mining operation will dwarf those of the community – but by how much?)
3. By considering the factors outlined in [Figure 4](#), which of these present the greatest chances for delivering lasting benefit to the community? To answer this question, it will be necessary to get information (see [Table 7](#)) and to have discussions with the targeted company representatives (CEO or senior managers).

## Past treatment of communities

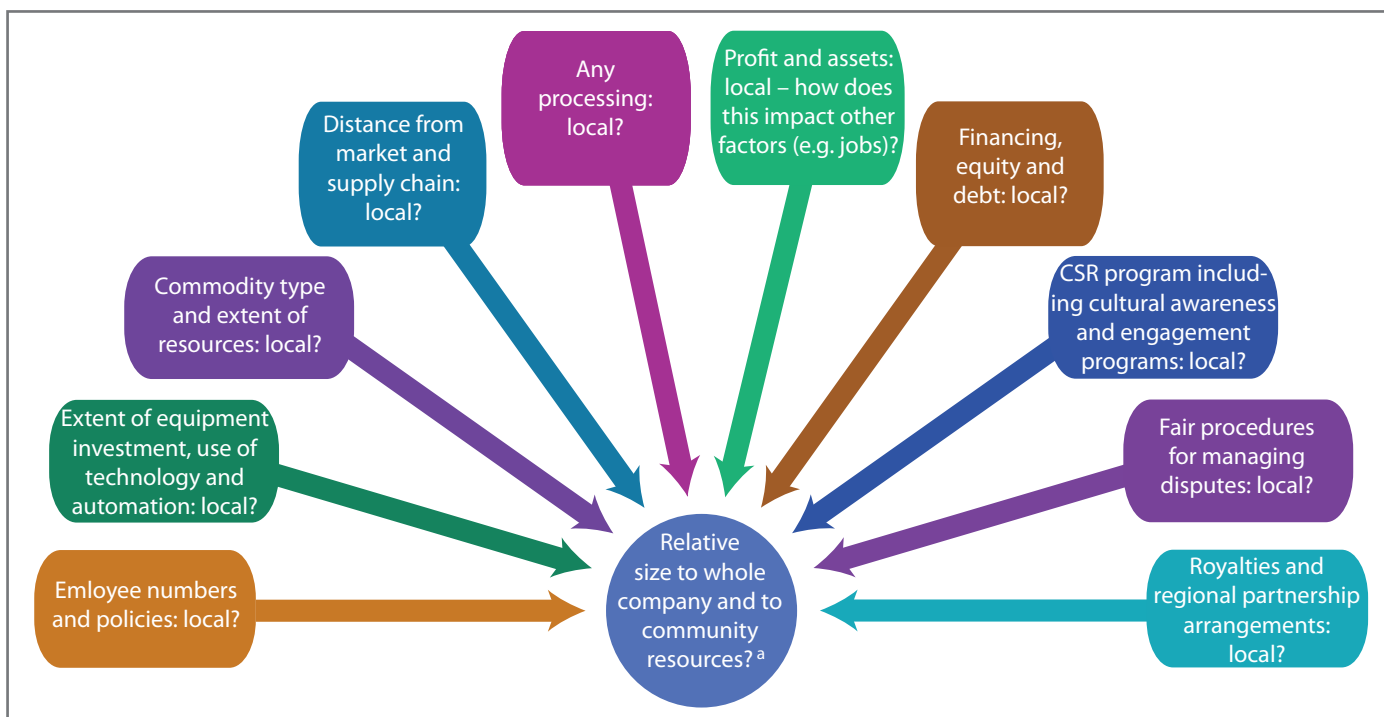
Communities will need to consider how a company has treated communities in the past, so that they can determine how to begin a discussion around the benefits and costs from mining. Prior examples of treatment of communities may include:

- environmental damage to a local area through pollution of waters, land and air or from noise pollution
- negative social impacts, including impacts from a transient workforce that does not contribute to the local community, and goods and services provided to the mine workforce but not desired by the local community group (e.g. sex industry, gambling, alcohol, drugs, etc.)
- economic damage, for example arising from impacts on existing local industry as a result of higher costs of labour, equipment, services, land and property or a collapse of local markets resulting from a downturn in the mining industry.

<sup>34</sup> *ibid.*

<sup>35</sup> For detailed analyses of the returns to factors of production in remote mining cases, see Blackwell and Dollery (2013a, 2014).





**Figure 4: Company interaction with local community**

A multitude of factors contribute to the financial resources and return from the project, which in turn affects the resources available to the company to willingly engage and support community aspirations.

Sources: Synthesis and development of Blackwell and Dollery (2013a, 2014)

a. Note these factors will change in time with the profit position of the company based on commodity prices and exchange rates.

How a company responds to harm it has caused to local people will also provide a community with a good indication of what treatment to expect throughout the mine lifecycle.

Some companies may have an excellent history of avoiding, offsetting or reducing environmental, social and economic harm. Alternatively, there may be a history of companies failing to deal with impacts and attempting to buy out some local groups in order to stifle criticism of their operations.

With the advent of the internet and social media, obtaining information on the past behaviour of companies is considerably easier. For example, relevant information can be found from:

- newspaper or community group websites that track company ethics (e.g. [www.theguardian.com/business/2008/nov/16/observer-good-companies-guide-mining](http://www.theguardian.com/business/2008/nov/16/observer-good-companies-guide-mining))
- indexing bodies that show if companies are performing ethically, as evidenced for example by being listed in the Dow Jones World Sustainability Index ([www.sustainability-indices.com](http://www.sustainability-indices.com))

- reports and notices provided by listed companies on the Australian and other world stock exchanges (e.g. [www.asx.com.au](http://www.asx.com.au))
- ethical investment magazines (e.g. [ethicalinvestor.com.au](http://ethicalinvestor.com.au))
- a general search on various search engines (e.g. [www.google.com](http://www.google.com) using the company name)
- company and community group pages on social media sites such as [www.facebook.com](http://www.facebook.com) and [www.linkedin.com](http://www.linkedin.com).

Some companies also issue their own standards of behaviour as well as sustainability reports (e.g. [www.santos.com/sustainability-at-santos.aspx](http://www.santos.com/sustainability-at-santos.aspx)), which can be obtained from their websites. While it can be useful, information provided by companies is designed to cast them in a favourable light and must be treated with caution. It should be considered alongside information from independent organisations, such as Investing in Integrity, which document the business practices of companies and assess their integrity (e.g. [www.cisi.org](http://www.cisi.org)).





## Issues affecting Aboriginal and Torres Strait Islander people

The situation of Aboriginal and Torres Strait Islander people in relation to mining companies is distinctive because of the recognition of inherent Indigenous rights in land as a result of the High Court's 1992 Mabo decision and, in some Australian jurisdictions, because of specific Commonwealth or State legislation recognising or creating Indigenous rights in land (e.g. *Aboriginal Land Rights (Northern Territory) Act 1976*). Many of the general points discussed above regarding the nature and diversity of mining companies and the consequent need to understand the structures and policies of individual mining companies apply equally in Aboriginal and Torres Strait Islander contexts as well as other contexts. However, the legal obligations owed to Aboriginal and Torres Strait Islander landowners (not, it should be noted, to Aboriginal and Torres Strait Islander communities in the sense of discrete settlements) by governments and companies mean that the context of company–Aboriginal and Torres Strait Islander relations and the options and strategies available to Aboriginal and Torres Strait Islander negotiators can be quite different. As a result, Aboriginal and Torres Strait Islander people and their communities require detailed and specific advice suited to their distinctive situation. While some such information is provided below, we wish to emphasise that it is general and should not be construed as legal advice to be applied in specific situations.<sup>36</sup>

In seeking information about mining companies they are dealing with, Aboriginal and Torres Strait Islander communities should ask:

- How has the company treated Aboriginal and Torres Strait Islander people or other Indigenous peoples – for example, does the company have Aboriginal and Torres Strait Islander employment and business development programs, and how effective are these?
- Is or has the company been known for being discriminatory or racist?<sup>37</sup>

- Does the company have royalty agreements with the Aboriginal and Torres Strait Islander people on whose land they mine?<sup>38</sup>
- What is the company's record in dealing with situations where there are a number of Traditional Owner groups with interests in land where the minerals will be extracted?
- Does the company have a policy of providing funding to Aboriginal and Torres Strait Islander cultural heritage conservation and cultural development, social and community services, art and music conservation or development or sporting activities?
- Does the company have a policy of providing information in a form that local people can easily understand?
- How has the company behaved in matters to do with native title or land rights? Have their relations in this regard helped or hindered Aboriginal and Torres Strait Islander self-determination and wellbeing?
- Does the company have a fair process for dealing with Aboriginal and Torres Strait Islander concerns? What is this process and how does it work, and does it include an independent appeal mechanism if Aboriginal and Torres Strait Islander people remain concerned?

## Conclusion

Companies and the government are the key decision-makers in relation to extraction of mineral resources (except in the Northern Territory, where Aboriginal people have the power of veto over decisions about Aboriginal land). Understanding the powers and interests that companies have is therefore important. Mining companies, while having CSR programs and other community and social objectives, are primarily driven by profit. Their continued existence relies on profit; the financial and stock markets reinforce this imperative; and maximising profits restricts the ability and willingness of companies to meet the social, cultural, environmental and economic interests of local communities. Company community relations or CSR staff officers can be potential allies for the community, but the final decisions for the company

<sup>36</sup> The *IBA Community Toolkit*, while developed in the Canadian context, contains much information on negotiations that is relevant to Australia.

<sup>37</sup> For example, see Blackwell & Robertson (2016).

<sup>38</sup> For further reading on royalty arrangements, see Blackwell & Dollery (2013b).



will rest with the CEO and the Board to which she or he reports. Communities ultimately need to engage with those who control a company if they are to achieve substantial and long-lasting benefits from mining projects.

A community needs to understand the scale, structure and history of the companies it is dealing with. For example, the larger the company, the more likely it is to have formal CSR programs, be committed to meeting international industry requirements or human rights standards and have formal processes for engaging with the community. Smaller companies may have no formal CSR policies or programs, and their desire to meet community objectives may depend on the culture and ethics of a small number of people who lead the company.

Having knowledge about how companies might behave, especially given their past behaviour, is important for communities to prepare for negotiation or for some alternative strategy. It is important to know, for instance, whether companies have treated the various groups within communities fairly in the past, whether they have caused social tension by encouraging certain sections of the community to sell out others, and whether they have a fair process for addressing the concerns of various groups within a local community. These questions are also important for Aboriginal and Torres Strait Islander communities, which also need to seek information on a company's record in respecting the legal and cultural rights of Indigenous peoples.









# Module 4: Decision-maker – the State

## 4 Module Four

### Introduction

In this module, we provide a description of the role of the state at its various levels (local, state or territory, national, global regions and global) and for its various agencies (departments, authorities, government-owned corporations) and agents (ministers, employees, etc.) as a key decision-maker in resource development and the mine lifecycle.

At the outset it is important to note that there is an emerging and evolving literature on the role that local communities have in creating new informal spheres of governance that can be highly effective in meeting local desires and in shaping local places.<sup>39</sup> Similarly, while our focus in this module is on formal governments relevant to Australia, we do briefly refer to formal government institutions that exist outside Australia, but which have had significant influence over mining and its relationship with local communities, for example through the European Union or United Nations.

The remainder of the module discusses the following topics in relation to the state:

- interests, character and likely behaviour
- decision-making hierarchy
- benefits (and costs) from the project
- past relationships with communities
- the courts and legal avenues
- issues affecting Aboriginal and Torres Strait Islander people.

<sup>39</sup> For examples in remote Australia, see Blackwell et al. (2015a)

### Interests, character and likely behaviour

Remember from the outset that it is government and mining companies that make decisions over resource development, except in the case of the Northern Territory where the *Aboriginal Land Rights (Northern Territory) Act 1976* provides Aboriginal people with the power of veto for mining operations on Aboriginal land. These decisions are primarily implemented through legislation and its associated regulations, but these can be amended, removed, rewritten or made exception for in special cases (e.g. trading zones, coal seam gas exclusion zones, strategic agricultural areas).<sup>40</sup> In general, the government acting on behalf of the Crown owns the resource below the surface and legislates as to how these resources can be explored, accessed, extracted, processed and transported to market and then how the benefits (and costs) from mining are shared across mining's various stakeholders, including local communities.

Much like companies, the state has deliberate objectives, though these are not always fixed and can change, particularly with a change of government. Often, the objectives of the leaders of government – the ministers – are to stay in power by being re-elected. This means that politicians and their departments at all levels – from local government through to federal government – will be aware of the importance of every vote, particularly in marginal seats. Often departmental policy can be determined based on the number

<sup>40</sup> Blackwell (2016b)



of people affected and how they may be seen to vote at the next election. Elections thus present opportunities for communities to seek out and obtain commitments from ministers and their departments or the relevant minister's political opponents.

Related to being re-elected, and highly emphasised in the present Australian political climate, is the need for project approvals and the associated jobs and growth that come with these. State governments are often prepared to invest large resources of time, money and political capital into projects that may or may not generate revenue for them.<sup>41</sup> The Western Australian Government's support for offshore gas development in north-west Western Australia is an example where the state is prepared to devote very substantial resources to getting projects off the ground.<sup>42</sup>

A related issue is the timing of political and bureaucratic attention to mining projects, which is typically heavily front-ended, that is, focusing on project assessment and approval. No matter how high a project's public and political profile, once it has been approved attention very quickly shifts to the next project. This issue in timing of focus means that communities will struggle to achieve government focus on problems generated by a project after it is approved. In the later phases of the mine lifecycle, resources and effort to deal with any problems need to be generated through greater community involvement.<sup>43</sup>

Governments, just like corporations, need to ensure that their treasuries receive sufficient funds to run their operations or to service debt. These treasuries (and the treasuries of political parties that sit behind them, which are subject to donations, including donations from companies, NGOs, etc.) are financed through revenue-raising activities such as royalties from mining and licence fees for exploration and land access, all of which are tied to ensuring that mining proceeds. Therefore, the objective to serve the public may be in conflict with the need to ensure public services are financed, which partly

occurs through the collection of royalties from resource extraction.<sup>44</sup>

With the replacement of many state taxes with the goods and services tax (GST), states lost autonomy over a large portion of their revenue-raising capacity. For resource-rich jurisdictions such as Western Australia, Queensland and the Northern Territory, these royalties are critical, though in all states, resource royalties contribute to state or territory treasuries.<sup>45</sup> Though state and territory governments have the role of legislating (setting the rules) for resource development, they do not necessarily have the resources to support such projects; these must be sourced through royalties. At the federal level, the Australian Government has jurisdiction over offshore oil and gas resource extraction, from which it receives revenues.<sup>46</sup> Even at the local level, revenues from mining can provide local governments with strong financial incentives to support mineral extraction.<sup>47</sup> On top of these direct revenue sources, the mining industry also contributes indirectly to economic activity across all levels and at all scales, through taxes and other duties, employment, value add as the new income cycles through the economy, and exports.<sup>48</sup>

How the state behaves depends on how a particular political party or individual came to power, irrespective of geographical coverage (i.e. whether they are local, state/territory, national, global region or global). In Australia, all levels of our formal members of government are elected through democratic processes. In local government, councillors are elected who then elect the mayor, the ultimate decision-maker. In state government, local members are elected and may be given ministerial responsibility for particular government departments, but these will be determined by the political party and its leader or the Premier or Chief Minister. While the person in that position must be voted in by his/her local electorate, it is the party that determines who will have that role (and not the constituency, unlike in the United States where people vote directly for the President). The Premier

41 Department of State Development (2017), Australian Government (2017)

42 Department of State Development (2017)

43 O'Faircheallaigh (2017)

44 Blackwell & Dollery (2013b)

45 *ibid.*

46 *ibid.*

47 For detail about opportunities to provide ECVm from rates through local governments, see Drew et al. (forthcoming).

48 Blackwell & Dollery (2013a, 2013b, 2014)



or Chief Minister has ultimate decision-making power in the state or territory.

At the national level, again local members are voted in to the House of Representatives, the lower house of Parliament where proposed legislation is first received and debated. Next, legislation goes to the Senate, or upper house, which comprises 12 representatives from each of the states and two from each territory. The Senate can further debate, revise, prevent or check legislation from the House of Representatives before it becomes law. States and territories also have houses of Parliament, but the number varies, with Queensland and the two territories having unicameral systems (and therefore no upper house through which legislation can be checked) and the other states having bicameral systems. Therefore, using all levels of formal government representation, across the various houses of parliament or council, can be critical to ensuring that community wishes in regards to resource development are met. Knowing the general structure of government, the political parties that contest for power, how they are funded and how they seek further funding is important for community leaders trying to influence government decisions over resource development.

International governing institutions may be less well known to local people but can have considerable influence on domestic decision-making, particularly on grounds of social or environmental justice. For example, because Kakadu National Park in the Northern Territory is a World Heritage Listed park, the local Aboriginal corporation has been able to focus international attention on the community concerns about future uranium mining at Ranger near Jabiru. Just as international mining corporations bring international resources, experience and networks to ensure a mine is successful, communities can also tap into international networks and governance institutions to ensure their wishes are met.

## Decision-making hierarchy

Governments, and the political parties behind them, have set hierarchies and processes for making decisions and preparing, amending, removing or checking their governing rules or legislation and regulations. Sometimes, the state also follows

conventions<sup>49</sup> rather than written-down rules or laws.

[Table 8](#) outlines the political leaders at various levels of formal government relevant to Australia and how these leaders are elected.

**Table 8: Leaders of various scales of formal government**

Formal government type	Leader	Election process
Local	Mayor	Voted by other councillors
State or territory	Premier, Chief Minister	Leader of the party – voted in by the party
Commonwealth	Prime Minister	Leader of the party – voted in by the party
Global region, e.g. European Commission, OECD	President, Secretary-General	Voted in by members' representatives
International, e.g. United Nations	Secretary-General	Appointed by General Assembly, subject to veto of Security Council

Note: OECD = Organisation for Economic Co-operation and Development

The effects of mining on global communities, positive and negative, are of interest not only to local leaders, but at all scales of government institutions. Many mining companies operate globally and are global institutions, so the global regional and international organisations listed in [Table 8](#) and [Table 9](#) have policies, programs and projects focused on mining and its relationships with communities. They therefore play a critical role in delivering lasting benefit from mining for local communities on the global scale and provide a rich source of additional information.

As summarised in [Figure 5](#), state governments in Australia are responsible for mining in their state (except mining of offshore oil and gas, where a similar Australian Government structure is established). The state decision-making hierarchy is made of up three main levels: Cabinet, headed by the Premier and key ministers (e.g. Treasurer, State Development Minister), central agencies (which typically comprise the Premier's Department, Treasury and State Development) and line departments (the rest of the state departments, managing their respective Acts,

<sup>49</sup> A convention is a usual procedure or procedure that has been followed in the past.





including those regulating the resource). In each of these institutions there are key players: in Cabinet the Premier or Chief Minister; in the central agencies the Premier, Treasurer and Minister for State Development; in each department a minister and secretary. For example, in Queensland the Department of Natural Resources and Mines manages mining law set out in the *Mineral Resources Act* (Qld) and *Petroleum and Gas Act* (Qld), and the Director-General is the head employee of the department (though is often implicitly politically appointed). Different sections of the department manage policy to do with regulations.

### The minister's office, the department and policy change

Ministers (including the Premier or Chief Minister) can be contacted through their offices, the details of which are usually easy to find on the relevant web pages. Ministers have advisors, each one responsible for specific portfolios. Chief advisors have more influence over other advisors, and developing a relationship with a minister may require doing so through the chief advisors first. However, the chief advisors may be more difficult to access. Advisors also often work directly with departmental officers to develop and implement policy, and departmental officers may have to

work with a minister's office to coordinate a new policy position and deal with important constituent concerns on a particular policy issue.

All constituents can write to any minister. Any response, however, may have been prepared by departmental staff and only signed by the minister. It may contain fairly standard responses that leave little opportunity for reply. Sometimes a contact phone number will be given so that the relevant departmental officer can be contacted directly. Use this number to contact the officer and gain more information about the government's policy, program or project position and the possibility for future changes of these.

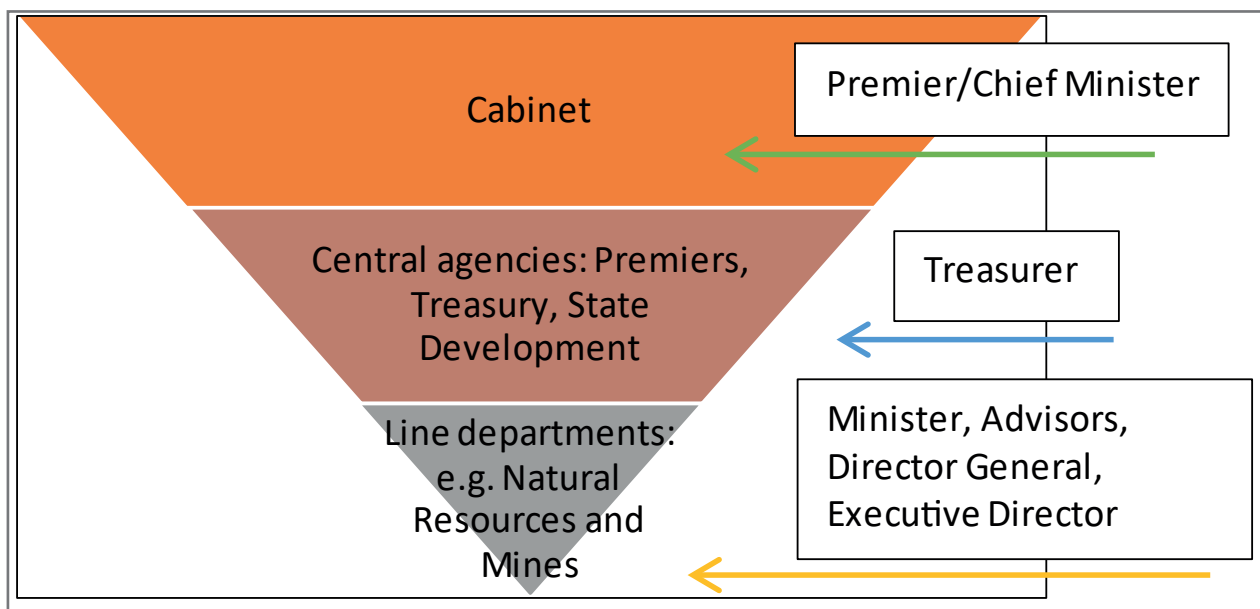
The draft reply letter, prepared by departmental staff addressed to the constituent, will go to the Minister's Office for review, approval and signing. Sometimes this draft letter is accompanied by a Ministerial Briefing Note for the Minister's Office from the relevant departmental staff providing further background and a solution to the problem if required. This is where real change in government policy can occur, through innovative solution suggestions from the departmental staff, sometimes derived from the constituent's letter. Usually, however, the current or historical departmental policy will be followed so that constituents receive consistent policy.

**Table 9: Decision-making powers at each level of formal government**

Formal government type	Decision-making power
Local	Limited for project approval but significant role in managing impacts from resource development, e.g. seeking to manage demand for physical services from population growth through rates
State or territory	
Environment Department/ Agencies	Impact assessment
Mining Department	Grants tenures
Treasuries	Collect royalties
State Development	Negotiates state agreements
Commonwealth	Limited except where the EPBC Act (including water) is triggered, where the project is in Commonwealth waters, where it affects Australia's international obligations, or where it has an especially high political profile
Global region, e.g. European Commission, OECD	Where it affects Australia's international obligations and membership (links to Commonwealth)
International, e.g. United Nations	Where it affects Australia's international obligations and membership (links to Commonwealth)

Note: OECD = Organisation for Economic Co-operation and Development





**Figure 5: Typical state hierarchy**

The triangle is inverted to represent where the power to control the state rests. Premiers or Chief Ministers have the greatest power, but this can be checked by other ministers in Cabinet, particularly the Treasurer.

There probably will not be an immediate change in position from a departmental officer; real change comes through developing a relationship by contacting them more than once and getting a meeting with the minister or the minister's office. Persistence is required because change may only come after many years of lobbying the minister's office and the relevant departmental section staff.

Even if department staff and the minister's office are behind a policy change, it needs to be approved by Cabinet. The proposed policy first needs to meet an economic and financial viability test through a cabinet finance committee. Once this is approved, a cabinet submission is prepared that goes before Cabinet. If it passes that stage, amendments to current legislation or the creation of new legislation are argued in Parliament. The state Governor provides the final approval for new or amended legislation or regulations.

It can be many years from the first phone call or letter from a constituent to when the Governor provides approval for new or amended legislation. The periods leading up to an election and a change of government representing a different political party may be times when the chance of effecting change are greater.

### **Confidentiality over government and company papers**

It is worth noting that Cabinet is protected by 'Cabinet-in-Confidence', which is like commercial-in-confidence for corporations; that is, any document, matter or discussion that goes before or is discussed in Cabinet does not have to be released to the public. Companies can also restrict what information the public has access to through commercial-in-confidence, to protect company secrets or information that gives an unfair advantage to competitors. These two forms of confidence mean that two of the key decision-makers in matters related to mining – the company and the state (along with Traditional Owners in the Northern Territory) – have a significant advantage over communities in their knowledge about whether a mine will go ahead and how the mine lifecycle will be managed.

### **Federalism, intergovernmental relations and political party structures**

Federalism and intergovernmental relations, and the interplay between these and political party structures, can often play a critical role in decision-making. For example, where state and federal levels of government are held by the same party,



the federal government may be able to negotiate a greater role for itself with state government consent. Alternatively, the federal government may choose a smaller role to avoid a dispute with a state party. Conversely, where different parties are in power at different levels, one or other level may be happy to push the boundaries of its jurisdiction even if (perhaps especially if) this causes political conflict. Communities should endeavour to find spaces within these intergovernmental and party relations where they can leverage some influence on the state or territory and federal governments.

### Benefits (and costs) from project

As noted at the outset of this module, the extent and distribution of potential costs and benefits (who shares them) from mining are very much influenced by state and corporate decisions and policies and by the ability of communities to influence these costs and benefits. Key areas of government policy that influence the distribution of costs and benefits include, for example:

- **Allocation of mining revenues:** For example, the Royalties for Regions (RFR) program of the Western Australian Government was specifically designed to return 40% of the mining royalty stream to communities associated with mines.<sup>50</sup> In the Pilbara, for example, this had a significant effect on the provision of community infrastructure, including a town hub with state-of-the-art accommodation, restaurant, bar and coffee shop facilities as well as a community sports and conference centre in Karratha. These were built to attract families to relocate to Karratha. As noted above, the political dynamic is important in determining the distribution of benefits to communities from mining through the RFR program in Western Australia, with the Nationals in the coalition state government leading the initiative. Other states have similar programs, but the size of royalties and benefits that have been returned to communities are not of the same significance.<sup>51</sup> Knowing which political parties are likely to support a greater redistribution of royalties to remote areas can be key for communities in targeting political parties and government to garner support.
- **Provision of education and training to prepare people for jobs in mining:** Mining companies and state governments often set targets for job creation and training for projects. This reflects the political interest of governments to provide education, jobs and income and of the mining company to prove the benefits from the project, which facilitates approval from government. This can form part of the agreements developed between the state and the company. Communities then have an opportunity to influence these agreements; the targets for training positions, jobs and income; and how company performance is monitored, encouraged and enforced. For a mining company, the cost of providing training specific to the mine for community members may not be significant yet may present opportunities for building human capital in the community instead of flying workers in.
- **Provisions of services and infrastructure to mining towns:** As noted in [Module 2](#), mining companies have to construct a range of essential services that can also benefit communities: power, transport, communication, water supply and emergency services are examples. These services may be provided through public-private partnerships in which case the state government contributes; however, a city-centric state government may choose not to provide these services where the location is remote and the population small. In this case, it may not require too much extra money for the mining company to provide these services to communities, if they are already building them for the mine. However, when the mine shuts down for a period or closes all together, there is an issue of how to continue providing these services. For example, in the work on transitioning Leigh Creek following the closure of the coal mine and power stations at Port Augusta, South Australia,<sup>52</sup> there is a definite role for the state, particularly given the original mine was run by a state-based corporation.
- **Environmental management and monitoring:** The state has a distinctive role in ensuring that all environmental and health requirements are met during all phases of the mine lifecycle. Companies are typically required to mitigate

<sup>50</sup> Department of Regional Development (2014)

<sup>51</sup> Blackwell & Dollery (2013b)

<sup>52</sup> For more discussion on the dependency of regional communities on remote mining towns for essential services, see Robertson & Blackwell (2015) and Robertson et al. (2017).





environmental impacts as part of their mine lifecycle and environmental planning and to regularly monitor impacts and report to the relevant responsible state agency – for example, the Department of Environment or Environment Protection Agency. Therefore, members of the community should check the appropriate plans (What impacts are identified? Are they correct – are there some missing? Do the impacts reflect local conditions, and are they likely to be more or less significant when local conditions are more accurately considered? How will the impacts be mitigated, and will these measures work?) at the project approval stage of the mine lifecycle. This is critical for communities, as is ensuring that mines meet their promises throughout the phases of the mine lifecycle. Again, it may not cost the company too much more, in the overall cost of the mine operation, to deliver significant additional environmental benefits to a local community.

Blackwell and Dollery<sup>53</sup> document the flows of benefits from mining to the various factors of production via land, labour and capital through rent, wages and profit. Included in these articles are example assessments of the return benefits from mining through these streams, including royalties. Blackwell and Dollery find that there are significant benefits derived at various spatial scales and to various owners of the factors of production. It is up to communities to understand the political dynamics and statutory decision-making in Australia's federal system so they can gain some share of the benefits afforded to the state.

In addition to benefits, the state can incur costs from mining activity and become ultimately responsible for any pollution or ill effects (social, cultural, economic and environmental) that result. The full range of costs from mining, particularly the social and cultural costs, are documented in the literature.<sup>54</sup>

## Past relationships with communities

The state in Australia, through some of its representatives, has recently been perceived by

communities and the media as having deceived and acted dishonestly, particularly in regards to previous NSW Ministers and their corrupt dealings and interests in mining development.<sup>55</sup> Similarly, there have been significant community and cultural conflicts, including significant trade-offs identified for agriculture, racing and wine industries over mining approvals and access to land.<sup>56</sup> For these reasons, local communities are very sceptical of the role played by and the interests of the state in mining. How these relationships and feelings develop over time will depend on how the industry and government respond to the needs of communities.

## The Crown is responsible for the resource, consequences and recourse

The state – being custodians of the resource on behalf of the Crown and the Australian public – are ultimately responsible for how it is explored, extracted and processed across all phases of a mine's lifecycle. Each state or territory will have slightly different laws relating to exploration, mining and processing and the effects on bystanders from these activities, including environmental costs and social and cultural costs and benefits. The laws, legislated by Parliament, are inherently designed to reduce or mitigate these externalities, but in practice they may not always do so. It is important for communities to understand this, and to know what recourse they have where the government has not acted properly.

## Irreversible damage to social, cultural and ecological systems

Sequential and multiple use – where a resource can be mined, then the site rehabilitated for another use – is a natural resource management term. However, mining can bring high risks of persistent and irreversible damage to social, cultural, environmental and ecological systems; in these cases, sequential and multiple use following mining is not possible. On the other hand, mining can provide critical and enduring inputs to society that help reduce waste and pollution (e.g. stainless steel water bottles are more durable than plastic ones).

<sup>53</sup> Blackwell & Dollery (2013a, 2014)

<sup>54</sup> For example, see Robertson & Blackwell (2014), Robertson (2016)

<sup>55</sup> For example, see ABC News (2014)

<sup>56</sup> Lock the Gate Alliance (2016), Briggs et al. (2015)



In cases where the risks and consequences for damage are unacceptably high or where spiritual and cultural heritage is undermined, exploration and mining for the resource should not be left to market mechanisms. The state (or other institutions) should intervene to prevent any enduring excessively high cost to community, society, culture, the environment and ecology.<sup>57</sup>

### What to consider: How has government responded to harm in the past?

A community should review government's past handling of resource development and consider how the government has attempted to rectify:

- any environmental damage to a local area through polluted waters, land and air as well as noise pollution
- social damage that may include undesirable social change, a transient workforce that does not contribute to the local community or its groups, undesirable goods and services being provided to the mine workforce that are not desired by the local community group (e.g. sex industry, gambling, alcohol, drugs, etc.)
- economic damage that may include undesirable impacts on local markets such as higher costs of labour, equipment, services, land and property or, once the mine has gone, a collapse of prices for these markets, creating significant losses for local people and businesses.

Responses to these questions will provide a good indication of what to expect in terms of how a community is likely to be treated by the state throughout the mine lifecycle. State agencies may have an excellent history of avoiding, offsetting or reducing environmental, social and economic harms. In contrast, there may be a history of state representatives being bought out by companies<sup>58</sup> or of local community leaders, such as in local government, selling out the overall wishes of the local people.<sup>59</sup>

[Box 6](#) provides some explicit examples of government agencies or institutions and what to expect and how and when to engage with them.

<sup>57</sup> Blackwell (2016b)

<sup>58</sup> ABC News (2014)

<sup>59</sup> Besser et al. (2016)

[Table 10](#) provides an outline of the key legislation and regulatory frameworks for resource companies. Knowing which Acts apply and how they apply to regulate the mining sector is important to how communities can influence mining.

### Regional Partnerships

Another instrument that brings together state and local governments and mining companies are Regional Partnerships. These have been shown to improve negotiations and relationships between mining companies, government and local people.<sup>60</sup>

### The courts and legal avenues

While they are an apparatus of the state, the courts are a critical element in deciding conflict over resource development. The courts create a body of law known as the common law, which is distinct from legislation, or state-made law. Indeed, the courts contribute to interpreting the law in Australia; as a result of court cases, laws are often reformed or newly created (e.g. the *Native Title Act 1993* evolved from the Mabo and Wik cases). Though the courts are a tool available to individuals, the cost of pursuing action in the courts can be very high.

The legal avenues for communities to deal with mining projects include:

- Legal counsel with a full-cost law firm (the first initial consultation may be free, and some firms offer 'no win, no fee' in compensation cases, e.g. [www.shine.com.au](http://www.shine.com.au), but communities should check the details before having a meeting with a lawyer or law firm)
- Freely available guidance materials from law sources on the web (e.g. [www.chamberslawyers.com/wp-content/uploads/downloads/2013/10/060518-Presentation-Eng.pdf](http://www.chamberslawyers.com/wp-content/uploads/downloads/2013/10/060518-Presentation-Eng.pdf) but these can be dated, so should not be relied on)
- Legal Aid in each state or territory (e.g. for Western Australia [www.legalaid.wa.gov.au/Pages/Default.aspx](http://www.legalaid.wa.gov.au/Pages/Default.aspx)), which typically provides legal support to people who cannot afford the costs of a full-cost firm

<sup>60</sup> Blackwell et al. (2015a), Blackwell & Dollery (2013a, 2014)



- Consulting local or community libraries, which typically have a legal section (e.g. [library.armidale.nsw.gov.au/find-legal-answers-2/](http://library.armidale.nsw.gov.au/find-legal-answers-2/))
- Environmental Defenders Office (there is one in each state and territory except Victoria, e.g. [www.edonsw.org.au](http://www.edonsw.org.au))
- Seeking legal advice from a university law specialist (these can be searched on the web, e.g. [www.law.uwa.edu.au/research/cmenrl](http://www.law.uwa.edu.au/research/cmenrl)).

## Issues affecting Aboriginal and Torres Strait Islander people

The state, in federal and state or territory forms, is responsible for Aboriginal and Torres Strait Islander affairs in Australia and has specific departments and agencies, with ministers at each level, to manage these affairs.

With Aboriginal and Torres Strait Islander affairs remaining a national priority, these matters are reported directly to the Prime Minister.<sup>61</sup> However, there is considerable mistrust by Aboriginal and Torres Strait Islander people and their leaders of the role that the state plays, due for example to the Stolen Generations<sup>62</sup> and mixed results from the Closing the Gap campaign.<sup>63</sup> Also, there is a view that current institutional frameworks provide inherent favour to the dominant culture, making life comparatively difficult for Aboriginal and Torres Strait Islander people.<sup>64</sup> Aboriginal and Torres Strait Islander people should therefore approach the state and its representatives with caution, being mindful that there are representatives who have good intentions and there is an evolving appreciation of the inherent biases in the dominant culture. Reading the sections above on how the decision-making hierarchy of the state is set and what incentives are at play in resource development for the state will help.

In relation to mining, there are also significant pieces of law that govern rights to land or an area which have been implemented since the 1970s in Australia. Interestingly, this is not the same in other countries – such as the United States of America

and New Zealand – where relations over traditional lands have historically been managed through treaties. Two key pieces of law are:

- **Aboriginal Land Rights Acts** (Northern Territory, Queensland, New South Wales, South Australia Victoria and Tasmania all have such Acts) providing freehold title or perpetual lease as an interest in land
- **Native title** is a bundle of traditional rights and interests for land and waters coexisting ('non-exclusive') with other rights<sup>65</sup> (like pastoral leases), recognised through the common law and determined by the Federal Court, High Court and possibly some state and territory courts. However, 'exclusive possession' native title also exists and includes the right to occupy and possess an area, typically unallocated Crown land or areas that were previously held or owned by Aboriginal people, to the exclusion of all others.<sup>66</sup>

## Aboriginal land rights Acts

The Aboriginal land rights schemes have the purpose of returning lands to Aboriginal and Torres Strait Islander people and establishing land councils to manage these lands. Not all Acts are the same, so the locally relevant Act should be consulted. For example, in New South Wales the *Aboriginal Land Rights Act 1983* (NSW, section 3) has the purpose of:

- providing land rights for Aboriginal and Torres Strait Islanders in New South Wales
- providing for representative Aboriginal Land Councils in New South Wales
- investing land in those councils
- allowing for land and other assets to be acquired, managed by or for those councils
- allowing funds to be allocated to and by those councils
- allowing community benefit (including funeral funds, residential accommodation, education and training, scholarships, cultural activities, and child and aged care) schemes by or behalf of those councils.

61 Department of the Prime Minister and Cabinet (2016a)

62 Australians Together (2014)

63 Department of the Prime Minister and Cabinet (2016b).

64 Krakouer (2015)

65 'Native title exists alongside and is subject to the rights of other people in the same area, e.g. people with leases, licences or a right of public access will continue to have those rights and native title must give way to people exercising those rights.' National Native Title Tribunal (2007, p. 2)

66 Kimberly Land Council (2014)





## Box 6: Explicit agency examples and what to expect

**Regulators:** These are usually state based. They provide the regulatory frameworks and ensure that companies meet the basic minimum standards in relation to environmental impact and, to a lesser extent, the impact on communities. Often regulators follow risk-based approaches to manage the risk of companies not complying with the rules. Most regulation is administered at a state level through relevant mining Acts (in each state and territory), but at a federal level the EPBC Act can also trigger regulatory action where there are threats to significant species or heritage assets. Since 2013, there has also been a 'water trigger' under the EPBC Act, which 'allows the impacts of proposed coal seam gas and large coal mining developments on water resources to be comprehensively assessed at a national level'.<sup>1</sup>

Regulatory staff are often highly technical and transparent in their processes and also willing to listen and incorporate community feedback, as long as it is consistent with the requirements of legislation. This effectively means that feedback given early in the mine lifecycle, prior to government approval, has more influence. Once approval is given, it is much more difficult for communities to influence the process unless the company has breached a specific requirement, such as the EPA Act. However, regulators (and government agencies and ministers) are still sensitive to SLO issues and community opinion. They also do not want communities to become anti-development, as this reduces economic opportunities for the state.

**Local government:** These are local players that sit outside the state or territory resources jurisdiction (area of law) but are critical in two respects. Firstly, they can help communities adjust to some of the impacts of mining, such as pressure on infrastructure and services. Secondly, they can help provide vision or strategic direction for the community that can form the basis for how resource companies can provide community benefit, including through collaboration with other groups. This can be vital for making sure that company CSR resources are put to best use and lead to long-term community benefit. It is worth communities seeing whether the local government has a strategic plan and how it intends to respond to the resource development.

**Natural resource management organisations:** These organisations often partner with resource companies to ensure that the company's natural resource management activities link with strategic natural resource management occurring in the region, such as pest, plant and animal control and revegetation. They can be excellent advocates for improving company practices, as they have a mandate to protect natural resources and will, where they have capacity, be aware of what is happening at the site or operational level at the mine. They are also good at creating multi-stakeholder projects that have a cost-sharing model, lessening the burden to companies and communities alike.

**Environment Protection Agency:** For each state or territory, they administer a specific Act to protect the environment and water resources. Mine sites or development sites are exempt from these Acts until there is some discharge from the mine into adjoining water, soil or air. This triggers the EPA Act, and EPA officers will be required to attend and monitor the breach and, where required, take compliance action.

**Regional Development Boards:** These are government-funded boards that aim to improve economic development opportunities in regional and remote areas. They advocate for private and public investment in regional communities to improve outcomes. They can collaborate with resource companies to scope initiatives that help communities and ensure their long-term viability. They are also often pro-development but with a broader mandate.

**Land Councils/Native Title Services:** These are explained in more detail in the section on Land Councils and Native Title Services.

<sup>1</sup> Department of Environment (2016)

Some land rights Acts are explicit about the treatment of mining on Aboriginal land. For example, in New South Wales, the Act states that:

- any transfer of claimable lands to an Aboriginal Land Council includes the vesting of title to the mineral resources and other natural resources contained in those lands [s. 45(2)] unless these rights were already vested in another person other than the Crown [s. 45(3)]
- consent for mining must be obtained from the Aboriginal Land Council before mining operations (including exploration) can commence – a local Aboriginal Land Council can only provide

this consent if the New South Wales Aboriginal Land Council or a court (in the case of a dispute between the two) approves [s. 45(4 & 6)]

- terms and conditions can be set by the Council, including payment of fees or royalties, for these mining operations [s. 45(5)]
  - these fees and royalties must be paid to the Mining Royalties Account [s.46 (2)] of the New South Wales Aboriginal Land Council and not to the local Aboriginal Land Council [s.46(1)]
  - 40% of the fees and royalties will be paid to the New South Wales Aboriginal Land Council



**Table 10: Key legislative frameworks for resource companies**

Legislation/ Regulation	Jurisdiction	Purpose	Key elements
<b>Resource development Acts</b>			
Mining Acts*	State	Granting and management of rights to prospect, explore and develop mineral leases; regulate mining activities and ensure consistency with other Acts	Regulate mining activities, including key approval processes (notice of intent, government assessment and approval) and ensure consistency with other Acts
Government Agreements	State	Granting and management of special rights for major mineral or energy projects	All elements are ratified in Parliament under a single Act that overrides other Acts; include mining area, rights and obligations, royalties
Petroleum Acts	State	Granting and management of licences to explore and produce petroleum, including coal seam gas	Regulate oil and gas, including key approval processes, and ensure consistency with other Acts
Offshore Petroleum Acts	Commonwealth/ State	Granting of rights for offshore petroleum developments, first three nautical miles in state waters, then federal waters	Regulate health and safety, well integrity and environmental management of offshore petroleum exploration and development activities
<b>Environmental Acts</b>			
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Commonwealth	Protects matters of national environmental significance	Environmental assessment and decision-making for projects likely to have a major impact
EPA Acts	State	Protect environment at state level, including air, water, noise and land; granting of licences for major developments	Stipulate undertaking of assessment of environmental impact for major developments, controlling polluting activities and issuing licences for major polluters
Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009	Commonwealth	Environmental regulations for offshore petroleum developments	Provides summary of an environmental plan
<b>Acts covering concerns of Aboriginal and Torres Strait Islander people</b>			
Aboriginal Land Rights Acts	Commonwealth/ State	Establish arrangements for and rights over Aboriginal and Torres Strait Islander land and establishment and operation of Aboriginal Land Councils to manage this land and related issues	Aboriginal Land Councils manage the land and related issues, receive the royalties from mines and provide for the power of veto in the Northern Territory for mining on Aboriginal land
Heritage Acts	State	Protect Aboriginal cultural heritage	Requirement to obtain a heritage clearance
<i>Native Title Act 1993</i>	Commonwealth	Protects native title against any future dealings of land, including resource development	Right to negotiate, including granting of permit or title, negotiation of Land Use Agreements
<b>Behaviour of corporations</b>			
<i>Corporations Act 2001</i>	Commonwealth	Develop laws regarding corporations	Special provisions regarding conduct and reporting of resource companies
National Cooperatives Law	State	Provide for laws in relation to cooperatives and mutuals	Special provisions regarding conduct and reporting of resource cooperatives or mutuals

\* New South Wales: *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*; Victoria: *Mineral Resources Development Act 1990*; South Australia: *Mining Act 1971*; Queensland: *Mineral Resources Act 1989*; Western Australia: *Mining Act 1978*; Tasmania: *Mineral Resources Development Act 1995*.



and 60% to the local Aboriginal Land Council [s. 46(3a7b)]

- gold, silver, coal, petroleum or uranium mining operations on Aboriginal Land Council lands, or for other minerals on lands which had pre-existing rights to the transfer to the Council, are excluded from this section of the Act (s. 45(12)).

In contrast, in the Northern Territory, Aboriginal Land Councils (in consultation with and consent from the Traditional Aboriginal Owners) under the *Aboriginal Land Rights (Northern Territory) Act 1976* (s. 42(1 & 6)) have the power to veto (or to block) resource development on Aboriginal land. This is a unique power within the Commonwealth legislation: it enables these Land Councils to become decision-makers along with mining companies and the state. This is markedly different from the states, where Aboriginal and Torres Strait Islander representatives do not have this power. Furthermore, the *Aboriginal Land Rights (Northern Territory) Act 1976* is far more expansive and detailed on the equitable process for the granting of exploration licences and mining interests than the New South Wales Act.

It is imperative that communities read the relevant state or territory's legislation, or have a legal expert interpret the legislation, so they can make informed decisions.

## Native Title Act

The *Aboriginal Land Rights (Northern Territory) Act 1976* as passed in the Australian Parliament set a precedent for Aboriginal and Torres Strait Islander wellbeing and power across the country. Eddie Mabo took a case (*Mabo v Queensland (No.2)* (1992)) to the High Court in 1982 on the grounds that Queensland did not recognise that Indigenous people had a system of law and ownership before European settlement. A decade later, the High Court ruled that Indigenous traditional title prior to European settlement was valid and was referred to as native title.<sup>67</sup> This decision meant the native title could exist anywhere in Australia as long as:

- Indigenous people had maintained Aboriginal law and customs on land

- no other titles extinguished (or finished) the native title by allowing ownership of that land.<sup>72</sup>

These common law principles were formalised by the Australian Parliament with the *Native Title Act 1993* which had the purpose of clarifying the legal position of landholders and the processes to follow for the claiming, protection and recognition through the courts of native title.

Uncertainty remained over whether native title claims over pastoral leases (40% of Australia's land area) would extinguish these leases. In *Wik Peoples v Queensland* (1996), the High Court found that native title rights could coexist with other land interests on pastoral leases. In the case of conflict over rights, the rights under the pastoral lease would extinguish the remaining native title rights.

Native title therefore provides Aboriginal and Torres Strait Islander people with:

- procedural rights, in particular, the 'right to negotiate', that native title claimants enjoy under native title rights. These rights mean that the standing of native title claimants in legal proceedings may be clearly established, which may not be the case for non-Aboriginal or Torres Strait Islander members of communities
- limited rights that do not constitute a veto over projects, unlike the *Aboriginal Land Rights (Northern Territory) Act 1976*, which does
- potential protection given the legal constraints and obligations the *Native Title Act 1993* places on the state and on developers
- a great variation in the extent of rights and the accompanying bargaining power enjoyed by native title claimants or holders in different regions of Australia (e.g. the stronger rights in Cape York, Queensland; the Northern Territory; and the Kimberley, Western Australia on the one hand versus the much-diluted rights in the Hunter Valley, New South Wales; central Queensland; and the Western Australian goldfields on the other)
- decades of agreements that are relevant to all communities. Of particular note is the backlog and apparent slowness of claims being ratified, such that it can be some time between preparing and lodging a claim and receiving an outcome.

<sup>67</sup> Central Land Council (2017b)





Preparing a claim requires considerable resources and expert legal skills, which are expensive.

## Land Councils and Native Title Services

Each state or territory has statutory authorities called Land Councils or Native Title Services that help manage these issues. These authorities work within specific legislative frameworks to represent Aboriginal and Torres Strait Islander interests in the development process and, in some jurisdictions, help redistribute some of the returns from mining.

For Aboriginal and Torres Strait Islander groups that have legal rights to land, these authorities help them negotiate agreements with resource companies to maximise benefits for communities, including royalty payments. The authorities can also provide support with statutory obligations under native title, such as running Prescribed Body Corporate and governance arrangements. In some jurisdictions, they have also helped facilitate some innovative projects from resource company royalties or payments, including those that help create long-term benefit.

In general, for Aboriginal and Torres Strait Islander groups these Councils and Services can be considered allies, but there is also merit in Traditional Owners becoming independent in respect of their own governance processes.

## Conclusion

In this module, we have outlined the critical role that the state plays in making decisions over the exploration, extraction and management of the lifecycle of resource development. Ministers, especially the Mining Minister (approval of mines) and Minister for State Development (state agreements over mining) have ultimate responsibility for how mineral resources are developed in the states and territories of Australia, and these are the key ministers to influence in decisions over resource development. The Treasurer is also an important minister to influence because this person, with the Minister for Mines, determines royalty arrangements. A significant source of revenue for many states or territories are resource royalties, so finances and the provision of public services are supported by some of the revenue

flows from mining development. Similarly, the campaigns of political parties can be funded by the resource industry. Politicians are also focused on re-election, particularly where their seat is marginal, which can affect the negotiating power of communities. Knowing how the state and its representatives have treated communities in the past is important for building relationships or alternative governance arrangements in the future.<sup>68</sup> There are key agencies within government that may help communities such as regulators, local government, environmental protection authorities and natural resource management boards. For Aboriginal and Torres Strait Islander people, there are also Aboriginal Land Councils and Native Title Services. Aboriginal land rights Acts have the potential to provide rights to Aboriginal land and, in the Northern Territory, a right to veto resource development, while Native Title rights may mean coexistence with other land uses, exclusive possession or extinguishment of certain rights in conflict with pastoral lease rights, but they do deliver a procedural right to negotiate (where non-Aboriginal community members have no such rights). Such rights and agencies can provide opportunities for leveraging long-term benefit to communities from mining in negotiations with the state and companies.

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68 For example, see Blackwell et al. (2015a).





# Module 5: Decision Influencers – NGOs and Consultants

## 5 Module Five

### Introduction

In this module, we provide a description of the role of non-government organisations (NGOs) and consultants. Although here they are grouped together, they each have unique stakeholder positions in influencing decisions made over resource development. Both can be important advocates for communities or provide a conduit to changing company views and policies. The focus in this module is on the role played by NGOs, but some mention is made of the important role that consultants can play for communities in influencing company and state decision-making.

The remainder of the module discusses the following topics:

- NGO definition within the mining context
- NGO interest, character and likely behaviour
- NGO decision-making hierarchy and community processes for working with NGOs
- benefits (and costs) of NGOs from the project
- NGO past relationships with communities and companies
- NGO issues affecting Aboriginal and Torres Strait Islander people
- uses and management of consultants.

The module ends with some concluding comments.

### Defining NGOs in the mining landscape

NGOs<sup>69</sup> are not-for-profit community-based organisations that have a clear mandate to address a key environmental, social or economic problem within society. NGOs work to help deliver outcomes that meet key ethical and moral values, including those within resource development such as:

- holding companies to account in cases of poor practices
- representing community and environmental interests
- ensuring that broader regulatory and policy frameworks reflect community and society values
- working in collaboration or partnership with companies to improve their practices and the outcomes of CSR.

NGOs have a history of wielding influence over decision-making in the resources sector. Because the legal frameworks in Australia limit how such groups and communities can influence development through restricted rights to freedom of expression, association and peaceful assembly,<sup>70</sup> NGOs have had to do this through forming constructive relationships with companies.<sup>71</sup> Their influence is also through striking a chord with public sentiment and improving companies' SLO

<sup>69</sup> Throughout this module, NGOs are referred to. At the end of the module we have a section on consultants because their incentives (seeking revenue and profit or profile) are different from those of NGOs.

<sup>70</sup> Human Rights Law Centre (2015)

<sup>71</sup> Fordham (forthcoming)





by aligning company practices with society's expectations to deliver social, environmental and economic benefit.<sup>72</sup> International NGOs can bring international concerns for local issues to bear on domestic decision-making over resource development and should be considered by communities in the range of NGOs they may work with.

Among other things, NGOs have been able to:

- question the environmental and social appropriateness of developments
- improve capacity for communities to be informed and have their rights upheld
- identify environmental degradation problems created by developments and initiatives to compensate for this
- identify the social costs of mining and how to mitigate these
- ensure communities maximise the benefits from mining.

The ideal NGO is run by very committed staff and typically has a clear mandate from an elected board, from the NGO members or from the interest groups the NGO represents. It also has good linkages with communities and other stakeholders. Political and organisational realities and personal agendas of individuals within an NGO drive its actual behaviour and its use to communities.

A range of NGOs led by the mining industry have policy, programs and projects to address local concerns at various scales. For example, the Minerals Council of Australia has state offices and an Australian head office, and there are NGOs with global reach such as the International Council on Mining and Metals ([www.icmm.com/](http://www.icmm.com/)) and the metal-specific NGOs such as the World Gold Council ([www.gold.org/](http://www.gold.org/)). These institutions operate as lobbying groups and market developers for member mining industry companies. They help the industry improve its performance, as measured through profit but also through CSR.<sup>73</sup>

## Interests, character and likely behaviour

To better understand the role of NGOs and how they can potentially work within the community and resource company dynamic, it is useful to identify the types of NGOs found in this space. The literature provides complex typologies of company–government–NGO relationships,<sup>74</sup> but here we focus on the kind of approach particular NGOs take.

The first are *adversarial* NGOs, which have strong views and mandates around key issues such as environmental protection, human and social rights and development of mining's footprint and are opposed to certain types of mining, for example, uranium. They do not seek to work cooperatively with resource companies; rather, they undertake active campaigns to address community or environmental interests in a conflicted environment. This may, of course, be because of the historical practices of the company or of the government or the experience of the NGO and may better reflect the relationship rather than the organisation itself.

Adversarial NGOs typically work through political lobbying, gaining grassroots support, advising communities, exposing malpractice and actively using the media. Such groups have a genuine place and have helped to ensure the protection of key community values, for example in the Tasmanian dams case. They can help communities get better outcomes during the negotiation process and help provide a watchdog role during mining development or operational phases (see [Table 11](#) for more detail).

The second type of NGOs are *cooperative*. These also have clear societal mandates and objectives; however, their approach is to work cooperatively with resource companies to help achieve these objectives. They wish to extend the benefits of the resource development and build close relationships with companies by directly advising companies or developing projects and initiatives that companies can join. Such strategies can help ensure that the benefits from mining are greater and potentially endure beyond mine closure. Again, the given NGO may have become cooperative through their

<sup>72</sup> Robinson (2004), Fordham (forthcoming)

<sup>73</sup> Maxwell Stamp PLC (2015)

<sup>74</sup> For example, see Coston (1998)



**Table 11: Adversarial NGO examples and their roles in the resource sector**

NGO type	Ec.*	Env.*	Soc.*	Comment
Anti-development, particularly in agricultural areas, e.g. Lock the Gate	✓	✓	✓	Serve to represent interests of landholders impacted adversely by resource development and prevent loss of agricultural land by restricting development
Environmental protection, e.g. Wilderness Society, Australian Conservation Foundation		✓	✓	Ensure that development does not adversely impact sites of high wilderness significance and that communities have a voice
Legal rights of communities, e.g. Environmental Defenders Offices		✓	✓	Help communities understand their legal rights and the conditions of the development so they can make informed choices. Potentially strengthen community capacity to say no
Groups against specific mining activities, e.g. anti-uranium		✓	✓	Opposed to specific types of mining on environmental grounds, e.g. coal and uranium due to local impacts or influences such as climate change

\* Ec. = Economic, Env. = Environmental, Soc. = Social

**Table 12: Cooperative NGOs and their role in the resource sector**

NGO type	Ec.*	Env.*	Soc.*	Comment
Natural resource management, e.g. NRM organisations, environmental centres	✓	✓	✓	Involve companies in processes of NRM, e.g. weed control, soil erosion, water management and environmental restoration
Social welfare organisations, e.g. Centacare/Anglican Church	✓		✓	Seek to ensure companies build in social welfare programs at mine site or assist communities to adapt to social impacts of mining
Environmental restoration, e.g. Greening Australia, Biodiversity Trusts		✓	✓	Link companies to strategic restoration and habitat management programs; engage with communities through these processes
Business and economic development, e.g. Many Rivers, business consultants	✓			Work cooperatively with communities and companies to achieve economic and business development outcomes
Climate change, e.g. Aboriginal Carbon Fund	✓	✓	✓	Broker carbon capture schemes between company and community to lead to multiple benefits

\* Ec. = Economic, Env. = Environmental, Soc. = Social

historical experience in dealing with government or companies.<sup>75</sup>

Such groups recognise that they do not necessarily agree with everything companies do, but that significant outcomes can be achieved by working directly with companies and influencing their processes.<sup>76</sup> Cooperative NGOs contribute actively to mine-site rehabilitation, environmental restoration and biodiversity offsets, human and social rights and business development (see [Table 12](#) for more detail).

<sup>75</sup> It may be the relationship itself that is one of cooperation or adversary, rather than the type of, or a particular, organisation (Coston 1998, Fordham forthcoming). Working with this framework can help shift a relationship from being adversarial to one that is cooperative and provides enduring value.

<sup>76</sup> Werker & Ahmed (2008), Nelson (2007)

## Decision-making hierarchy and processes

Usually NGOs have a board or executive and a constitution, charter or strategic plan that governs their operations and activities. The head of the board or the President will be the key decision-maker. Some NGOs have management groups that include full-time or part-time employees, and these are usually answerable to the executive or the board. The leader of this management team will usually be a CEO. However, the NGO decision-making hierarchy typically differs from that of a company or the state. NGOs are, on average, smaller in scale and have more limited resources and decentralised decision-making. In some cases, this means that a committed and effective campaigner may have more power than a part-time President who is located in a capital city and has limited resources available to monitor what is happening 'on the ground'.



## Box 7: Decision-making process in working with NGOs

**Step 1:** Identify how the community wants to work or engage with NGOs and which type of NGO is best suited for this:

- For NGOs that will work cooperatively with companies and extend outcomes of CSR, refer to the section on Cooperative NGOs.
- For NGOs that will help protect specific environmental values or community interests, refer to the section on Adversarial NGOs.

**Step 2:** Find out what NGOs exist, the people involved and what they are doing:

- Search for the NGOs active in the area: use community directories, word of mouth, media and company websites, or search for specific organisations based on the specific area of interest.
- From these results, find out as much as possible about what these NGOs do, what role they play and how they integrate with community interests.
- Find out who the individual people are. What are they doing? What are their principles?
- Is there a gap between the NGOs that do exist and the services that are required?

**Step 3:** Decide on which NGOs are relevant and determine how to engage them:

- From Step 2, list in priority order the NGOs to be approached and the people to meet.
- Contact them by phone or email and try to arrange a face-to-face meeting.
- Have some key pathways forward but be open to discussion of possibilities.
- Consider a joint meeting with the NGO and the company as a step towards developing a cooperative relationship.

**Step 4:** Put structures in place to define and formalise the relationship:

- Define who the partners are in the relationship and governance relationships, e.g. committees, meetings, agreement, etc.
- Determine key aims and objectives.
- Determine the length of time the partnership will last and the key outcomes.
- Determine how progress will be monitored and what happens if something goes wrong.

**Step 5:** Evaluate ongoing progress:

- Take the time to evaluate ongoing progress of the partnership and what has been achieved.

[Box 7](#) provides a decision tree or series of steps that can be used when deciding whether to engage and then engaging with an NGO. The key initial task is to determine whether there is benefit for the community to get involved with an NGO and, if so, what type of NGO that would involve. This involves a combination of looking at what NGOs exist, which people lead the NGO (CEO, MD of Board, President of executive), what role NGOs are currently playing and what are the specific community interests.

[Box 7](#) outlines Steps 1–5 of the decision-making process; Steps 1 and 2 are iterative and can be done in either order.

In Step 1, consider the current stage of the mining project. At the beginning stages, independent advice and advocacy are needed, and more cooperative strategies may be more appropriate in later stages. A cooperative NGO does not need to have a current relationship with a resource company: companies will listen to community sentiment and may decide to partner with an NGO if there is a positive community view. NGOs can even be created to meet a specific need (refer to [Case study 5](#), about biodiversity offsets, in [Module 9](#)).

In Step 2, consider how NGOs position themselves in relation to the company and whether this might affect cooperative relationships with the company. Ensure that the NGO does not seek to represent the community view or speak on behalf of the company in order to further its own interests. Also, ensure that the NGO has sufficient information and knowledge about community expectations and is not making inaccurate statements, which could threaten the credibility of the relationship and may sensationalise issues. A good test of an NGO's ethics is whether the group is prepared to converse directly with the company; the two sides may never agree, but this demonstrates capacity for acting fairly.<sup>77</sup> Look at the standing of the NGO in the community: is it considered reputable? Does it have a good history of reaching its goals? Does it

<sup>77</sup> 'Acting fairly' is a plain language term for what is known as 'procedural fairness' or 'natural justice'; see Ombudsman Western Australia (2009) for more detail. In reaching a decision and regardless of the final decision made, if the procedure is fair, the parties involved may be happier than when the procedure is unfair.





make its decisions based on reputable science and principles?

Step 3 involves choosing a particular NGO and engaging with them as outlined in [Box 7](#). Using the information gained about relevant NGOs in Step 2, put the NGOs in priority order from most to least useful, and establish who the key contacts are for each NGO. Collect contact details for those individuals. Move through the list and make contact with those NGOs, in priority order, via email or phone and try to set up a face-to-face meeting. Have a set process or agenda, as well as clear goals, for the meeting, but remain open to other views – the NGO may help in defining community goals. Track progress against these goals and follow up promptly on promised actions; keep minutes of these meetings for these purposes. Always meet in pairs or more with NGOs so there is a witness, should matters become conflicted. Consider arranging a meeting between the company and the NGO to help develop some consensus.

Step 4 is critical to protecting community interests and expectations. This stage helps to clearly detail the type of partnership or arrangement formed. The arrangement may be a company–NGO or community–NGO agreement depending on the type of NGO and their role. Irrespective of legal jurisdiction (legal or geographical boundary), having the agreement in writing is critical for rectifying a situation if things do not go as planned, if either party changes their mind, or if either party does not do what they said they would. Finally, Step 5 is important as it is the opportunity to clarify the success of the relationship, what has been achieved and what can be improved.

## Benefits (and costs) from the project

NGOs are likely to gain benefits (and incur costs) from engaging with companies and communities within a resource development context; the recent proliferation of NGOs is testament to their success in this space.<sup>78</sup> NGOs can draw on their strengths as independent and ethical organisations – regardless of the political interests at play in resource development – to garner financial and resource support from companies, communities and

governments alike. However, the costs of reduced public or company support may prevent them from being associated with a particular issue or being financially supported by a particular company or industry. Understanding the benefits and costs to NGOs in developing relationships with resource companies or mining-affected communities is important to understanding how they will act and whether these actions will meet community expectations.

There are costs and benefits for communities as well as for NGOs; [Table 13](#) outlines the benefits and costs for communities from dealing with the two types of NGOs in a given resource development project.

**Table 13: Community benefits and costs of dealing with NGOs in the resource sector**

NGO type	Benefits	Costs
Cooperative	More resources; better outcomes; potential to leverage funds from other sources; potential to endure for the entire life of the mine.	Time to establish and ensure commitment
Adversarial	Access to new information; better information on which to base community decisions; gain allies and support that help increase the community's power base; can lead to better development outcomes for all parties	May impact on capacity to form constructive relationships with companies; need to ensure NGO is reputable and does not threaten credibility of process; may result in community viewpoints being hijacked by strong interest groups

## Past relationships with communities or companies

### Cooperative NGOs

There are some examples of cooperative NGOs forming very productive relationships with communities or resource companies to help achieve mutual benefit. For example, Greening Australia has had an ongoing relationship with Alcoa for 32 years.<sup>79</sup> This relationship has resulted in Alcoa developing environmental restoration capacity in the vicinity of its mine sites and in

<sup>78</sup> Werker & Ahmed (2008), Nelson (2007)

<sup>79</sup> See Fordham (forthcoming)



providing financial support for wider environmental restoration programs in the region, including restoration and habitat management which has a high community and environmental benefit. Both parties have worked hard to build and maintain the relationship over the years.

Another example is where an independent human rights organisation has been able to provide high-level advice to a global company to ensure that it develops a robust human rights policy framework and improves its human rights practices: the Danish Human Rights Organisation advised Rio Tinto on its human rights practices and devised a human rights policy for the organisation.<sup>80</sup>

### Adversarial NGOs

The Australian Conservation Foundation (ACF) has had a long-term campaign in the Kakadu region of the Northern Territory, Australia, to work with Traditional Owners to ensure that the values of the Kakadu National Park (established in 1981) are protected and that mining development does not go ahead when not appropriate.<sup>81</sup> The Ranger mine had been built in 1980, and in 1986 the ACF campaigned to help prevent an additional mine being developed in the area. That was followed in the 1990s with a campaign to oppose the Jabiluka lease to the north of Ranger. The Jabiluka lease and Ranger mine areas existed before the Kakadu National Park was established; they are surrounded by the park but are specifically excluded from its protection. Kakadu Traditional Owners are explicitly opposed to mining on any of their lands and have used mining royalty streams to try and stop mining.<sup>82</sup> The ACF (and other environmental advocacy groups) have therefore helped ensure that Kakadu National Park has been established, expanded and world heritage listed.

Another example is the Environmental Defenders Office of each state or territory in Australia, which have provided advice to communities regarding development applications within their areas and

facilitated understanding of their rights and specific aspects of any agreements.<sup>83</sup> This support means that the communities can make informed decisions to support, or otherwise, any given development.

### Issues affecting Aboriginal and Torres Strait Islander people

NGOs are generally good relationship builders and form productive working relationships with a range of actors.<sup>84</sup> They work with Traditional Owner groups across a range of issues such as mine-site rehabilitation, business and commercial opportunities and cultural heritage issues. NGOs can bring in expertise, leverage funds, help build capacity and ensure fair processes are utilised. They can also bring more rigour into the decision-making process, for example through project evaluation capacity and influencing the strategic direction of projects.

However, the objectives of the NGO can be at odds with the objectives of the Aboriginal and Torres Strait Islander people affected by a possible development. Such tension has been apparent in Australia in recent years, and there have been conflicts and controversies where NGOs have supported Aboriginal and Torres Strait Islander groups that oppose resource projects, but have later withdrawn their support and, in some cases, undermined Aboriginal and Torres Strait Islander groups preparing to negotiate with the state and developers.<sup>85</sup> In some cases, NGOs have actively intervened in internal disputes in Aboriginal and Torres Strait Islander communities, heightening conflict and supporting individuals or groups in taking legal action to oppose agreements endorsed by the majority of community members.<sup>86</sup>

Nonetheless, there are NGOs available that can help navigate through the mine application process and understand rights and obligations. They can be critical players in ensuring Aboriginal and Torres Strait Islander people have their rights upheld; this includes not-for-profit institutions,

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.* The Fox inquiry from the 1980s makes a leading and long-standing contribution to the uranium mining debate in Australia and resulted in considerable constraints and precautions being imposed on the Ranger mine.

<sup>82</sup> O'Brien J (2017) pers. comm., CEO Gundjeihmi Aboriginal Corporation, 2 March 2017.

<sup>83</sup> Fordham (forthcoming).

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> See, for example, some of the conflicts over offshore gas development projects in Western Australia as discussed by O'Faircheallaigh (2011)



such as environmental defenders and native title service organisations, as well as private consultants. Gaining such independent voice and advocacy can be an important bargaining tool in negotiating with companies and government. Such NGOs can further help navigate through the threats to cultural heritage or values of environmental significance once the development is underway.

Aboriginal and Torres Strait Islander people are often looking to gain significant community development opportunities from the resource development and lifecycle process. Independent advice and support from not-for-profit or business consultants can be invaluable in building the case for enduring financial and business benefits from the mine process. Through such advice, a number of Traditional Owner groups have employed business development officers, which has led to significant business outcomes being generated (see the case studies in [Module 9](#)).

A number of NGO groups such as Oxfam, UNICEF, Centacare and other Christian-based organisations play a key role in helping Aboriginal and Torres Strait Islander people look at projects in ways that improve their developmental outcomes. There are opportunities to link such programs to company CSR programs that deliver benefits and value-add given that NGOs or consultants may utilise consistent approaches to community development and these can be relied on across time to deliver CSR outcomes. Under such an approach, NGOs could also link with Land Council community development work and other sources of government funds.

Traditional Owners and a number of environmental organisations share a passion for site rehabilitation and rehabilitating and managing country (see case studies in [Module 9](#)). There are considerable opportunities for Aboriginal and Torres Strait Islander people to join with NGOs or resource companies to achieve those outcomes. These include through the biodiversity vegetation offset process but also through involvement in mine-site rehabilitation and determining what happens to the mine site after mine closure.

## Use and management of consultants

While the roles of consultants and NGOs in creating enduring outcomes for remote communities might seem the same, they are not. Consultants provide services to a client for a fee under a commercial arrangement. In contrast, NGOs typically already have their terms of reference and ways of operating set by the overall objectives and aims of the NGO as written into their constitution, charter or strategic plan. NGOs may deliver a service for a fee, but this would sit with the scope of their constitution and not necessarily be driven by the motive to seek profit, unlike the consultant. The relationship between communities and consultants will depend on who is paying the consultants: the community, the company, the state or the NGO.

### Community consultants

When the community engages the consultants, the community needs to manage and control them, setting their terms of reference and tracking and reviewing how they are performing, including if they are providing a good service to the community for their price. These aspects can be handled in a standard consulting contract; consultants are used to and well aware of operating under such processes.

Consultants should provide professional, efficient services. It is important for communities to set out the required work in detail in the contract, providing clauses about work that might need to be done should circumstances change.

The consultant should provide a proposal for the required work, and this document should be included in the contract. The contract should be clear on a number of matters:

- Reporting: When will reports be submitted (on a schedule?), in what format (face to face? in a document? presentation?) and to whom (who from the community?)
- Milestones and payment schedules: Which parts of the project need to be completed by when? What payments are attached to the meeting of these milestones? What percentage of each milestone has been completed?





- Risk, including conflict resolution strategies: What risks arise? Who will deal with them, and how?
- Intellectual property: Who gains what rights to the knowledge, data, methods and results created from the consultancy? This intellectual property typically goes to the client, in this case, the community. However, consultants may keep their rights over commercially valuable methodologies, data and work papers. The results in formally prepared reports are typically owned by the client, but all these aspects are subject to negotiation between the consultant and the client.

### State and company consultants

Consultants who are paid for by the company or state will have the interests of their client firmly in mind and can be regarded as representing them (refer back to [Module 3](#) for what to expect from [consultants representing] companies and [Module 4](#) for [consultants representing] the state). In this situation, communities have little control over the management and use of this group of consultants. Having said this, if the consultants are engaged to create a positive relationship with the community, then they may provide an avenue for ensuring that the company listens to the views and desires of the community, particularly where the consultant is trusted by the company and has leading-edge experience and knowledge about delivering ECVM.

### Conclusion

NGOs can play an important role in the CSR space and the relationship between companies and communities. The key decision for communities is determining their expectations in and around a resource development and how NGOs can support or hinder their objectives. There also may be existing relationships with NGOs that can be utilised. In the case where there is no NGO available to provide the service that would meet community expectations, other organisations can play the required role, including government agencies that support community desires and private consultants paid for by the community. However, consultants will be strongly motivated to look after the interests of whoever is paying their fees. Local communities are well positioned to note a void and create a new

NGO to fill this gap. Regardless of the preferred approach taken by communities, there is merit in finding out what NGOs or equivalent groups are already doing in the local region or elsewhere and how these might add to the formation and development or otherwise of relationships with companies.

Many NGOs play vital roles in developing healthy relationships between companies, government and communities, but communities need to carefully consider whether these NGOs are appropriate in their given context and how the NGOs affect the capacity of the community to engage and work with resource companies if that is what is required. Communities should seek out NGOs that are open for dialogue, that take into account scientific evidence and that apply ethical principles in the way they form decisions. Some further key reflections from this module are outlined in [Box 8](#).<sup>87</sup>

#### Box 8: Key reflections from Module 8

- NGOs have had constructive relationships with resource companies and helped improve outcomes of the mining process, but they also have helped to protect environmental values and the rights of communities.
- Where community and NGO sentiments align this can lead to extremely positive outcomes, including direct partnership with companies in resource and community development processes.
- Most CSR staff in companies see the value in forming cooperative partnerships, including with NGOs or government agencies and private consultants to build common benefits from mining. Where community aspirations can encourage the development of mutual benefit, the involvement of NGOs is likely to lead to better CSR outcomes, particularly those that secure alternative futures to mining beyond the life of the mine.

87 Fordham (forthcoming)



# Module 6: Decision Influencer – the Media

## 6 Module Six

### Introduction

The media is critical in influencing policy (including rules, legislation and regulation) in relation to the mineral industry. Recently, a number of high profile mining company owners have become highly visible in influencing national policy, particularly in relation to the taxation of mining profits or investigation into mineral production oversupply.

The mining industry in these cases was adept at influencing media reports and ensuring the position of the industry received airtime, because there were significant financial stakes – namely, preventing profit loss at the time of the mining boom. Ultimately, the tax on mining profits at the federal level was watered down from a Super Normal Profit Tax to a Mineral Resource Rent Tax; it was subsequently removed altogether after 30 September 2014.

Similarly, other actors have successfully brought media attention to the public debate to improve their bargaining power. For example, the Gundjeihmi Aboriginal Corporation, which represents the interests of the Mirarr people of the lands where the Ranger uranium mine is located, have been successful in gaining global media attention for their concerns.

Thus, all actors in the mining game can use the media to further their interests. It is a very important tool that local communities can bring to the bargaining table.

The 'media' includes all the main news, newspaper, radio and television companies. With the advent of

the internet and, in the last 10 years, social media, local issues can now be communicated to a global audience and global issues can be applied to the local context.

The remainder of this module provides some insights into:

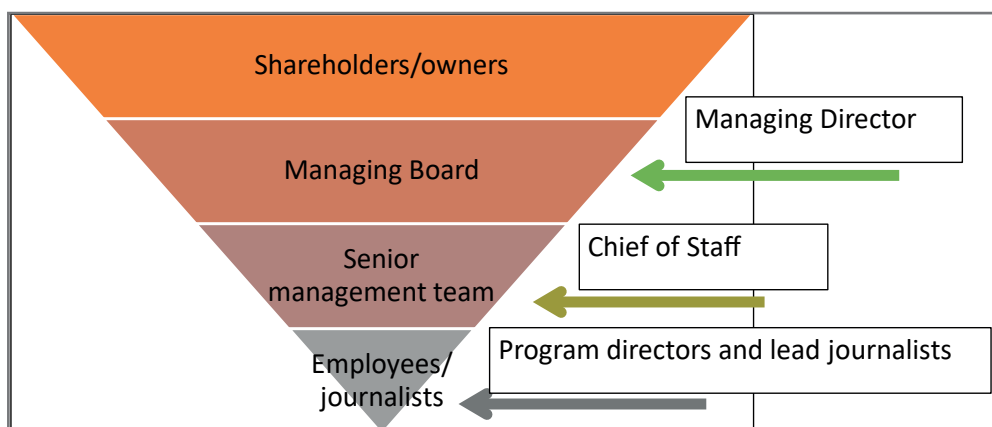
- decision-making hierarchy within the media
- interests, character and likely behaviour of the media
- gains (and losses) for the media from the project
- how communities can engage and retain media attention
- Aboriginal and Torres Strait Islander issues in relation to the media.

The module ends with some concluding comments.

### Decision-making hierarchy

Similar to mining companies, media companies have an organisational hierarchy that includes the owners of the business, a managing board and employees as outlined in [Figure 6](#). The Managing Director is the key decision influencer in the media corporation. Other important roles in a media company are the Chief of Staff and the Chief Legal Officer, who helps protect the company, particularly against legal claims for misrepresenting the facts.





**Figure 6: Typical media company hierarchy**

A media company hierarchy consists of four main levels: shareholders or owners, a managing board, the senior management team, and company employees led by a Chief of Staff. The triangle is inverted to represent where the power to control the company rests. Owners have the greatest power, but this can be checked by other owners, the Board, then the Managing Director, Chief of Staff, program directors and then leading journalists. To influence decision-making and to engage and sustain media attention, communities should target the Chief of Staff, program directors or leading journalists, who have greater power over setting the news items or agenda for the day.

As noted above, program directors and leading journalists are the key targets communities should establish and maintain working relationships with to ensure a sustained message to the public. Working through good social media outlets can also be critical in maintaining a social media presence. This may mean having dedicated part-time staff to help with these elements.

## Interests, character and likely behaviour

As is also true of the mining industry, the world media industry is an oligopoly, where a few large media houses dominate the market and have the greatest influence over what is reported. To mitigate this, each country has regulations that attempt to control the extent to which journalists are at the mercy of media owners. For sound journalism, there should be some independence between the employees or journalists (those who write the news) and those who own the media business.<sup>88</sup> Inevitably, however, owners of the business demand profits; journalists whose media reports do not sell will not continue to be employed and reported.

Because sensational stories sell, there is a strong motive for the media to distort the facts. Anyone who has been involved in a media release will have experienced this personally; in fact, this is

an excellent way to learn how the media operates and how to sell a particular viewpoint in the best possible light. Most organisations have media or communication units because these specialists know how the media works and are experts in ensuring that the organisation's best interests are presented. These specialists can also protect the organisation when there is negative press. Note, however, that some people believe that all news is good news regardless of whether it is positive or negative; it just depends on how it is framed.<sup>89</sup>

Various organisations offer short courses in dealing with the media. For example, many universities and some TAFE colleges offer short courses to their staff and students in media skills,<sup>90</sup> and some companies offer free courses.<sup>91</sup> Community members engaging for the first time with the media are encouraged to enrol in such courses. The key advice included in these courses is to prepare notes and stick to key messages throughout the interview or media release.

Australia has a full range of media companies, including free-to-air and commercial operators. There are also media companies (called a 'statutory corporation') such as the Australian Broadcasting Corporation (ABC) that are owned and funded by

<sup>88</sup> Iggers (1998)

<sup>89</sup> de Vreese (2005)

<sup>90</sup> University of New England (2016)

<sup>91</sup> For example, see Probono Australia (2016), Luxium Media Solutions (2016)





the Australian Government to ensure their content reflects Australian culture, has high educational and factual content, and reflects bipartisan and democratic processes as set out in the *Australian Broadcasting Corporation Act 2008*.

## Gains (and losses) from the project

The media plays a critical role in making the rest of the country aware of the problems facing remote Australia. Without stories that explain life in remote Australia, most Australians would have little understanding of the important role that mining plays in connecting remote people with the broader economy.

Most media reports are about the financial performance of the mining companies that operate in remote Australia.<sup>92</sup> The focus is on company profitability and returns to owners, rather than company relationships with remote communities or people. It is even possible that companies directly fund the media in reporting their operations; however, evidence of this is difficult to locate and would be a private and confidential matter.

Therefore, community groups and local government need to take the lead in informing the media about the broader impacts of mining and how it influences the resilience and sustainability of the remote economy. Because populations are small, the resources available to influence national policy and media representation are small. Publicly funded and subsidised media companies such as the ABC, National Indigenous Television (NITV) and Special Broadcasting Services (SBS) or the privately owned newspaper *The Australian* (which is the only national printed newspaper) may provide good avenues for communities to bring national attention to the problems faced by remote Australians.

Added to these are a growing number of online articles from media outlets such as the university-funded *The Conversation* ([theconversation.com/au](http://theconversation.com/au)) and independent media organisations such as *The Guardian* ([www.theguardian.com/au](http://www.theguardian.com/au)), which are providing informed debate.

Alternatives to mainstream media organisations should also be considered because these may

provide an unexpected opportunity for communities to have their views heard or seen more broadly across the nation or internationally.

## Engaging and retaining media attention

Being able to engage and retain media attention is important if communities are to influence decisions made about mining and how these affect the wellbeing of remote communities. Engaging and retaining media attention includes:

- developing a long-term media narrative with key messages that are constantly repeated by all community spokespeople in every interaction with the media
- taking time to build relationships with individual journalists and producers of key current affairs programs
- the trade-offs that may be required to build and maintain these relationships (e.g. giving exclusives to particular journalists versus getting a story out to as many media outlets as possible)
- the importance of timing: avoiding another news story overshadowing the desired story, and releasing information to the media at a time when it will have maximum effect, for instance when a company is raising capital on the stock exchange or when a government is approaching a key decision point.

## Issues affecting Aboriginal and Torres Strait Islander people

There are a range of particular concerns for remote Aboriginal and Torres Strait Islander communities in dealing with the media:

- remoteness and limited resources to engage with the mainstream (in the capital cities) media companies
- the media's tendency to emphasise negative aspects of Aboriginal and Torres Strait Islander lives and communities
- the media's tendency to apply double standards (e.g. questioning the legitimacy of Aboriginal and Torres Strait Islander leaders in a way that would not occur in an equivalent non-Aboriginal or Torres Strait Islander context)

<sup>92</sup> Oaten (2016), Stevens (2016)



- the media's tendency to oversimplify the complexities involved when Aboriginal and Torres Strait Islander communities deal with mining projects.

To combat (at least, in part) these barriers, communities can:

- target a number of media organisations that may be interested in their stories. For example, NITV is a relatively new media company that has a strong reflection of Aboriginal and Torres Strait Islander culture and interests.<sup>93</sup> The ABC also has a number of documentaries which address some of the problems facing Aboriginal and Torres Strait Islander people, including the *7.30 Report* and *Four Corners*,<sup>94</sup> but as noted above these can often emphasise negative rather than positive aspects.
- work with media companies that have a remote and Aboriginal and Torres Strait Islander focus (though these stories may only reach an audience of like-minded people, rather than one where the mindset needs to be changed)
- given the points above, engage with mainstream media outlets through journalists who can be trusted, who are not racist and who wish to portray the truth of a situation rather than a sensational story
- identify sources of funding, including those provided directly (yet at arm's length or independently) by mining companies for art and cultural initiatives to support the development of community media organisations that can broadcast on community issues and reflect the wishes of community people. A range of Aboriginal and Torres Strait Islander media organisations are helping to promote the innovative and positive aspects of a remote existence<sup>95</sup>
- pool resources with other communities to increase impact
- use the general media strategies provided above, such as having set messages and sticking to them when interviewed.

Having a media company that reflects the culture of the Traditional Owners in Australia is important to educating the entire Australian population about the issues Aboriginal and Torres Strait Islander people face, including those in relation to resource extraction and the bias of dominant western culture. Sustained lobbying of governments at all levels is required to ensure that these organisations continue – using the Land Councils and mining company resources may be other ways to garner resources to do this (see [Module 4](#) for more detail). This use of the media to influence public policy and resulting regulation and management of resource extraction is critical to a fair and reasonable allocation of the returns from mining to remote communities.

Some Aboriginal and Torres Strait Islander representatives and elders are aligned with resource extraction, while others are fundamentally opposed to resource extraction because it destroys mother earth and the sustainability, wellbeing and health of Aboriginal and Torres Strait Islander and remote people.<sup>96</sup> In some locations, some have argued that mining has also brought with it racial discrimination and informal apartheid.<sup>97</sup>

## Conclusion

The media plays an important role in influencing decisions made over resource extraction in remote Australia and in any enduring value that is created from mining for remote Australian towns and communities.

Mining companies, community groups and local government can all influence the media and its reporting. The oligopolistic nature of media companies means they are more likely to be influenced by the commercial interests of mining companies than by the interests of small, sparsely populated and sometimes unincorporated (local government) communities.

Media companies that require government subsidies and support, such as the ABC and NITV, provide an opportunity for the vast majority of the Australian population who reside in a few capital

<sup>93</sup> National Indigenous Television (2016)

<sup>94</sup> For example, see Besser et al. (2016)

<sup>95</sup> For example, see NITV and the short films that accompany this toolkit ([www.nintione.com.au/miningtoolkit](http://www.nintione.com.au/miningtoolkit)).

<sup>96</sup> Collins (2012)

<sup>97</sup> An example was the historically, yet no longer, 'closed' town of Leigh Creek; see Robertson & Blackwell (2015)





cities to learn about remote Australian wellbeing and the important role of remote Australia in delivering economic activity and participation in the mining industry.

A key tool for remote communities and Aboriginal and Torres Strait Islander people to have impact with the media is to target program directors or leading journalists who can be trusted with a prepared consistent story about mining and its role in remote economic development and participation. Developing relationships with these media staff – particularly those from companies which are subsidised to present factual reports of importance to Australian and remote Australian culture – is therefore critical for remote community groups. Media training for community members is also important; to prepare for interviews, people should have a script with key messages and stick to these messages.

For Aboriginal and Torres Strait Islander people who have limited resources and live in very remote Australia, funding streams provided by mining companies for the arts and culture may be critical to developing a community-based media organisation. Garnering support from the local Land Council and local, state and federal representatives can also be useful, as will working with well-established Aboriginal and Torres Strait Islander outlets. Penetrating mainstream media outlets may require joining with other communities and pooling resources.

Furthermore, it is critical for remote communities and local government to develop their social media pages and connections in order to broadcast their views more broadly across Australia and to gain support from international organisations and media interests.







# Module 7: Tools to Influence Actors

## 7 Module Seven

### Introduction

A range of tools can be used to expand the benefits and mitigate the costs of mining impacts on remote communities. These tools have some influence on the key decision-makers outlined above – namely the state, the mining company and, in the Northern Territory, Aboriginal and Torres Strait Islander people, who have the power of veto over mining on Aboriginal land (see [Module 4](#) for more detail). The success of any given tool depends on how it is used and what other tools are available to the community. All tools should be evaluated in terms of their usefulness to the community in achieving its goals. Ideally, a collection of tools should be used; however, there will also be a need to be careful with the often limited funds and resources that are available. We endeavour to demonstrate to communities how additional support can allow the use of a greater diversity of tools.

The tools include, but are not limited to:

- economic participation
  - community ownership of the mine
  - shareholder rights
  - the impact assessment law
    - community-based monitoring and mine closure planning and rehabilitation
    - risk assessment and action planning
  - corporate social responsibility (CSR) tools
    - asset-based community development
  - political support
- national and international conventions
  - the media ([Module 6](#))
  - non-cooperation or direct action
  - tools specific to Aboriginal and Torres Strait Islander people.

These are now discussed in turn, except for the media which was discussed in [Module 6](#).

This module closes with a summary of when to use what tools for which communities at the various phases of the mine lifecycle.

### Economic participation

Communities directly affected by mining may not be aware of their unique capacity to provide much-needed inputs (factors of production) to the mining process and to receive, in return, much-needed benefits. This was a cornerstone of the theoretical and applied research of the ECVM team within the CRC-REP.

Knowledge of factor share theory – the share of returns from employing various types of factors in the production process – is important to establishing an efficient and fair allocation of resources from the returns from mining.<sup>98</sup> How these returns are invested and manifested then determines the benefits that flow and whether they endure to provide long-lasting benefits to remote people. Economic theory outlines three key factors of production, with their returns:

- Land – rent

<sup>98</sup> Blackwell and Dillery (2013a)





- Labour – wages or salaries
- Capital – profit and dividends.

Despite a community being in what looks to be a unique position to supply all these factors of production for a mine, mining companies may actually rely on outside suppliers.

The first factor, land, can be owned by private interests and the Crown and can be leased or freehold. Use of this land provides rent to the owner. Exploration licences allow people or companies to look for minerals within a designated area of land, while mining leases allow access to the land and removal of the minerals in the ore body. Mineral royalties paid to the state or territory relate to the use of the finite ore body, while royalties paid to the traditional land owners provide a form of rent for use of the resource and access via the land.<sup>99</sup> However, one public policy issue in Australia is that much of the resource royalties collected by the states are not returned to the communities from where the ore is mined; instead, they end up in state or territory treasuries and are used to pay for public services – such as health, education and roads – mainly for the more populated areas.<sup>100</sup> Also, royalties received from land rights for Aboriginal and Torres Strait Islander people need to be carefully managed for them to return lasting benefits to communities.<sup>101</sup>

In terms of the second factor, labour, it is common in Australia that workers for the mine (as well as workers in other industries<sup>102</sup>) are supplied from non-local communities through a FIFO arrangement.<sup>103</sup> This may be because the mine is remote and people prefer to live near the coast or in the city,<sup>104</sup> because of the perceived or actual poor services in the remote support town nearest the mine or because the specific skilled labour is

not available locally.<sup>105</sup> Recently, there has been increased pressure, often from approving state agencies, for companies to demonstrate that they are contracting locally. For example, in the INPEX project in Darwin, special consideration is given to local contractors, including Aboriginal and Torres Strait Islander suppliers.<sup>106</sup> Sometimes, local people need training that will help them be mine-ready as employees and contractors; the mining company or its suppliers may be able to provide this training. The funding for this can be supported through partnership arrangements with local, state and federal governments and Aboriginal land councils. Community representatives should meet with the mine manager early in the mine lifecycle to ascertain the possibility of local contracting and employment<sup>107</sup> and what benefits can be provided to community businesses and employees.

As Blackwell and Dollery<sup>108</sup> have indicated in detail for the Ranger and Tanami mines and nearby community locations in the Northern Territory, local supply of some types of capital is also possible. Communities should be aware, though, that large international mining companies often already have preferred suppliers of their construction materials and equipment, using international supply chains that can lower cost of provision on a global scale. Local suppliers therefore need to be competitive in their services and prices.

Where individual communities do not have the internal resources to negotiate agreements over the provision of land, labour and capital to mining companies, support can be garnered from local, state and federal governments, Aboriginal land councils or consultants and NGOs. Consultants who are experienced in negotiating agreements for communities can be helpful, but some research will help determine if they have the right background for this kind of work, and independent referees should be sought to check on their trustworthiness.

99 See Blackwell and Dollery (2013a, 2013b; 2014) for greater discussion about land rents and resource royalties and the extent to which these revenues return and provide lasting benefit to the origin communities.

100 This topic is the focus of a current research initiative by Blackwell and Dollery (see Drew et al. 2018) which is seeking funding from government and industry to consider the issue in more detail and provide policy solutions.

101 See Blackwell and Dollery (2013b) for a more detailed discussion of returns to Aboriginal and Torres Strait Islander communities.

102 Blackwell et al. (2015b)

103 Haslam McKenzie & Hoath (2014)

104 Blackwell et al. (2015b).

105 Blackwell et al. (2014a), Blackwell et al. (2015b), Robertson & Blackwell (2015), Blackwell & Robertson (2016), Robertson et al. (2017), Blackwell et al. (2017)

106 INPEX (2016)

107 Mining companies may often set goals around local employment, including Aboriginal and Torres Strait Islander employment, and these can be checked in their annual reports. For example see Newmont (2017).

108 Blackwell & Dollery (2014), Blackwell & Dollery (2013a)





This type of checking should be done very early in the mine lifecycle.

## Community ownership of a mine

One important tool for ensuring the profits of mining are returned to the community from where the resource is extracted is for the community to have greater than 50% ownership in the mine, giving it the power to dictate how the mine is run throughout its lifecycle. Communities then become decision-makers rather than having to influence the decision-makers; their role as an actor in mining shifts to a higher level of control (see the short film for the toolkit which provides the example of Gumatj, the first Aboriginal community-owned mine).<sup>109</sup>

An alternative to ownership and operation is to own the mine but lease the various phases to other specialist companies that act as the owner's agent. Under such an arrangement, the community company is not tied to one supplier (at least not over the long term; during each contract period, the community owner will be locked in to one operator unless there is a breach of contract). Leasing out phases of the mine lifecycle can limit the risk of the community not having the expertise or experience to operate the mine.

Matters to be mindful of in taking on ownership or leasing a mine to another operator include:

- Community owners will also share in any losses from mining.
- Community owners should be aware of any obligations they will have for rehabilitation of a mine as owners, and the funds for rehabilitation should be sufficient to ensure that the community owners are not left with a large debt for clean-up.
- Community goals may conflict with mine profitability or viability. If they compromise profitability, returning the mine land to what it was before mining began may be financially impossible.
- The stakes are high: can the community run a mine profitably, rehabilitate the site and return benefits to the community that endure, while not

compromising the local culture, society, economy or environment?

Making sure these aspects of ownership or leasing are consciously and transparently accounted for in building a business case for community ownership in a mine is critical before entering any agreements with mining companies or the state. Garnering the support of the local, state and federal governments; Aboriginal land councils; NGOs; and consultants will be critical to having sufficient funding and suitably experienced people to help build the business case and make preparations for agreements.

## Shareholder rights

Another avenue to influence company behaviour is to become a shareholder in the company. Through the Corporations Acts both in Australia and in many overseas jurisdictions, shareholders have specific rights in terms of company disclosure and behaviour.

For example, shareholders have the right to view financial information about the company and, at the Annual General Meeting, shareholders have the right to raise concerns and ask questions and to expect a company response.

Shareholders receive notifications and announcements about the company and are well informed about its financial position and business strategies, so they better understand the company and its current business dealings.

Remote communities may not have sufficient money to purchase shares in the company, yet this may be a way for the company to gain its SLO, constituting a form of local – even if minority – ownership of the mine. For example, the company may give the community a share in the company, or a philanthropist or other organisation may provide support for the community to purchase shares.

## The impact assessment (IA) law

We have previously discussed in [Module 4](#), in the section about issues specific to Aboriginal and Torres Strait Islander people, the importance of land rights and native title law being used as tools to deliver benefits to communities for mining on traditional lands through royalties and,

<sup>109</sup> Go to [www.nintione.com.au/miningtoolkit](http://www.nintione.com.au/miningtoolkit) to see the short film.



**Table 14: IA stages, project approval milestones, community participation and necessary expertise**

IA stages	Project approval milestones	Community participation	Necessary expertise to include to participate
Determine if environmental impact assessment (EIA) is required	Exploration	Most mine developments in Australia require an EIA	EIA experts and lawyers, economists, environmental scientists, social scientists
Identify who is involved (levels of government, stakeholders)	Pre-construction – project feasibility	This is when particular communities are included or not	EIA expert to advise on extent of and which communities are involved and is critical when scope is too narrow
Set the scope of the project and the assessment	Pre-construction – project feasibility	Typically includes local community	EIA experts on what scope should be included and is critical where scope is narrow
Conduct the analysis and prepare the report	Pre-construction – project feasibility	Will incorporate local community impacts and consultation	At the draft stage of this report, community can provide submissions to critique any element of the report and then can push for an impact management agreement
Regulatory body makes decision	EIA typically approved, subject to a number of planned mitigation actions; soon afterwards, the mine is approved	Once the decision is made, communities can appeal but this may be expensive and require significant resources (NGOs, media, etc. may help garner support)	At this point, it is difficult to change regulator's view, but communities can appeal; will need expert legal advice at this stage
Follow-up and mitigation	Mine typically approved and project construction well underway, through to the remaining stages of the mine lifecycle	Necessary for community to conduct ongoing monitoring to ensure mitigation is undertaken per plan	Monitoring independent from that of the company will be required. Where breaches occur, there will be opportunities under the IA law to rectify any wrongs. Expert legal advice required again here

in the Northern Territory, through the power to veto a mine. The law also has a range of Acts and regulations that help set the rules for extraction of mineral and fuel resources so that costs of mine development are mitigated and benefits expanded, but here we focus on the early stages of the mine lifecycle, where the likely impacts of the mine are identified and quantified through what is termed impact or effects assessment.

The IA law gives communities the chance to provide input to the mine lifecycle; this can be part of a wider strategy for shaping a project's impact on a community. Relevant issues include:

- objection rights to the levels and scope of assessment, which can be critical in facilitating opportunities for community input – these objection rights expand as the level and scope of assessment increases
- opportunities to challenge project development assumptions about impacts and to propose more rigorous IA strategies, for instance via comments on draft IA reports

- use of IAs as a platform to push for negotiation of impact management agreements.<sup>110</sup>

Given that remote communities may lack the critical expertise, it is important that they engage trusted experts and access additional resources to do so. [Table 14](#) describes the required expertise at each stage of a mine's development and what that IA stage is. Further details on Environment Protection Agency roles in relation to a mining project are provided in [Module 4](#).

A critical task for the community in the early stage of the mine lifecycle is to consider its vision for the community and then how that vision looks with the addition of the mine. What will the mine look and feel like? What impacts are likely? Which of these can and cannot be mitigated or reduced? IA becomes an important tool in understanding the values held by the community for its future with the mine. A good introductory discussion and evaluation of the methods available to help

<sup>110</sup> For a discussion of impact agreements, see Gibson & O'Faircheallaigh (2015)



assess impacts of resource development in remote Australia is available.<sup>111</sup> The paper discusses the range of tools that can be used to assess the economic, social, cultural, environmental and ecological values of remote Australia, particularly where the community is not incorporated into a local government (i.e. it is unincorporated). It recommends integrated assessments (across economic, social, cultural, environmental, ecological and political values) and, where possible, cumulative assessments combined with remote sensing, given its recent significant advances and applications in the field.

### Community-based monitoring and mine closure planning and rehabilitation

As noted in the case studies of [Module 9](#), a range of mining-related activities involve community-based monitoring as well as mine closure planning and rehabilitation. These cases provide examples of positive relationships between local people and mining companies in delivering common benefits that have the potential to provide enduring community value.

### Risk assessment and action planning

Remote communities can use a risk assessment tool to better understand the hazards and subsequent risks of mining. The mining company will also prepare a risk assessment and action plan as part of the EIA work required under the law to gain project approval.

For the community, risk assessment and action planning improve its ability to negotiate, ensure that its needs are met and that its values across environmental, economic, social and cultural domains are considered. Community leaders can engage risk assessment experts to undertake such an assessment – guided by the case study in [Appendix A](#). Funds for the assessment could come from an outside source (local, state and federal governments; Aboriginal land councils) or from the mining company, seeking an SLO; or the work could be completed pro bono by expert risk assessors.

[Appendix A](#) is a summary of a report commissioned for this study about the Ranger uranium mine,

one of the case study locations for the ECVI project of the CRC-REP.<sup>112</sup> The Appendix describes the background of the mine; the impacts on environmental, human health, social and cultural values; and the direct and indirect hazards of the mine. It provides only an introduction to the six steps of risk assessment: identify the hazards, estimate the likelihood of each hazard, determine the consequences of each hazard, measure the risk of each hazard, develop risk management strategies and communicate the risks. In addition to these six steps and importantly for remote communities, a number of additional steps are required, including:

- asking the community to identify what they consider important and what pressures they are experiencing. This should be pursued by the community during the EIA (see IA law section above) work of the pre-construction – project approvals phase of the mine lifecycle)
- undertaking an assessment of community values against the known and perceived risks attained in the first step, to identify community perceptions of risk.

Through risk assessment and action planning, communities can incorporate risks from the mine lifecycle into their community planning. Further work is needed to make the risk assessment example provided in [Appendix A](#) applicable to the individual communities and mine types that would use this tool. Further information on risk assessment in the context of mining can be obtained from the CRC-REP commissioned report from which this section was prepared.<sup>113</sup>

### Corporate social responsibility tools

Communities can gain significant benefits by understanding and influencing the CSR processes of mining companies. Research conducted as part of the ECVI work<sup>114</sup> showed that doing so requires the community to:

1. Understand what CSR is and what 'good CSR' is: Extensive interviews were conducted to ascertain these aspects of CSR from mining companies and stakeholders, including Aboriginal and Torres

111 Blackwell (2012)

112 Campbell & Heppenstall (2016)

113 For the full report, see Campbell & Heppenstall (2016)

114 Fordham (Forthcoming)





Strait Islander people, across remote Australia. Knowing what CSR and 'good CSR' is gives communities an idea of what good practice is and whether they are getting it from their mining company. See [Appendix B](#) for more detail on this.

2. Understand how the company defines and undertakes CSR: Do they have a policy on CSR? Whether companies have a CSR policy or not was raised by a number of Aboriginal and Torres Strait Islander interviewees in the research as being important in ensuring companies are doing what they say they will. [Box 9](#) outlines some suggested questions that will help communities with the task of improving their knowledge of company CSR policies.
3. Getting communities to identify what they want from CSR. This helps ensure that communities can put their interests and needs forward. The key questions community should consider are outlined in [Box 10](#).

Some key CSR tools include:

- multi-stakeholder groups and community consultative processes
- developing a community vision
- CSR planning around assets and risks
- scoping new project ideas for linking CSR to community benefit
- direct and indirect involvement in the mine operation – community involvement in environmental monitoring, mine closure planning and rehabilitation, and servicing the mine
- building alternative futures to mining through CSR.

More detail about CSR and these tools is given in [Appendix B](#).

### Asset-based community development

Asset-based community development (ABCD) is another tool that communities can use for development<sup>115</sup> and that can be tied to aspects of a company's CSR program, including SLO. ABCD is tied to local knowledge, information, desires and visions. It involves the community identifying the various assets (built and non-built) needed to maintain and develop the local economy and

#### Box 9: Questions communities can ask to find out more about company CSR policies

**Task:** Find out as much as possible about the company's CSR policies. Look up the contact details of the community engagement person on the company website. Questions to ask include:

- **What resources does the company put into CSR, including staff and other resources?** Knowing who the CSR staff are means the community has a point of engagement with the company and knows who is responsible for ensuring community or public benefit.
- **What relevant CSR policies (if any) does the resource company have? Do they have a CSR overarching policy statement? Has this been endorsed at the highest level? Is it publicly available?** Answers to these questions help communities understand the company's commitment and the commitment of the company's leadership to CSR and then whether these commitments are actually being delivered.
- **What other policy frameworks does the company have that contribute to wider community benefit?** Examples include community investment programs, local employment and skills development and major environmental and social investments. These answers help identify further opportunities for communities.
- **Has the company committed to any relevant industry level or international level commitments as part of its CSR policy?** (see below, National and international conventions in this module). This is useful information that may help connect the community to new opportunities, or the community may be able to think up a strategy to help achieve this linkage.
- **Does the company have specific targets for its CSR? If not, why not? If so, how is the company planning to measure these?** This helps build in mechanisms of accountability for achieving CSR.

#### Box 10: Questions to identify community aspirations from CSR

**Task:** What does the community wish to see from the CSR program? Specific questions include:

- What are the key benefits the community would like to obtain?
- How should the company communicate and show progress?
- Does the community know of any models of how CSR frameworks could work?
- What are the key long-term benefits the community would like to see?

<sup>115</sup> Blackman et al. (2016)



community. This helps the community build a plan for its future vision and identify key assets that are currently missing from this vision. Mining, through its various mechanisms such as CSR programs and SLO, can contribute towards the creation and maintenance of these assets. However, note that built assets are not necessarily what remote communities, particularly Aboriginal and Torres Strait Islander communities, need most; rather, their traditional cultural intangible assets may be most critical and are intrinsically tied to their natural assets such as healthy country (land, water, heritage and ecosystems).<sup>116</sup> In such cases, mining may be in conflict with the need to maintain these cultural assets. If a mining company can recognise these needs and ensure that such assets are protected through the mining process – which may only be possible where mining occurs at a distance from community and sacred sites – then it may deliver enduring community value. Otherwise mining may deliver enduring community detriment.

Communities can request help from local, state and federal governments, Aboriginal land councils, NGOs, the mining company itself (as part of its SLO) or from experts (perhaps provided pro bono) to prepare an ABCD plan. This could then form an important input into the mine lifecycle plan, the IA and the mitigation plan for impacts.

[Appendix B](#) provides more detail on how communities can use ABCD to work with mining companies to build ECVI, which ties in with the CSR tools also described in more detail there.

## Political support

Political support for the position a community takes on a mine can be critical to ensuring that the community's views and vision for the future are considered when laws are being decided. Talking with local, state and federal government officials can also provide an indication of the community's views on the role played by mining in local elections. The guidance in [Module 4](#) is useful here.

Note that different levels of representation dictate terms in particular jurisdictions (geographical area of law or governance). While the support of the

local Councillor or Mayor or even local, state and federal members can be very useful, it may be that the support of the state or territory Minister for Mining or the Premier, Treasurer and Minister for State Development are required to see real change (see more in [Module 4](#)). For example, concern about water tables being contaminated by mining is now addressed at the federal level by a 'water trigger' under the *Environment Protection and Biodiversity Act 1999* as noted in [Module 4](#). In this case, garnering political support of the Environment Minister or her or his department would be critical, though the Minister's or departmental power must be considered within the context of where political influence and power reside (e.g. in Cabinet with the Prime Minister and Treasurer).

Bringing international attention and political interest to support community wishes can also be a useful tool, particularly where the worldwide public reputation of Australia is at risk (see the next section for more discussion).

## National and international conventions

National and international conventions can be used to garner political support but also as tools in their own right. [Table 15](#) provides an outline of the key industry bodies and their jurisdictional interest, purpose and key strategies. When communities are negotiating with companies, they can refer to these strategies so that they are 'speaking the same language' as the mining company. For example, the Minerals Council of Australia has the Enduring Value strategy as part of the Australian Minerals Industry Framework for Sustainable Development. Communities can refer to this when they are discussing how benefits will be sustained even after the mine has closed.

Similarly, [Table 16](#) outlines some key international guidelines and frameworks that resource companies typically adopt. Again, where it is identified that a mining company is required to meet a particular guideline or framework this can be used when negotiating over the delivery of benefits to community. For example, where a company undertakes sustainability reporting then these reports may be useful to see how a particular company is performing.

<sup>116</sup> Cornell & Kalt (2000), O'Brien (2014)



**Table 15: Key industry organisations and strategy for the resource sector in Australia**

Industry body	Jurisdiction	Purpose	Key strategy
<b>Mining</b>			
International Council on Minerals and Metals	International	To connect mining industry leaders to sustainable development and improve industry practice	Ten sustainable development principles, including reporting and auditing against those principles
Minerals Council of Australia	National	Establish key policy frameworks for Australian companies, promote best practice, influence national governments	Enduring Value – the Australian Minerals Industry Framework for Sustainable Development, Water Accounting Framework, Leading Practice Sustainable Development.
Australian Minerals and Metals Association	National	To assist the resource industry to deal with workplace issues and employment	Australian Women in Resource Alliance
Chamber of Minerals and Energy	State	Develop policies, provide strategic advice, help influence regulatory frameworks	Code of conduct and Code of practice, including issues such as community engagement
<b>Oil and gas</b>			
International Association of Oil and Gas Producers	International	Aim to improve safety, environmental and social performance; members identify and share knowledge and good practice	Our Life-Saving Rules, Shaping Safety Culture Through Safety Leadership
International Petroleum Industry Environmental Conservation Association	International	Aim for their members to improve their operations to meet the social and environmental expectations of society	Working group on issues such as climate change, biodiversity, health, water and fuel products
Australian Petroleum Production & Exploration Association	National	Represent Australian oil and gas explorers and producers; help promote best practice, access to markets and appropriate regulatory frameworks	Develop policy advice and key information for members
National Offshore Petroleum Safety and Environmental Management Authority	National	Regulate health and safety, well integrity and environmental management for offshore petroleum activities	Five-year environmental plan for long-term activities Offshore petroleum environmental approval system Added transparency for offshore oil and gas

## The media

This is not discussed in detail here because it has been covered in [Module 6](#). Here we just remind readers that the media can be used to influence the decision-making process and decision-makers themselves by drawing attention to a particular issue. For example, the media has been used effectively to harness international political support for community needs and desires where there was a conflict with a mining company (see [Module 6](#) for more detail).

## Non-cooperation and direct action

When the community and the mining company cannot agree, and there seems to be no chance of future agreement, the community (or mining company) may wish to be non-cooperative

and take direct action; this may be in the form of non-violent actions such as sit-ins, strikes, workplace occupations, protests with people en masse, sanctions,<sup>117</sup> and other forms of grassroots environmental activism.<sup>118</sup> However, even passive and non-violent action can be illegal, so communities should consider the consequences of taking this kind of action.

Non-violent direct action has a history of success across the world and has been used by civil and workers' rights and social movements in India,<sup>119</sup> North America,<sup>120</sup> Europe<sup>121</sup> and Australia, particularly in stopping extractive uses of the

<sup>117</sup> Houser et al. (2008)

<sup>118</sup> Ghai & Vivian (2014)

<sup>119</sup> Cribb (1985)

<sup>120</sup> Luther King (1963)

<sup>121</sup> Sarotte (2014)





**Table 16: Key international guidelines and frameworks resource companies adopt**

Type of guideline	Jurisdiction	Purpose	Application
<b>Reporting</b>			
Global Reporting Initiative (GRI)	International	Develops and disseminates sustainable development reporting guidelines	Companies report sustainability outcomes through agreed standards in reporting
Extractive Industry Transparency Initiative	International; Australia is a signatory	Transparency and reporting of all payments made from resource companies to governments	Disclosure of such information through annual reports and sustainability report
Carbon Disclosure Project	International	Disclose carbon emissions of major corporations	Disclosure of such information through annual reports and sustainability report
<b>Human rights</b>			
United Nations Guiding Principles on Business and Human Rights	International	Global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity	Corporations take up the principles on a voluntary basis to show due diligence, avoid human rights abuses and report progress
Voluntary Principles on Security and Human Rights	International	Human rights standards designed especially for the extractive sector	On a voluntary basis, corporations align their corporate policies and procedures to human rights principles; companies are signatories
United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169)	International	Sets out individual and collective rights of Indigenous people	Countries sign up to it; Australia has signed. Voluntarily, companies uphold the principles
Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises	International	Principles and standards for responsible business conduct; guidelines from government to corporations	Not legally binding, but has corporate accountability mechanisms built in, including a grievance mechanism; a case can be brought against a company, using the complaints mechanism to investigate the allegation
<b>Environmental standards</b>			
ISO 14000 – Environmental management standards	International	Practical tools for companies and organisations looking to manage their environmental responsibilities	Can be adopted and certified by companies
International Water Stewardship Standard	International	Key standard for organisations to meet regarding water management and protection of water ecosystems	Voluntary; involves accreditation to a specific standard, including developing a Water Stewardship Plan
International Cyanide Management Code (gold-mining companies)	International	Key standard for gold-mining companies to prevent hazards, accidents, incidents or injury where gold is extracted from ore by the cyanidation process	Voluntary code that includes production, transport, storage, and use of cyanide and the decommissioning of cyanide facilities
<b>Broader CSR standards</b>			
ISO Standard on CSR	International	Broad global standard regarding CSR practices, incorporating human rights, environment and social investment	Guide only; does not include an accreditation process
United Nations Global Compact	International	United Nations principles across social, environmental and human rights and sustainable development	Corporations sign up on a voluntary basis and work to improve corporate practice in relation to social, environmental and economic performance
<b>Financial standards</b>			
International Financial Reporting Standards	International	Standards on the financial accounts reporting for companies	These standards set precedents for domestic financial accounting standards and determine the extent to which the accounts reveal particular operations at the local or regional scale
International Finance Corporation's Performance Standards	International	Standards to manage corporations' environmental and social risks	Corporations are obliged to meet these standards if they seek funding from the IFC



environment or community resources.<sup>122</sup> Non-violent direct action has helped networks form of concerned people who can be called on to lend support to other environmental issues across a country, region or the globe, such as in the case of mining in Kakadu Conservation Zone.<sup>123</sup>

Other forms of non-violent action can be to not participate in any community activity or service provided by resource companies, or to not purchase any goods or services provided by company-owned non-mining businesses. If sufficient people take similar action, this can prevent the company from earning an SLO, bringing into question the social approval of their operation, or limit the extent to which they can operate parallel businesses in the local economy.

## Tools specific to Aboriginal and Torres Strait Islander people

A range of tools, some of which have already been discussed (at the ends of [Module 3](#), [Module 4](#), [Module 5](#) and [Module 6](#)), are directly useful to Aboriginal and Torres Strait Islander people, including:

- use of land rights and native title legislation to exert rights over land or to protect traditional rights ([Module 4](#) in particular)
- use of land rights and native title legislation to earn public and private royalties from the mining process ([Module 4](#) in particular). These royalties<sup>124</sup> can be used to fund community activities, including business development and training and employment opportunities but also a range of community, health and cultural needs<sup>125</sup>
- the power Aboriginal and Torres Strait Islander people have of veto over mining on Aboriginal land in the Northern Territory – this is a significant tool that communities can draw on to influence or veto mining should the community so wish (refer to the *Aboriginal Land Rights (Northern Territory) Act 1976*)

- the ‘right to negotiate’, which may be gained through native title arrangements
- support from international human justice institutions for being treated justly or fairly
- the same tools listed in previous sections, but in particular cases Aboriginal and Torres Strait Islander people may have a better avenue to leverage opportunities (see below); however, these opportunities may be hampered by a range of resource, support and funding barriers.

An example of a tool that is available for any community is an Aboriginal-owned mining operation. The short film<sup>126</sup> that accompanies this toolkit provides an excellent example of the first Aboriginal-owned mining operation in Australia in Arnhem Land of the Northern Territory.

Another example is where, as part of regional mining agreements or law, mining companies are required to have a particular percentage of their employees or mining contractors be Aboriginal and Torres Strait Islander people. This, along with company CSR and SLO obligations, may present a range of opportunities for ECVm.<sup>127</sup> However, there are reasons why local people may not be employed or contracted in preference to those from further afield.<sup>128</sup>

Because values held about country by Aboriginal and Torres Strait Islander people are different from those of non-Aboriginal and Torres Strait Islander people, the ‘benefits’ that industry believes it is delivering from mining may be seen as risks for local people – as noted in the Ranger uranium mine case study in [Appendix A](#) at the end of [Table A 7](#) and [Table A 8](#). Risk assessments should be carried out with Aboriginal and Torres Strait Islander people to ensure they are prepared carefully and properly.

As noted in Module 3 through to Module 6, Aboriginal and Torres Strait Islander people living in remote Australia may have difficulty accessing tools such as land and native title services (as outlined in [Module 4](#)) and EIA services that are provided in more populated areas. However, a reasonable

122 *Commonwealth v. Tasmania* (1983) 158 CLR 1, 21 (the *Tasmanian Dam Case*)

123 Anonymous (n.d.)

124 For a discussion of resource royalties and Aboriginal and Torres Strait Islander expenditure, see Blackwell & Dollery (2013b)

125 For more examples of economic benefits of mining operations see Blackwell & Dollery (2013a, 2014).

126 Go to [www.nintione.com.au/miningtoolkit](http://www.nintione.com.au/miningtoolkit) to see the short film.

127 *ibid.*

128 For an assessment of the true local employment of Aboriginal and Torres Strait Islander people and appropriate measures to assess this, see Blackwell et al. (2014a).



internet or satellite connection can give access to many services that are not immediately provided in the local community. Because these are expensive to set up and are still not typically available to all people in a remote community, there are strong public good arguments for these services to be subsidised for remote communities, particularly Aboriginal and Torres Strait Islander communities. Training in the use of the internet for communities is therefore critical as well.

Finally, the section about issues for Aboriginal and Torres Strait Islander people in Module 3 through to Module 6 should be read with this section to ensure that communities have a good introduction to the range of tools that can be useful.

## Summary and conclusion

As noted in [Table 17](#), there are particular times in the mine lifecycle when each of these tools can be best applied to meet the goals of the local community. Some can also be used at other stages of the lifecycle but may be less effective in influencing decision-making at that stage; there are

windows of opportunity for preventing a project going ahead or preventing any perceived wrong. Predicting what may be effective is very difficult, so the best advice is to take a diversified approach to using the available tools.

[Table 17](#) shows that most tools are best applied early and late in the mine lifecycle: during the exploration phase and before the project is approved and then at closure. In the intermediate period, that is, during construction and operational phases, most tools are likely to be less effective, though there are special cases where the tools could be successful (e.g. where unacceptable damage is being done to the environment or sacred sites and exerting native title rights or gathering community, political, media and international support may stop a mining company's wrongdoings). In some cases, tools are useful throughout the lifecycle, for example through continuing to monitor and assess impacts after the initial forward approval stage and IAs are complete.

We have presented a range of tools here as an introduction; local leaders can use these to find the others that are available.

**Table 17: Opportunity of successfully applying tool through lifecycle phases**

Tool	Exploration	Project approval and feasibility	Construction	Operation	Care and maintenance	Closure
Local knowledge	✓✓	✓✓✓	✗	✗	✓	✓✓
Economic participation	✗	✓	✓✓✓	✓✓	✓	✓
Economic ownership	✓✓✓	✓✓✓	✓	✓	✓✓	✓✓✓
IA law	✓✓✓	✓✓	✓	✓	✓	✓✓✓
Community-based monitoring and mine closure planning and rehabilitation	✓	✓	✓✓	✓✓	✓✓✓	✓✓✓
Risk assessment and management	✓	✓✓✓	✓✓	✓✓	✓✓	✓✓✓
CSR tools	✓✓✓	✓✓✓	✓✓	✓	✗	✓✓✓
Asset-based community development	✓✓✓	✓✓✓	✓✓	✓	✗	✓✓✓
National and international conventions	✓✓✓	✓✓✓	✓✓	✓✓	✓✓	✓✓✓
Political support	✓✓	✓✓✓	✗	✗	✗	✓✓
The media	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓
Non-cooperation and direct action	✓✓✓	✓✓✓	✓	✓	✓	✗
Aboriginal and Torres Strait Islander tools (e.g. land rights)	✓✓✓	✓✓✓	✓✓✓	✓✓	✓	✓✓✓

Note: ✓✓✓ = ideal time; ✓✓ = good time; ✓ = possible time; and ✗ = no longer possible.







# Module 8: Building Lasting Relationships Between Actors

## 8 Module Eight

### Introduction

This module considers how communities can build lasting relationships with the actors in the mining lifecycle, what communities' rights are, the process of negotiating agreements and what to do when things go wrong. In particular, we focus on:

- negotiating with resource companies and related agencies
- Indigenous rights in international and Australian contexts
- freedom to demand CSR
- community goals, planning and politics
- unity within communities
- unity between communities
- preparing for negotiations
- conducting negotiations and reaching agreements
- implementing agreements and maintaining relationships
- troubleshooting: what to do when things go wrong.

We are grateful for permission from Prof. Ciaran O'Faircheallaigh to reproduce a large portion of the material in this module from the Canadian toolkit *IBA Community Toolkit: Negotiation and implementation of impact and benefit agreements*.<sup>129</sup> However, we have modified this material to better reflect the Australian context and language.

### Negotiating with resource companies and related agencies

Previous modules have outlined what communities can expect in terms of the typical behaviour and incentives of the actors in resource development. Here we move to the next stage: interacting with these actors.

#### Before making the decision to negotiate

The first thing a community should consider is whether it wishes to negotiate with a company wanting to extract resources on its lands, particularly in remote areas, given the vast number of greater difficulties that people living remotely face compared to people in more urban places.<sup>130</sup> Remoteness imposes extra cost and time on people to negotiate, making the process very difficult indeed. As an example of the negotiation decision, a community may be fundamentally opposed to resource extraction and thus not wish to enter negotiations at all. In this instance, they can use options such as litigation (using the law to stop the company), seek legal advice from a lawyer, direct political action, media campaigns or political alliances with community groups, which are outlined in [Module 5](#) and [Module 7](#). In many cases, however, a community may decide to negotiate with a resource company, with the vision of obtaining enduring community value from resource development.

<sup>129</sup> Gibson & O'Faircheallaigh (2015)

<sup>130</sup> For a discussion of the difficulties faced by remote Australians, see Blackwell et al. (2015a).





Gibson and O’Faircheallaigh<sup>131</sup> make a number of points in regards to negotiation:

- **Negotiation is not consent:** Deciding to negotiate does not represent community consent to a proposed project or a desire to reach agreement. Communities have a right to terminate negotiations at any point in the process. It may be that the developer is unwilling to meet community expectations. In this case, the community should be careful to leave open the possibility of re-engaging, should the company change its position significantly, or opening negotiations with an alternative developer.
- **Information is power:** Once the community decides it will negotiate, it needs to assess its position on the company, on the government or agencies that will approve or reject the project and on the wider economic and political context. The negotiation team must then identify the strategy that is most likely to achieve a successful outcome, based on a sound and comprehensive information (or evidence) base. Developing such an information base is critical to informing decision-making by the community leaders.
- **Process is as important as outcomes:** It is very easy to focus on the benefits that could be returned from negotiating with mining companies, such as a royalty stream. However, the process of negotiating and implementing agreements shapes the content of agreements and the benefits realised. Good outcomes reflect the wider legal or regulatory context, the nature and extent of community involvement, the character of the community, the strategies and negotiating positions developed by the community, the way the community structures its negotiating team, the legal position of the community for the project and nature of the project itself. The most powerful explanations for success in negotiations are a community’s clarity in its goals and its ability to stay united and to plan collectively.
- **Forming networks is important:** Networks are critical to information and resource exchange. They can be formal and systematic, between groups of leaders, or small and informal, between individuals. Two examples of the scale of such networks and exchange are summarised

in [Box 11](#). Between these two ends of the spectrum, endless opportunities for networking and information exchange exist.

## Rights of Indigenous peoples – the international context

International recognition of rights extends to all Indigenous people, regardless of the laws that apply in the individual countries in which they live. Where a group of Aboriginal or Torres Strait Islander people has limited rights under Australian law, it may be able to draw on these international rights, particularly if negotiations will occur with a multinational company that has an international reputation to protect. While international laws and conventions, unlike domestic laws, cannot be used to force companies to do any particular action, they can lend weight to the negotiating position of a community. This is becoming an increasingly important negotiating tool for communities,

### Box 11: Examples of networking scale

“In 2007 a group of James Bay Cree leaders and advisors visited the Kimberley region of Western Australia, hosted by the regional land organization, the Kimberley Land Council Aboriginal Corporation (KLC). Over the previous five years, the KLC had assisted communities in negotiating a series of mining agreements; the Cree group was just about to embark on its first negotiation with a mining company. The Cree had extensive experience in negotiating self-government agreements, an area where the KLC had limited experience but planned to become more active. The Cree and senior KLC staff spent a week travelling through the Kimberley region and meeting with Aboriginal leaders and negotiators, a unique opportunity to share expertise and experiences across a wide range of matters, including fundamental issues regarding Aboriginal governance and political strategies for dealing with companies and governments.

At the other end of the spectrum, in 2000 one of the authors was encountering problems in finding a mutually acceptable way of dealing with the specific, technical but important issue of indexing payments under an agreement between a major multinational mining company and an Aboriginal group in Australia. He spoke briefly by phone with technical advisors in both Australia and Canada who had dealt with the same issue in earlier negotiations between Aboriginal communities and the company involved. This assisted greatly in identifying an approach that would both meet the needs of the Aboriginal group and be acceptable to the company.”<sup>1</sup>

1 Gibson & O’Faircheallaigh (2015, p. 13)

131 Gibson & O’Faircheallaigh (2015, pp. 11–13)





with the increased recognition of the need for Indigenous people to live on, care for and utilise resources from ancestral lands so as to meet their needs for economic and social wellbeing and survival.

The Universal Declaration of Human Rights, passed unanimously by the United Nations General Assembly in 1948, sets out certain rights and freedoms that apply to 'all peoples and all nations'. These include the right 'without any discrimination to equal protection of the law' (Article 7), 'the right to own property alone as well as in association with others' and the right *not* to be 'arbitrarily deprived' of that property (Article 17), and the freedom 'either alone or in community with others ... to manifest ... religion or belief' (Article 18).

### Rights over resources<sup>132</sup>

The right of peoples to self-determination and their 'permanent sovereignty over natural resources' is enshrined in Article 1 of both the United Nations International Covenant on Civil and Political Rights (ICCPR) and the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) (both 1966), where Article 1 states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own needs, freely dispose of their natural wealth and resources ... In no case may a people be deprived of its own means of subsistence.

Furthermore, the right to equality before the law and to property is guaranteed in the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 5 states:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to

equality before the law notably in the enjoyment of the following things:

(d) (v) The right to own property alone as well as in association with others;

(e) Economic, social and cultural rights.

The United Nations Committee on the Elimination of Racial Discrimination, in its general Recommendation XXIII, has highlighted some specific implications of ICERD for Indigenous peoples:

The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized ... The Committee especially calls upon States Parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

Article 27 of the United Nations ICCPR states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess or practice their own religion, or to use their own language.

In commenting on Article 27, the United Nations Human Rights Committee has stated:

One or other aspects of the rights of individuals protected under this article – for example, to enjoy a particular culture – may consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of indigenous communities constituting a minority.

<sup>132</sup> *ibid.* pp. 25–26



## The right to free, prior, informed consent<sup>133</sup>

There is growing evidence of international acceptance of these principles regarding the rights of Indigenous peoples, including the right to exercise free, prior, informed consent (FPIC) regarding development on their ancestral lands. Oxfam, the international, independent, non-government aid and development organisation, has prepared a series of resources to advocate for FPIC, particularly for Indigenous peoples.<sup>134</sup>

Another indication of this growing acceptance is the acknowledgement of the right of Indigenous peoples in general, and their right to FPIC in particular, in international conventions and declarations, including the International Labour Office Convention 169 on the Rights of Tribal and Indigenous Peoples (1989); the Convention on Biological Diversity (1992), which has been ratified by more than 170 countries; and the United Nations General Assembly's Declaration on the Rights of Indigenous Peoples (2007). The Declaration states that Indigenous peoples 'have the right to self-determination' and to 'maintain and strengthen their distinct political, legal, economic, social and cultural institutions'. It repeatedly affirms the right of FPIC (Articles 10, 11, 19, 28, 29, and 32). For example, Article 32 states:

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

States shall obtain the free and informed consent [of indigenous peoples] prior to the approval of any project affecting their land or territories or other sources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

There are also other indications of the growing acceptance of the rights of Indigenous peoples:

- A number of international organisations have explicitly recognised the principle of FPIC.

For example, in 1998 the Inter-American Development Bank adopted a policy requiring FPIC in the case of Indigenous people possibly affected by involuntary resettlement as part of a bank-financed project, and the World Commission on Dams has also endorsed the principle.

- Individual commercial enterprises have effectively acknowledged the principle of FPIC in deciding not to proceed with investments if they do not have support from Indigenous landowners. For example, in 2005 Rio Tinto signed an agreement with the Aboriginal Traditional Owners of land containing the Jabiluka uranium deposit and undertook not to develop it except with their consent. Two other leading international mining companies, Anglo American and BHP Billiton, are reported to have made similar undertakings in relation to specific projects.

However, it must be stressed that despite these positive developments, it is not yet the case that the rights of Indigenous peoples are accepted. Major obstacles still exist to their recognition, and especially to their recognition in practice, rather than on paper:

- Some key covenants (for example ILO 169) have not been ratified by many countries, which are not therefore bound by the relevant provisions.
- Many governments do not consider themselves bound by the findings of United Nations bodies such as the United Nations Human Rights Committee.
- Key declarations, such as the United Nations General Assembly's Declaration on the Rights of Indigenous Peoples, are not binding on members, and a number of countries with large Indigenous populations, including Australia and New Zealand, voted against the inclusion of FPIC.<sup>135</sup>
- Some international financing bodies (e.g. Asian Development Bank, World Bank<sup>136</sup>) and governments acknowledge only free, prior, informed *consultation*, which provides less onus on the government or funders to achieve consent.

Even where governments ratify international conventions or introduce national legislation

<sup>133</sup> *ibid.* pp. 26–28

<sup>134</sup> For example, see Greenspan et al. (2015), Hill et al. (2014), Hill et al. (2013).

<sup>135</sup> Allen & Xanthaki (2011)

<sup>136</sup> Fujita (2013)



designed to protect the rights of Indigenous people, there is no guarantee that government agencies or commercial interests operating in their jurisdictions will actually respect these rights (e.g. it took the Awas Tingni community in Nicaragua over seven years of advocacy to have the government act on the court's decision).

Some international and national financial institutions are currently commissioning research on FPIC so they can provide corporations with guidance on relevant issues. It is likely that over the longer term, FPIC will become embedded in management systems and through engagement and consultation with Indigenous communities. However, as mentioned above, there is still some way to go. The World Bank requires only that clients seeking loans engage in free, prior, informed *consultation*. The World Bank's private investment arm, the International Finance Corporation, in 2006 rejected the principle of FPIC even where developments involve potential damage to critical cultural heritage or require involuntary resettlement of Indigenous peoples.

Industry has increasingly embraced FPIC. For instance, the International Council on Mining and Metals, an international organisation representing large mining and mineral processing companies, endorsed the principle of FPIC in a declaration in May 2013, when it adopted an Indigenous Peoples and Mining Position Statement that requires compliance for all new projects and all project changes (but does not apply retrospectively to existing projects). In principle, the ICMM statement requires that companies and those supporting the project 'work to obtain the consent of Indigenous Peoples'.<sup>137</sup> It further defines FPIC as a process and an outcome, and the definitions offered are consistent with United Nations' and other definitions of FPIC. But the statement also spells out that FPIC is not a veto power for Indigenous people, and that there are ways to proceed for the company if consent cannot be obtained.

In summary, international law has confirmed that Indigenous peoples have the right to consent to operations in their territory. Where they lack clear legal rights in domestic law, the international

law may still allow them to start a process of engagement with mining companies that may eventually allow them to achieve significant benefits from, and a say over, development on their land.

More generally, international recognition of the rights of Indigenous peoples provides one more mechanism through which Indigenous peoples can push for a just outcome from development on their land. This is especially so when they are dealing with large multinational companies that are very conscious of their international image. With the steadily increasing recognition of the rights of Indigenous peoples over the last 20 years, these rights are likely to become more important as a foundation for negotiating just agreements.

## Aboriginal and Torres Strait Islander rights – the Australian context

Because the Commonwealth of Australia consists of a federation of states, the rights of Aboriginal and Torres Strait Islander people over land and resources are highly dependent on the context of the given jurisdiction.<sup>138</sup>

As noted in [Module 4](#), land rights and native title generally provide a variety of weak forms of property and resource rights to traditional landowners. These rights include but are not limited to:

- a right of consent under the *Aboriginal Land Rights (Northern Territory) Act 1976* with, in practice, only the right to veto over exploration under section 42(6)(a) and under section 46(4) (a) any mining interest,<sup>139</sup> with limited veto over mining once approved, except over the construction of roads on Aboriginal land under section 68.
- full property rights to a limited range of minerals in New South Wales and Tasmania
- a right to consultation under amended native title law.<sup>140</sup>

<sup>138</sup> Most of this section relies on the work of Altman & Martin (2009) but has been modified by the authors where necessary.

<sup>139</sup> A mining interest is defined in the Act as 'any lease or other interest in, or right in respect of, land granted under a law of the Northern Territory relating to mining for minerals'.

<sup>140</sup> Altman and Martin (2009)

<sup>137</sup> Gibson & O'Faircheallaigh (2015, p. 28)





Land rights and native title law in Australia recognise that existing ('prior interest') mining interests will prevail, and a series of High Court decisions mean that commercial interests always take precedence over customary Aboriginal and Torres Strait Islander interests.<sup>141</sup> It is therefore critical that communities act early to gather as much information about the mine and what is proposed so they can prepare to negotiate with and influence the company and the state and, if they choose not to negotiate, to exercise their veto right at the exploration stage of the mine cycle.

For a more detailed discussion of the rights of Aboriginal and Torres Strait Islander people, refer to the sections about the issues related to them in each module above, particularly in [Module 4](#).

## Freedom to demand corporate social responsibility<sup>142</sup>

The willingness of corporations to undertake CSR initiatives in relation to any social group depends, in large measure, on the capacity of that group to inflict damage on the corporation by threatening its SLO.<sup>143</sup> Groups must apply 'an ever-present threat of the loss of social license to operate to ensure that companies recognise and address [their] demands ... civil society organisations need to maintain surveillance and pressure to ensure it is always in the corporate interest to respond to community demands'.<sup>144</sup> The capacity of groups to threaten the reputation of corporations is a crucial lever.<sup>145</sup> When Aboriginal and Torres Strait Islander groups sign agreements to support corporate activities and to maintain silence through confidentiality provisions, they have substantially surrendered their ability to threaten a company's licence to operate.

It may of course be the case that this threat is no longer needed because agreements contain legally enforceable provisions that ensure the ongoing performance by a company of certain CSR obligations.<sup>146</sup> However, two points remain. First, the nature of the relationship between Aboriginal

and Torres Strait Islander groups and companies has profoundly changed with the existence of social licence providing a veil of potential but not necessarily real protection for communities. Second, whether corporate obligations through agreements with Aboriginal and Torres Strait Islander groups are substantial and enforceable and represent a 'fair deal' is questionable, because these groups can be required to sign a confidentiality agreement as a precondition to receiving and reading the main agreement. Aboriginal and Torres Strait Islander groups may need to make the agreement known to other groups in order to be informed and understand the implications of the agreement in order to be in a position to sign it. Another aspect of this point is the length of time over which agreements apply, which is typically for the whole life of a project. For major projects, this is often measured in decades rather than years. If these groups discover after the event that the trade-off they have made is not to their advantage, it may be a very long time before they have an opportunity to change the situation. Thus, communities need to work hard and be vigilant in the early stages of the mine lifecycle to ensure ECVM is strongly woven into negotiations and any subsequent agreements. They should avoid signing a confidentiality agreement or they should make provision within this agreement to seek the counsel of experts and other groups during the process of reaching agreement about the resource development and the implications of this for the community. Furthermore, agreements should have specific provisions that take stock of changing circumstances throughout the mine lifecycle and provide an exit clause to the agreement where the trade-off is not to the community's advantage.

## Community goals, planning and politics<sup>147</sup>

Community negotiators must be constantly vigilant against the risk of political disunity negatively affecting negotiations with developers and governments. They must be aware of broader community goals and ensure that an agreement adds to rather than detracts from these goals. As Gibson and O'Faircheallaigh (2015, p. 53) note:

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141 *ibid.*

142 Gibson and O'Faircheallaigh (2015, p. 52)

143 Trebeck (2008)

144 *ibid.* p. 20.

145 Trebeck (2008)

146 Gibson and O'Faircheallaigh (2015, p. 50)

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147 Gibson and O'Faircheallaigh (2015, p. 53)



Often negotiators can refer to community planning exercises or consultations undertaken in relation to other processes, such as land claims, to identify key priorities, and use these to identify the issues they should prioritise in negotiations. If a community has not had an opportunity to establish and articulate its goals, negotiators should insist on a community consultation and planning exercise as part of the preparation for negotiations. This does not always occur, with the result that agreements may contain provisions that are not highly valued by community members. This results in lost opportunities and can lead to recriminations and social tension in the longer term.

For example, where an agreement supports community learning and education more generally, where this is the goal of the community rather than obtaining industrial jobs, then the agreement is more likely to be successful. However, where the agreement simply involves training for industrial jobs and this is not the goal of the community, then the agreement is likely to be of little use to the community.

## Unity within communities<sup>148</sup>

It is important for a community to remain united throughout the negotiation process. A strategic and unscrupulous company will identify disunity or any other weaknesses in a community unit and use these to leverage advantage in negotiations.<sup>149</sup> A divided community, even in the presence of a high integrity company, may not obtain as good or long-lasting benefits as a united community can.

The nature of communities is that there are various views about what the financial and employment benefits, the effects on the environment or on social and cultural heritage will be. Of course, these different views should be examined, but communities will need to come to a united position and decide what the balance is between these sometimes competing goals.<sup>150</sup>

Unity should be established before beginning negotiations with the company. For example, a community in Australia that was negotiating a development project was divided, with some people wanting to focus on environmental and cultural protection and others on returns through employment and business development. When they became unified by seeking both outcomes, they were able to include both goals in the agreement.

Often conflict can arise because of tension between local and regional governance structures. For example, a common source of tension may emerge between traditional forms of governance and organisations that are funded and created through a particular Act. These tensions often spill over into negotiations. Conflicts can arise where regional organisations control some permits and royalty provisions, while local organisations control questions of land access. These kinds of problems are best solved privately and before negotiations, rather than allowing a corporation to witness the dispute and possibly use it to weaken the negotiation position of both parties.

Questions of legitimacy can surface as people disagree about who should have the right to negotiate agreements. When family organisations make decisions about agreements, they sometimes do so without the informed consent of all community members. This often occurs because agreements are confidential, and people confuse confidentiality with the need to hold the agreements back from community people. However, community people need access to all the information to ensure informed consent.

If conflict continues, or if it arises during negotiation, people should keep it within the community and work to resolve it away from the company.

A lot can be done to avoid internal conflict in the first place. One of the most important ways to do this is to make sure that community members are well informed about what is going on. Conflict often erupts because people do not know exactly what is happening and can be upset by rumours.

148 *ibid.* pp. 54–55

149 Gibson and O’Faircheallaigh (2015)

150 *ibid.*



## Unity across communities<sup>151</sup>

While unity *within* a community is critical to negotiating a successful agreement, unity *between* neighbouring communities can be just as important.

This second area of potential conflict often focuses on disputes over mining across community borders and the related issue of which community has 'standing' in relation to a project and therefore has the right to provide input and seek benefits. Such conflicts are often complicated by the fact that they involve much wider issues and interests, some of which may be unrelated to the negotiation. They can be as much a threat to a successful outcome as internal conflicts, and managing them is just as important. But different approaches will be required from those used to manage conflicts within community boundaries.

Aboriginal communities can gain much by sharing agreements, such as increased unity both regionally and nationally. When communities share information and agreements, they empower each other in the face of the greater negotiation power held by companies and governments. Sharing therefore strengthens agreements and outcomes. [Box 12](#) provides some indications of where companies may be causing disunity and actions that communities can take to reunite.<sup>152</sup>

Conflict and disunity over the boundaries of traditional land claim areas are complex and can occur at family, people, community and regional levels. Understanding these areas is also difficult for outsiders and this disunity can be made worse through debate with companies, tribunals and courts. Multiple claims over traditional areas are sometimes used by companies to create disunity and to lower the negotiation power of each group.<sup>153</sup>

Traditional land area issues are best dealt with through the customs and agreements that Aboriginal and Torres Strait Islander people may use to promote unity. Conflict between groups and internally can be managed by elders, through

### Box 12: Signs of disunity and actions to help reunite

Signs that mining companies are causing disunity:

- The company brings the concerns of other Aboriginal and Torres Strait Islander communities to the table and uses these to improve their own negotiating position.
- The company signs an agreement with the community most willing to concede on agreement conditions and then tries to get all other communities to fall in line.
- The company focuses on negotiations with a distant, least likely to be impacted community first.
- The company consults the wrong people and communities.

Actions to help reunite

- Set up a meeting of the Aboriginal and Torres Strait Islander communities.
- Agree on how to consult each other, and when.
- Agree on who has priority. If there are many mining and exploration companies, communities can agree to give first priority in negotiation to the community that is closest or has key traditional use or resources.
- Share resources, such as technical people, funds through environmental assessments, and information.

visionary leaders and through the identification of common visions, histories and goals. Often, elders will draw on long-established cultural customs and family alliances and marriages to encourage conflicts to be resolved. Resolving conflicts can provide a basis for establishing the conditions for strong agreements. Elders can also create the conditions for working well together, because they have the capacity to correct people's inappropriate behaviour or actions, reminding everyone of common goals.

Another option, if some people are not trusted by all parties, is to involve a respected outside mediator. In such situations, the worst case is that the claim will be dealt with in the courts, an approach that is likely to breed more conflict rather than less.<sup>154</sup> Contesting matters in court can be costly and time consuming and create long-term conflict, whereas resolving the conflict outside of court is a preferred cheaper path which also has greater possibility of creating longer term unity.

<sup>151</sup> *ibid.* pp. 56–58

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

<sup>154</sup> *ibid.*





Agreements between different communities should be set at the start of negotiations with the company, to guide the relationship. At other times, a negotiation team simply seeks a mandate to collaborate with other negotiation teams from other communities. Typically, this type of mandate to collaborate requires negotiation teams to work together but constantly check with their own leadership teams for a common approach. Where different communities are working collectively, they can carve issues out and inform the company that sensitive traditional land area issues will be managed internally. For example, people can agree internally on how to split financing, without the company or its supporters weighing in on the issue.<sup>155</sup>

People-to-people agreements addressing shared Aboriginal and Torres Strait Islander territory through a land council should settle overlap issues before the company is involved, otherwise the new negotiations can cause an existing poor relationship to deteriorate. Some land councils have developed a simple formula that is used to determine the sequence and financial share for each community group represented in its council. People can commit to jointly protect the rights and responsibilities bestowed upon them by their ancestors and to protect the environment for future generations. Such an agreement can help reinforce the relationship between two people, while also defining the territorial (ocean and land) boundaries on a map.<sup>156</sup>

People-to-people agreements can be verbal but are better written down or recorded in some way. They create the conditions for unity in advance of an agreement with a resource company, leaving no room for the company to open fractures between groups and fuel disagreement to the disadvantage of all. Structures may be needed to solidify these relationships, such as the creation of a joint task force. In other circumstances, more informal relationships may suffice.<sup>157</sup>

Whatever the process taken, critical elements for building unity include:<sup>158</sup>

155 *ibid.*

156 *ibid.*

157 *ibid.*

158 *ibid.*

### Box 13: Strategies to address the wider implications of agreements

A number of strategies are available to Aboriginal and Torres Strait Islander groups in seeking to deal with the wider and potentially negative effects of agreements, while at the same time gaining the benefits that such agreements have to offer.

These strategies include:

- **Mapping wider relationships:** One obvious but important approach is for Aboriginal and Torres Strait Islander groups to undertake, at an early stage in negotiations, a 'mapping' exercise that seeks to identify all of the ways in which negotiations with a mining company may affect their engagement with the political and judicial/regulatory system as a whole, including their existing interaction with government in areas such as service provision and land claim negotiations.<sup>1</sup>
- **Focusing attention on key agreement provisions:** As is obvious from the earlier discussion, agreement provisions in a number of areas, for instance in relation to confidentiality and Aboriginal and Torres Strait Islander consent and support, can be critical in shaping the broader implications of agreement making for Aboriginal and Torres Strait Islander groups.
- **Avoiding the 'negotiation bubble':** At a broader level, it is important for communities to avoid isolating agreement negotiations from wider community planning and decision-making processes. This is critical to ensure that the wider implications of contractual agreements are considered and means that the structure and composition of negotiating teams, community consultations, and communication between negotiating teams and the wider community become imperative.

1 See O'Faircheallaigh & Ali (2008)



- devoting time and resources to good communication and consensus building through the development of common principles and goals
- splitting responsibility and resources (such as in the case of environmental assessment of mines), especially where particular language groups have specialised skills or resources in a given area.
- building community and people-to-people unity through direct action.

Mining companies, for their part, need to understand the importance of resolving traditional area overlap issues or other sources of conflict. Companies do not need to become directly involved, but to create the conditions and allow the space and time for people-to-people agreements to emerge. Companies will benefit in the long term from the stability and certainty that will result from such agreements. [Box 13](#) provides some strategies for communities to address the wider implications of agreements.<sup>159</sup>

## Preparing for negotiations

The following key matters should be considered in preparing for negotiations. A highly detailed discussion of each dot point can be found in the Canadian toolkit of Gibson and O’Faircheallaigh.<sup>160</sup>

- Form a structure(s) for negotiations.
- Develop a long-term strategic research plan and know how the community goals fit in.
- Decide on what kind of data are needed in the short, medium and long term.
- Make a plan to manage, file and store incoming data.
- Decide who will have access to data and how confidentiality will be maintained.
- Give clear guidance to consultants on how information should be analysed, presented and brought back to the negotiating team and community.
- Develop a budget for the work. Seek the funds from the company and project supporters, the government and foundations established to support CSR outcomes.

- Determine what information will be collected, using [Table 18](#)<sup>161</sup> as a starting point. Also refer to [Module 2](#) to read about when information becomes important and which tools can be used at specific stages of the lifecycle to influence decision-makers.
- Establish baseline conditions that community will place on the company to meet community needs and capitalise on resources.
- Define how information will be communicated.
- Establish a single point of contact.
- Never let a single individual meet alone with the company and project supporters to discuss the issues. Always bring at least another person or note taker.
- Assess and improve the community’s bargaining position.
- Determine objectives and develop a strong negotiation position.

These preparations should be undertaken in the earliest stages of the mine lifecycle to provide communities with the best possible bargaining position.

## Conducting negotiations and reaching agreements

The following key matters should be considered in conducting negotiations and reaching agreements. A highly detailed discussion of each dot point can be found in Gibson and O’Faircheallaigh.<sup>162</sup>

- Define roles for the negotiation committee and the people within it.
- Create rules for negotiation that can guide the negotiating team.
- Form a negotiation agenda based on community goals and aspirations.
- Agree on negotiation tactics and strategies.
- Document all negotiations, conversations and verbal agreements.
- Pay attention to what happens between meetings.

<sup>159</sup> *ibid.*

<sup>160</sup> This section provides a summary; a much more detailed discussion can be found in Gibson & O’Faircheallaigh (2015).

<sup>161</sup> *ibid.* pp. 74–77

<sup>162</sup> This section provides a summary; a much more detailed discussion can be found in Gibson & O’Faircheallaigh (2015, pp. 113–183).



- Focus on relationship building with the company in the community.
- Craft legal provisions, using specialist legal input.
- Identify options on all substantive provisions that will be needed to meet community goals and protect community interests.
- Agree on substantive provisions that obtain the maximum benefits for the community and minimise any costs it must bear – that is, that deliver ECVI.
- Ensure there is broad community support for a draft agreement; if there is not, return to the negotiating table.
- Ratify the agreement, using the occasion to cement community–company relationships through ritual.
- Build in penalties and incentives and then use them to motivate action.
- Develop a system for monitoring implementation of the agreement.
- Build in an easy-to-use system for amending the parts of the agreement that are most likely to be affected by changing circumstances.
- Anticipate external factors that can influence implementation success and then plan to deal with them.
- Use the agreement to build a strong relationship.
- Involve the company in local activities in order to build trust.

## Implementing agreements and maintaining relationships

The following key matters should be considered in implementing agreements and maintaining relationships. A highly detailed discussion of each dot point can be found in the Canadian toolkit of Gibson and O’Faircheallaigh.<sup>163</sup>

- Establish clear goals for implementation of the agreement.
- Build strong institutional structures for implementation, based on culturally appropriate models.
- Develop implementation plans and review them often.
- Define who is responsible for implementing parts of the agreement.
- Build in transition plans for turnover of employees.
- Ensure there are strong community champions of the agreement who are matched inside the company by equally influential corporate champions.
- Negotiate resources for implementation of the agreement, including funds, access to expertise and staff or information resources.
- Anticipate staffing, program and policy needs and start to build the capacity for them.

<sup>163</sup> This section provides a summary; a much more detailed discussion can be found in Gibson & O’Faircheallaigh (2015, pp. 187–202).

## Troubleshooting: What to do when things go wrong

### United communities

As noted above, communities that are united and stay united when confronted with a common threat can use specific strategies to enhance their bargaining power, such as direct action, litigation and forging political alliances. When communities are not united, the company can often divide and conquer, consulting with the people they find easiest to deal with and ignoring and isolating the ones that are less compliant.

### Seek legal advice early

When things do go wrong, it is important to seek legal advice. This can often avoid procedural difficulties and costly consequences that arise from not consulting legal advice in the early phases of the mine lifecycle.

### Ensuring agreements have provisions to cover unforeseen events<sup>164</sup>

Agreements should contain protections against catastrophic failures and unplanned events. There should be no release of the company from liability in relation to such failures, and there should be protective clauses and land stewardship measures in place to prevent their occurrence.

<sup>164</sup> *ibid.* 172–173





**Table 18: Information needs and sources to influence decision-makers**

Characteristics	Resources	Key questions
<b>Project and commodity</b>		
<ul style="list-style-type: none"> <li>Geology, especially grade, commodity mix, impurities</li> <li>Project scope</li> <li>Anticipated economic impacts</li> <li>Mine or oil/gas extraction technology type</li> <li>Other similar deposits and mines</li> <li>Project costs and risks, such as vulnerability to market change or delay, as well as newness of processes or technologies</li> <li>Place of the deposit on the corporation's priority list</li> <li>Net present value and internal rate of return (IRR). These are measures of the profit that a company is expected to get on its investment.</li> <li>Other similar deposits or projects</li> <li>Type of sale (open market; negotiated agreements)</li> <li>Historical and trend price behaviour for the commodity</li> <li>Market for the metals/minerals/commodity</li> <li>Uses of the product and demand estimates</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies (including economic impact studies and local IAs)</li> <li>Company materials and websites</li> <li>Company reports filed with regulators (e.g. Australian Stock Exchange, Australian Securities and Investment Commission – see <a href="http://www.asic.gov.au">www.asic.gov.au</a>)</li> <li>Other environmental assessments of similar mines</li> <li>Web searches for detailed economic analysis on the commodity</li> <li>Development description report included with development permit applications</li> <li>Information provided by the company under confidentiality agreements</li> </ul>	<ul style="list-style-type: none"> <li>What could cause key project vulnerabilities?</li> <li>Is this a doable project or is it on the margins? (This can affect vulnerability to early closure or outright project failure.)</li> <li>How big is the pie?</li> <li>Has the company been accurate in portraying the resource?</li> <li>What is the IRR? IRR is generally anywhere from 10% to more than 20%. The higher the IRR, the greater the risk and the more the community can ask for in financial benefits.</li> <li>What are the likely markets for this product? What is the projected price for the metal?</li> </ul>
<b>Access to ore body and land</b>		
<ul style="list-style-type: none"> <li>Overlapping rights of government or communities</li> <li>Associated infrastructure and other developments needed in order for project to proceed, such as roads or power</li> <li>Geographic barriers to development</li> <li>Legal or political barriers to development (e.g. EPBC Act)</li> </ul>	<ul style="list-style-type: none"> <li>Analysis by community representatives</li> </ul>	<ul style="list-style-type: none"> <li>Do we control access through permits, leases, etc. to the ore body?</li> <li>Will new roads be required for access to the ore body?</li> </ul>
<b>Energy sources</b>		
<ul style="list-style-type: none"> <li>Likely source of energy and cost</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies</li> </ul>	<ul style="list-style-type: none"> <li>Where will power come from? Is there a way for community power to be used (e.g. dam development)</li> </ul>
<b>Transportation</b>		
<ul style="list-style-type: none"> <li>Likely routes for materials into and out from the project</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies</li> </ul>	<ul style="list-style-type: none"> <li>How will the company get the ore out of the region?</li> </ul>
<b>Emergencies and contingency planning</b>		
<ul style="list-style-type: none"> <li>Hazardous materials that travel into the project</li> <li>Routes and amounts of materials leaving the project</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies</li> </ul>	<ul style="list-style-type: none"> <li>What kinds of chemicals will be on site (e.g. cyanide)? What risks do they pose? How will they transport any toxic material away from the site?</li> </ul>
<b>Environmental liabilities and impacts</b>		
<ul style="list-style-type: none"> <li>Water, animals, air, soil, tailings, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies</li> <li>Technical reviews of any studies completed for feasibility and EIA studies</li> </ul>	<ul style="list-style-type: none"> <li>What might be impacted by the development? Are there critical sites or species that may need to be protected from development?</li> </ul>



Characteristics	Resources	Key questions
<b>Social, cultural and economic impacts</b>		
<ul style="list-style-type: none"> <li>Labour market and demand</li> <li>Skill profiles needed</li> <li>Cultural meaning of the region (heritage sites, oral history of the region, place names, hunting or traditional use of the area)</li> <li>Community understanding or narratives of impacts</li> <li>Inventory of business capacity</li> <li>Taxation and revenue return to region issues (e.g. Royalties for Regions)</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies</li> <li>Self-assessment</li> <li>Government assessment; <sup>a</sup> sometimes specific branches of the government (e.g. Department of State Development) will fund studies to understand the range of business opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>How many people might be available to work? Or are employable people already employed?</li> <li>What cultural places or values might be impacted?</li> <li>What is important to the community to build or preserve?</li> <li>What businesses might be developed? What business opportunities exist?</li> <li>Will workers receive a remoteness tax rebate if they are away from community?</li> <li>Is there income that will return to the region for development through e.g. Royalties for Regions program</li> </ul>
<b>Closure and reclamation plans</b>		
<ul style="list-style-type: none"> <li>Bonds and sureties</li> <li>Plans and links to mitigation</li> </ul>	<ul style="list-style-type: none"> <li>Feasibility and EIA studies, including economic impact and local IAs</li> <li>Permit applications</li> </ul>	<ul style="list-style-type: none"> <li>What closure plans exist? How could the community be involved?</li> </ul>
<b>Corporations in general <sup>b</sup></b>		
<ul style="list-style-type: none"> <li>Legal requirements – reporting, responsibilities to shareholders</li> <li>Main purpose/guiding ethos</li> <li>Planning priorities – short, medium, long term</li> <li>Negotiation strategies of corporations in general</li> </ul>	<ul style="list-style-type: none"> <li>Corporate responsibility of NGOs <sup>c</sup></li> <li>Texts on corporations, especially extractive industries negotiations</li> </ul>	<ul style="list-style-type: none"> <li>What are the goals of the company?</li> <li>What are the values of the company?</li> <li>How might these relate to the community?</li> </ul>
<b>Company <sup>b</sup></b>		
<ul style="list-style-type: none"> <li>CEO history</li> <li>Board of Directors: skills; past project management; number of people</li> <li>Personnel dedicated to project</li> <li>History of community relations with the company</li> <li>Relationship to shareholders</li> <li>Corporate financial records</li> <li>Project financing</li> <li>Corporate structure</li> <li>Nature of company (junior, major)</li> <li>Financing</li> <li>Structure of the corporation: relationships or existence of subsidiaries and holding companies</li> <li>Relationship to other companies</li> <li>Commitment of resources</li> <li>Other agreements</li> <li>Corporate behaviour towards other Indigenous people or communities</li> <li>Historical behaviour of company</li> <li>Adherence to guidelines and standards (e.g. IFC, WBG, Global Reporting Initiative)</li> </ul>	<ul style="list-style-type: none"> <li>Press releases</li> <li>Corporate website</li> <li>Other communities</li> <li>Corporate annual reports</li> <li>Annual mining meetings (such as the Minerals Council of Australia)</li> <li>Corporate consultation</li> <li>Past interactions with the community</li> </ul>	<ul style="list-style-type: none"> <li>Who is the current contact person?</li> <li>What has the history of this company been?</li> <li>How diversified is this company, and therefore how stretched might they be? Or how committed might they be?</li> <li>What kind of company are they?</li> <li>Do they have financing in place?</li> <li>How do the site base staff and operation relate to the parent company?</li> <li>Where in order of extraction is this deposit compared with other deposits they are currently exploring?</li> <li>How have they negotiated with Aboriginal and Torres Strait Islander people in the past?</li> <li>What are the guidelines that the company adheres to? Can they be used to strengthen the community position?</li> </ul>
<b>Resources to support the community's negotiation effort</b>		
<ul style="list-style-type: none"> <li>Resources and key gaps</li> <li>Funding</li> <li>Current human resources</li> </ul>	<ul style="list-style-type: none"> <li>Government departments, specialists, technical experts, and other communities with experience, e.g. governments may make grants to communities involved in negotiations</li> <li>Dialogue with company</li> <li>Internal assessment</li> </ul>	<ul style="list-style-type: none"> <li>What funds and resources can be directed to the community?</li> <li>What expenses are anticipated? <sup>d</sup></li> </ul>



Characteristics	Resources	Key questions
<b>Legal process and key decision points <sup>e</sup></b>		
<ul style="list-style-type: none"> <li>Regulatory applications needed</li> <li>Nature of EIA process</li> <li>Regulatory and co-management bodies with impact on process (local, state, territory, federal)</li> <li>Moments of greatest influence (associated with regulatory approvals)</li> <li>Who holds power of decision-making (on this and associated projects)</li> <li>Regulatory, administrative, legal or other guidance on negotiated agreements</li> <li>Regulatory bodies in charge of elements of environment and social elements</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory authorities</li> <li>Legislation</li> </ul>	<ul style="list-style-type: none"> <li>What are the key decision points?</li> <li>How can regulatory requirements affect leverage?</li> </ul>
<b>Legal, policy and socio-economic context <sup>f</sup></b>		
<ul style="list-style-type: none"> <li>If on Aboriginal and Torres Strait Islander land in NT, <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> applies</li> <li>Surface lease agreements may apply</li> <li>Land claim may have been negotiated or under negotiation</li> </ul>	<ul style="list-style-type: none"> <li>Land claim agreement or through discussions with lawyer</li> </ul>	<ul style="list-style-type: none"> <li>What can the community influence? What bargaining power does it have through the legal system?</li> <li>Can the power of veto be used on Aboriginal land in the NT?</li> </ul>
<b>Associated agreements</b>		
<ul style="list-style-type: none"> <li>There may already be socio-economic or other agreements in place (e.g. regional partnerships)</li> </ul>	<ul style="list-style-type: none"> <li>Government sources</li> </ul>	<ul style="list-style-type: none"> <li>What agreements might already exist that could apply? (e.g. on training)</li> </ul>
<b>Mineral rights and regulations <sup>a, e, f, g, h</sup></b>		
<ul style="list-style-type: none"> <li>Mining and mineral access law</li> <li>Mineral regulation (state/territory)</li> <li>Legislative basis for consultation or mineral rights</li> <li>Jurisdiction of legislation</li> </ul>	<ul style="list-style-type: none"> <li>Government departments responsible for Aboriginal affairs</li> <li>Mining government departments</li> <li>Legal advisors</li> </ul>	<ul style="list-style-type: none"> <li>What legal or regulatory instruments support the case for an agreement (including royalty stream)? Consultation?</li> </ul>
<b>Community governance <sup>c, g</sup></b>		
<ul style="list-style-type: none"> <li>Self-government agreement; governance and consultation structures</li> </ul>	<ul style="list-style-type: none"> <li>Internal discussions</li> </ul>	<ul style="list-style-type: none"> <li>What structures are likely to be needed to manage negotiations? <sup>d</sup></li> </ul>
<b>Aboriginal rights analysis</b>		
<ul style="list-style-type: none"> <li>Land rights holders</li> <li>Status of land claims of self and others in the region</li> <li>Status with respect to Australian Government, such as Aboriginal and Torres Strait Islander rights; land claim agreements</li> <li>Impact on ability to secure other rights</li> </ul>	<ul style="list-style-type: none"> <li>Websites</li> <li>Aboriginal and Torres Strait Islander owners</li> <li>Australian Government</li> <li>Legal advisors</li> </ul>	<ul style="list-style-type: none"> <li>What legal rights does the community have with respect to the area? What can it gain? Does it have rights pending?</li> <li>See <i>Aboriginal Land Rights (NT) Act 1976</i> above power of veto</li> </ul>
<b>Court cases</b>		
<ul style="list-style-type: none"> <li>Relevant court cases</li> </ul>	<ul style="list-style-type: none"> <li>Lawyers <sup>g</sup></li> </ul>	<ul style="list-style-type: none"> <li>What court cases can be used to strengthen the community's case? For example, a court case that has recently been decided on consultation might strengthen the claim.</li> </ul>
<b>International standards</b>		
<ul style="list-style-type: none"> <li>Guidelines and international standards that can be used to guide or apply pressure</li> </ul>	<ul style="list-style-type: none"> <li>International Finance Corporation</li> <li>World Bank Group – e.g. Asian Development Bank</li> <li>International Council on Mining and Minerals</li> </ul>	<ul style="list-style-type: none"> <li>What is the best practice in guidelines, even if the company does not adhere to them? Can they be used to strengthen the community position?</li> </ul>

Notes: a. Refer to Module 4: Decision-maker – the State. b. Refer to Module 3: Decision-maker – the Company. c. Refer to Module 5: Decision Influencers – NGOs and Consultants. d. See Gibson & O'Faircheallaigh (2015, pp. 84, 125). e. Refer to Module 2: The Mine Lifecycle, Actors and Tools. f. Refer to sections in each module about issues affecting Aboriginal and Torres Strait Islander people. g. Refer to Module 7: Tools to Influence Actors.





Agreement provisions are only now emerging to protect nations in the case of catastrophic failures and losses. Components include:

- **Evidence:** Part of protection involves having solid evidence illustrating the extent and depth of use in the area surrounding a project. This requires the community to negotiate with the mining company for costs of a study that includes traditional knowledge and traditional use, or the extent of use, knowledge and the significance of a site to a community. The resulting evidentiary base can be used in the case of failure as the basis for awarding compensation.
- **Loss:** Provisions to ensure that compensation for collective and individual losses occurs swiftly can be negotiated. Loss may be the inability to fully and meaningfully exercise rights during project construction, operation and clean-up/recovery. Defining the full range of loss, including cultural, social and spiritual losses where there is severe environmental impact, is limited under current regulatory law, so agreements can be used to fill in these gaps.
- **Compensation** should not be only financial, but should include ceremonial restoration and extensive engagement of community-based teams in restoration and monitoring. Compensation is typically tied to losses that are suffered by particular individuals or failure to be able to practise livelihood (and associated market losses); this should be expanded.
- **Insurance:** Australia could adopt the approach of an insurance policy with the community as the beneficiary, so in the event of a claim the community rather than the government controls funds that can be used for rehabilitation.
- **Recourse:** Efforts should be made to ensure that financial institutions or companies behind a small mining company are liable for remediation costs. This should involve a guarantee from a parent company that if a subsidiary did not have access to adequate financial resources for full remediation, the parent will make up the difference.
- **Post-catastrophic failure response assessment:** This involves agreeing on an emergency response plan for a failure, including agreement on how to determine the extent of impacts and the adequacy of the compensation. New best

management practices should be implemented, such as inclusion of tailings water cover as well as independent tailings review panels.

- **Environmental monitoring:** Environmental monitoring during the project life could be undertaken by Aboriginal people, such as is the case in Canada under the Indigenous Benefits Agreements that have been happening at mine sites for more than 10 years. If there is strong community-based monitoring, the capacity can be applied to post-disaster monitoring to ensure there is a strong flow of information about impacts.
- **No waiver:** Negotiators should be wary of clauses that waive the rights of Aboriginal and Torres Strait Islander people to legal recourse in the case of catastrophic failure.

## Conclusion

The key to building lasting relationships between the actors in mining and oil and gas extraction is through building trust. At all stages of the negotiation process there are key ways to ensure actors are trustworthy and to encourage preferred behaviour. Before beginning negotiations, communities should always be mindful of their right to not negotiate if this is a better way to meet their community goals and plans for the future. Gaining information on all aspects of the proposed mine operations, including exploration, in the early stages of the mine lifecycle is the key to be best prepared for what may lie ahead.

When entering negotiations with mining companies, communities need to know their rights so they have power in the negotiation process and can reach a mutually beneficial agreement. Community negotiators are always free to demand good CSR and thus can refuse to provide the company with the SLO on their lands.

Unity within and between communities helps throughout the mine lifecycle in managing the usual peaks and troughs and effects these have on the community. Unity is particularly important during the negotiation of an agreement. Such an agreement is best made at the earliest possible stages of the mine lifecycle, although it must be weighed against the risk of having too little information at these early stages. The agreement



can occur later but needs to occur before the mining licence is approved; at this stage, there is little chance of turning back.

Once a decision to negotiate has been made, there are three distinct stages in negotiating: preparing and taking a position, conducting negotiations and reaching agreements, and implementing agreements and maintaining relationships. The third usually occurs in the latter stages of the mine lifecycle and is just as critical as the first two steps in the early stages.

A final point is that there are a number of options to consider when things go wrong, including the need to remain united within and between communities, the importance of seeking legal advice at the earliest possible stage to provide the greatest opportunity to rectify a problem and exercise

available rights, the need to ensure that agreements contain provisions that account for unforeseen circumstances, and the importance of never waiving the right for recourse.

The ultimate goal is that the community is better off following an agreement to proceed with mining than not proceeding; that is, there is enduring community value from mining. The best chance to do this is by knowing the mine lifecycle: what could occur at each stage and what decisions need to be made and addressed at these points; by having a repertoire of tools to influence decision-makers (including the courts); by being cognisant of possible adverse (as well as positive) impacts and risks; and by having an agreement in place to prevent, mitigate and rectify the ill effects from any resulting risks.



# Module 9: Case Studies for Creating ECVM

## 9 Module Nine

### Overview

Six case studies provide examples of where company and community relationships have been established early in the mine lifecycle with a focus on delivering ECVM throughout the mine lifecycle. These case studies can be used to glean ideas about how to work with resource development companies and other organisations to capture the best possible benefits for communities.

A further case study for the Ranger uranium mine near Jabiru in the Northern Territory is provided as an example of a risk assessment application in [Appendix A](#). It can be read in conjunction with the six case studies contained in this module, for a total of seven case studies.

It should be noted that these case studies have been prepared in conjunction with the main contact noted at the bottom of each case study and do not necessarily represent the views of all people. Readers should undertake their own research to draw their own views about opportunities for creating ECVM.

### Case study 1: Building Aboriginal and Torres Strait Islander business capacity to support enduring community development, South Australia

#### Issue

Elliott McNamara of the Barngarla Traditional Owner group knew he wanted to think outside the

square when it came to negotiating benefits from Indigenous Land Use Agreements (ILUAs). Barngarla Traditional Owners had rights to compensation from Arrium mining for the resumption of mining at Iron Knob, which is located on the Yorke Peninsula, South Australia. The mine is on land to which the Barngarla Traditional Owners had been given native title rights (see [Map 1](#)).

Elliott wanted to ensure that the flow of benefits from the ILUA would help secure a long-term future for the Traditional Owner group based on building skills and capacity, financial security and entrepreneurial capability. This required thinking beyond short-term benefits and establishing a business agreement with the company.

#### Approach

Elliott, on behalf of the Traditional Owner group, built close working relationships with the CEO of the mine and other senior staff. Through such discussions he was able to propose to the company that rather than be given financial compensation under the ILUA, the main financial benefit would be through a guaranteed business opportunity. The opportunity involved a multimillion-dollar contract for a minimum of seven years or for the life of the mine for crushing, screening and material handling at the Iron Princess mine, north-east of Iron Knob.

To facilitate this agreement and build enough credibility with the company, Elliott gained help from two highly experienced managers: an operations manager and a commercial manager. The managers were prepared to work with him





on an equal footing and to give the appropriate knowledge and skill base to facilitate negotiations with the company. The managers contributed towards building an appropriate business and financial model. This included the business being 100% Aboriginal-owned, with 51% of profits going back into the business and the remainder providing financial benefits for the Barngarla Traditional Owners.

Arrium was highly supportive of Elliott's efforts to build the business up and provided support and expertise where required. Because of this trusting relationship, Elliott was prepared to publicly support the company.

## Outcome

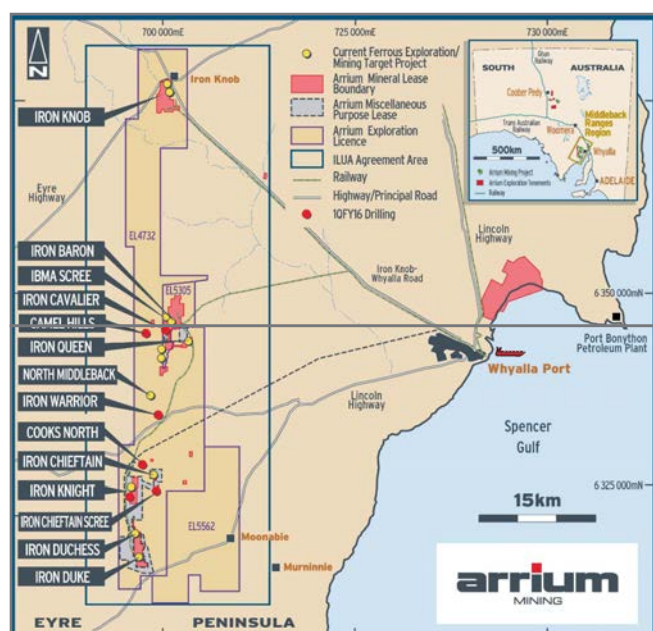
The ILUA was signed with a guaranteed business agreement, and Walga mining was created (see [Figure 7](#)). In 2008, Walga received its first contract with Arrium: to undertake the crushing and material handling for Iron Baron. Since then the company has provisioned a range of services to Arrium at a range of sites, including more recent involvement in site rehabilitation and revegetation at Iron Knob. This has created significant profit back to

the business, which has been used to build up the business and provide community benefit.

The venture to date has employed 50 Aboriginal people and led to significant skills development. People have undertaken a range of positions, including working as supervisors and being trained for management positions. According to Elliott, this has been done in a way that is consistent with Aboriginal and Torres Strait Islander values and has helped to establish a positive vision for the community:

You have to have a vision. I think I have a vision of where I need to go and I want my people to follow me. If I can get my kids to follow me, then others will follow too. We talk about footprints; I hope that I leave footprints that other people can follow. I have great support from my community, and I think the community has a sense of where we are going.

In establishing the business model, there was also recognition of the need – once the company had the business confidence and sufficient skills – to diversify away from the mine to retain ongoing



Map 1: Middleback Ranges, South Australia

Source: Arrium Mining and Materials (2015)



Figure 7: Walga Mining and Services' key management team

Note: Operations Manager, Ken Burton; Commercial Manager, Dan Tenardi; and Executive Director, Elliot McNamara

Source: Arrium Mining and Materials (2014)



viability. For example, the company recently won a contract with the federal government in a joint venture with Aboriginal contractors Rusca Brothers to provide works at the Cultana military base.

Elliott is keen to share his knowledge and accumulated experience with other Traditional Owner groups. He envisions developing joint partnership arrangements with other Aboriginal groups to kickstart new business opportunities within their own region. His intention is to initially train and subcontract them, but that they will run their businesses independently with time.

### Key learnings for communities

- Think outside the square when negotiating ILUAs to maximise benefit and enduring opportunities.
- Get support from the right expertise and be open to input from those with more experience.
- Build credibility and solid relationships with the company through senior engagement, that is, the CEO, in order to facilitate business success.
- Look to diversify the venture beyond the mine's life.

**Contact:** Elliott McNamarra, Managing Director, Walga Mining, 08 8645 2745

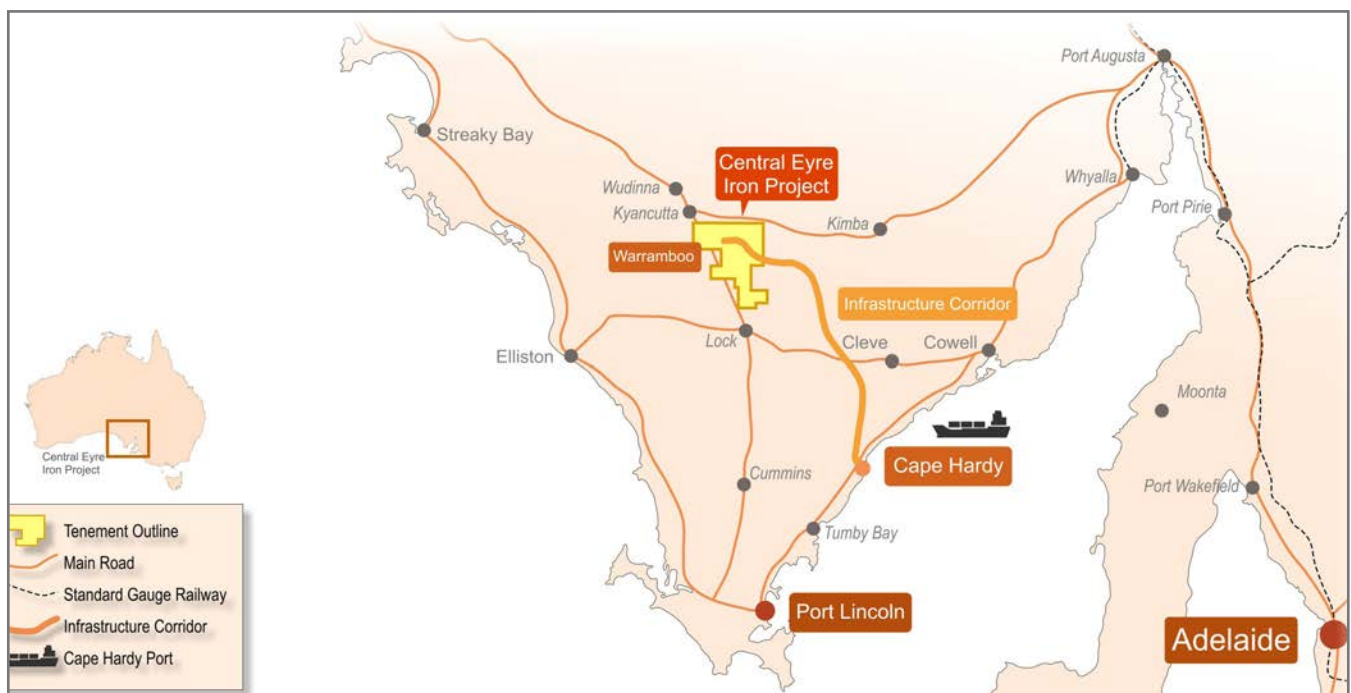
## Case study 2: Facilitating community input into maximising benefits from mining – Central Eyre Iron Project Community Consultative Committee, South Australia

### Issue

Iron Road Limited was in 2017 developing an iron ore project on the Eyre Peninsula near Wudinna, in South Australia (see [Map 2](#)). The project is significant to the state, given the size of the iron ore reserve and the potential economic benefits it can bring.

However, the challenge is to ensure that the project provides local community benefit and contributes towards the future vision of the region. This includes providing new opportunities for the region as well as addressing the potential social and environmental impacts of the project locally. This is particularly relevant given the development is on a relatively large scale and is within an agricultural district.

The company Iron Road has also developed a culture of being part of the community and wanting to contribute to long-term outcomes above and beyond compliance. This includes employing a local



Map 2: Central Eyre Iron Project

Source: Iron Road Limited (2016)



community leader based in Wudinna to develop the community and stakeholder engagement program in alignment with local community values and aspirations.

Members of the local community also aspire to use this development as a way to diversify, build on the value agriculture brings and prevent the current trend of population decline in the region.

The question, then, is how to bring community and company aspirations together and develop mutually beneficial goals while giving the community a voice and capacity to shape the direction of development.

## Approach

Iron Road was involved in and supported a community-led initiative to create a community consultative committee (CCC) with membership drawn from the local community and stakeholders. The role of the committee was to help oversee the community engagement process, provide advice to the company on relevant project issues and ensure that the mine leaves a positive legacy.

Everyone in the community had an opportunity to be involved, including those local landholders who were affected by the mine's footprint, and the members of the committee self-selected. An independent chair was appointed in mutual agreement by the company and the committee; this person held strong community connections and involvement in the region's development such as through sustainable agriculture and natural resource management commitments.

The committee established clear terms of reference and had a genuine commitment to finding constructive solutions while acknowledging and being sensitive to people directly affected by the mine.

## Outcome

The committee was formed in late 2013, at the beginning of the mine lifecycle. This provided opportunity for it to contribute to the mine proposal and development plan prior to the government assessment process, and created scope and capacity for the committee to have

direct influence over the mine project design and approach.

As one community member said, the CCC helped empower the community to look at a range of strategies and options so it could manage and steer its own future and outcomes:

Through the CCC we are able to raise any issues, including concerns regarding the impact of dust and salt on cropping land. The company worked with us to see how we can benefit in working together, and virtually any topics get raised. We have the opportunity to input and work out how it will best work for the wider Eyre Peninsula. It works if we are prepared to put in and work with the company and help shape things and not just let it happen. We put the energy in and make the best outcomes for our district.

Through the CCC, a number of innovative community strategies were discussed that, according to the stakeholder engagement advisor, had merit for consideration:

One of the members got up and developed a detailed proposal to establish a local plant nursery to help facilitate rehabilitation. Issues like that are certainly on the radar, and that sort of process – if community driven and if the company are prepared to support with money – could have a life of its own. We are making sure all options are alive and circulating as we are moving forward. This gives a sense of optimism.

A key result of the committee was a plan of the key social, economic and environmental outcomes that the community wanted to see emerge from the mining development. According to the independent chair, the outcome-based document:

... was to focus the thinking on the positive side, because the committee had members who were impacted farmers and there were a lot of feelings and emotions. Other members reflected on what would be good about it for business or industry – a vision of what they wanted. Iron Road were very





proactive to work with the community, through relatively tough situations.

The initiatives scoped by the CCC include:

- **Environmental:** To ensure that any biodiversity offsets generated by the project contribute to local environmental benefit; to minimise environmental impacts such as dust; to develop local capacity in ecological restoration.
- **Social:** To work towards mine workers being integrated into the community; to protect the sense of community, including a high level of voluntarism.
- **Economic:** To develop shared infrastructure for community benefit; to invest in local community development; to support local and regional business development.

The CCC is now in recess, but will potentially be reactivated if government approval is given for the mine to go ahead. The outcomes document will also help develop a platform for later evaluation of the success of the development and its linkage to community values and aspirations.

The communities of Port Neill and Tumby Bay have also established CCCs, because these locations will also be affected by the mine and its transport corridor.

### Key learnings for company–community consultation

- Form CCCs or equivalent early in the mine lifecycle process to help identify ways to maximise the benefits of mining and develop long-term or enduring value.
- Consider a range of options and potential innovations to ensure the project adds value to the local community.
- Be mindful of approaches and initiatives that may last after the mine closes and may support future community development.
- Openness and engagement with community early in the mine lifecycle help set an appropriate vision, raise significant issues and build in mechanisms of accountability.

**Contact:** Helen Lamont, Lamont Connections, [lamontconnections@gmail.com](mailto:lamontconnections@gmail.com)

## Case study 3: Protecting Country: Wiluna Traditional Owners get involved in environmental monitoring at the Toro Uranium Mine, Western Australia

### Issue

In 2013, the Wiluna Traditional Owners (TOs) gained native title rights to their traditional lands in Western Australia. TO leaders said this gave them a voice and a right to be consulted about projects impacting on their country. It also opened up possibilities of working cooperatively with stakeholders to manage their country and look after its future.

When Toro Energy first started consulting with the Wiluna TOs about a potential uranium development on their land (see [Map 3](#)) the TOs said they did not understand the development; they were not saying no to the proposal, but they wanted to know what the company intended to do and what impact it would have. Toro suggested they get an advisor and gave them a list of names.

The TOs engaged Jim Honduras, an independent consultant with scientific skills in radioactivity and environmental impact assessment. Through a year of regular meetings and discussions, the TOs gained more information and began to trust Jim's advice.

Jim aimed to ensure the interaction between the community and company went beyond tokenism and allowed the TOs to gain influence and involvement in the mining development process.

Toro wanted to ensure that the development provided significant and long-term TO benefits, such as business development and employment that potentially extended beyond the mine life of 20 years.

### Approach

The first key step taken was for the TOs to provide comment on Toro Energy's environmental impact statement (EIS), which was in the public domain.

Jim met with the TO group, said he would read the EIS and give them a summary using his scientific expertise and stressed that the TOs would need to



decide on which issues were important to them. The company would then have to respond to the submission questions raised, to the satisfaction of the TOs and the government.

As a result, the TOs had long discussions and shaped the submission they made. Key concerns were the risk of radioactive contamination and impacts on groundwater systems and associated water-dependent ecosystems. These included West Creek, which had trees of cultural significance, and the associated bush tucker of the area. The TOs also raised issues about the need to bury tailings so that the landscape would not be full of tailings spoils, as had been seen with previous mining developments.

The TOs also wanted to ensure the company was doing the right thing and to monitor its activities and behaviour. The TOs decided they would approach the company and request that they undertake environmental monitoring at the site, including radioactive monitoring, and also have opportunities to visit the site and meet with the site managers and supervisors.

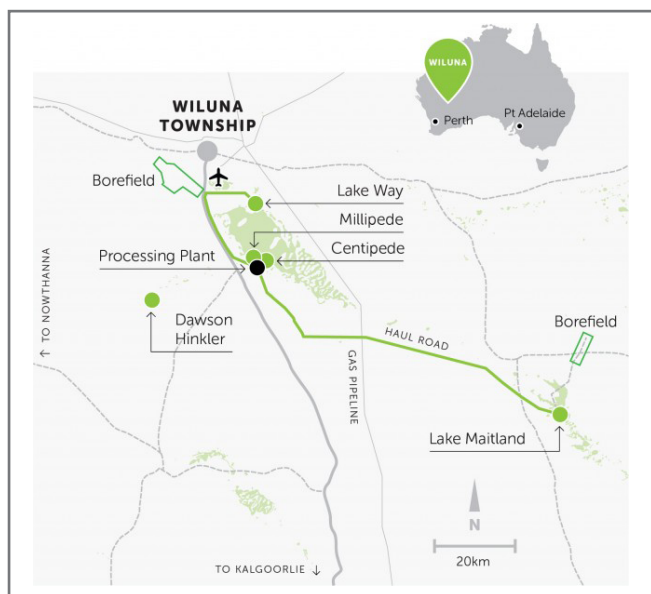
The company was very receptive to this approach and agreed to it. Company representatives saw that it fitted well with local Aboriginal employment aspirations, where people could get jobs on country without working directly on the mine operation.

They also saw it could create a business opportunity for the TOs, which could potentially lead to other business opportunities with other mines in the area.

The company funded two training sessions that Jim ran for the TOs to learn about radioactivity and gain skills in radioactive monitoring. The company also recognised that while it had its own training expertise, the process needed to be run by an independent expert such as Jim. Most of the participants were young and had limited exposure to environmental monitoring and concepts of radioactivity. The company also gave the TOs the opportunity to come out to the site and have face-to-face discussions with the site manager to ask questions and raise any relevant issues.

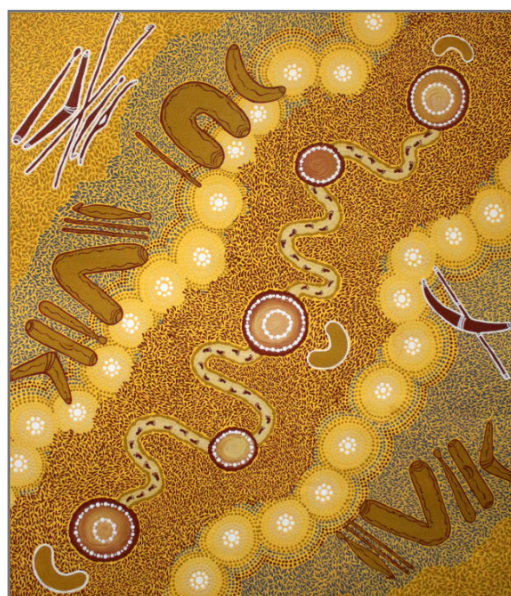
## Outcomes

The radioactive training sessions for the TO youth were very successful. The young people were interested and keen to be involved, and they spent a full day talking through issues and understanding the key concepts. They learned about how radiation is measured and what 'monitoring' means, including concepts such as calibration and unit of measure. They were able to talk about radiation, ask questions and not be afraid to gain knowledge and understanding.



**Map 3: Toro Energy's Wiluna Project**

Source: Toro Energy (2016a)



**Figure 8: Last Nomads, Regina Ashwin**

Source: Ashwin (2015)



To maintain these skills, the intention is to continue the training program until the mine is developed and, as a result, four continuous monitoring sites have been established in locations chosen by the TOs.

Also, the mining agreement between Toro Energy and the TO, signed in July 2016, contained a commitment to these arrangements.<sup>165</sup> This includes a specific provision supporting Wiluna TOs to form a business entity that will provide monitoring services to Toro Energy, including radiation and groundwater monitoring. It also includes an agreement for the TOs to regularly visit the mine site and ask questions of the site manager face to face.

The vision, according to Jim, is that such expertise can be built up with time. People will learn new measuring techniques, how to monitor groundwater and how to assess and write up results. This could potentially lead to the TOs gaining qualifications as metallurgical technicians.

As the company gains confidence in the TO involvement, there is also the potential to extend this to involving Aboriginal people in land management and rehabilitation of the site. This approach provides Aboriginal people with an opportunity to express their key values of protecting country and cultural heritage.

There is a sense that the TOs have gained more confidence, assurance and comfort in the process than they had previously, including a better understanding of issues and a capacity to influence the mine's development. For example, through the mining agreement, in the event of a high radioactive reading being recorded, an initial double check would occur in the field. A meeting would follow this with the Managing Director of the mine to discuss and resolve the issue. In the instance of this not working, an independent assessor would be brought in. This provides certainty over the process to be followed in resolving radioactive incidents.

## Key learnings for company–community relationships

- Nothing is impossible, and it has been possible to shatter paradigms. The process of mining has been demystified and made accessible to TOs in a way that suits them, rather than expecting them to read a 500+ page EIS statement.
- The process has been based on building relationships and trust, including in Jim who is independent of the company. This involves sitting down and talking face to face.
- Through the involvement in environmental monitoring, the TOs feel they have not lost control of their land.
- The process of involvement is as important as the outcome to give TOs an opportunity to work through and understand the issues, become comfortable with the process and build capacity.
- Transparency, preparedness of the company to listen and its commitment to doing more than the minimum required all facilitate community participation, which then helps empower the TOs.

**Contact:** Jim Honduras, Director and Principal Consultant, JRHC Enterprises P/L, 0402 987 191, [admin@jrhc.com.au](mailto:admin@jrhc.com.au)

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<sup>165</sup> Toro Energy (2016b)





## Case study 4: Creating sustainable livelihoods for Martu Traditional Owners in Western Australia – the Indigenous Ranger Program

### Issue

The Martu Traditional Owners (Mantu TOs) in Western Australia have extremely strong connections to their country and are looking to find sustainable livelihoods within their traditional lands in remote Western Australia (see [Map 4](#) and [Figure 9](#)).

The challenge is that the area is very remote and has low socio-economic status. Current employment levels for Mantu in Wiluna are around 3%.

The key requirement is to find pathways to employment and opportunity that meet the aspirations of the TOs and that they have ownership over but that also harness the potential economic opportunities in the region. There is a strong mining presence in the region as well as significant government service provision.

### Approach

Through a collaborative process called a Regional Partnership Agreement (RPA), federal government and other service providers in the region collaborated with resource companies and Aboriginal communities to look at ways to improve regional employment outcomes.



**Map 4: Martu determination near Newman, Western Australia**

Source: Kanyirninpa Jukurrpa (2016)

A critical step was to commission a perception survey to better understand employment preferences for Mantu people and the barriers for uptake of employment. The RPA panel wanted to know how to harness the aspirations of the Mantu people. The Mantu TOs took on the responsibility for the process, including writing the survey questions and going out and collecting the data and evaluating the results. The RPA utilised the results of the perception survey to help design initiatives to facilitate employment of Aboriginal people, including helping Mantu people to get their driver's licences.

The results of the perception survey were particularly revealing in terms of Mantu people seeking employment. The study showed that half the Aboriginal participants surveyed did not want to work underground in a mine, and that their employment preference was to be involved in land management activities.

This struck a chord with Guy Singleton, Community Relations Officer at Newmont, who recognised that traditional mine Indigenous employment programs had not worked well and had had difficulties in retaining staff. It provided the impetus for Newmont to work collaboratively with Central Desert Native Title Services to develop a Mantu Indigenous Ranger Program, with participants working directly for the Jundee mine on environmental compliance and land management. The scheme was piloted in 2011 and, after this was successful, implemented in 2012.

The Mantu Ranger Program was designed to introduce participants into the workforce gradually,



**Figure 9: Jigalong rangers removing buffel grass**

Source: Kanyirninpa Jukurrpa (2016)



with an initial program of rangers working one week per month at the mine. The first group of rangers worked on compliance and land management activities at the mine-site lease and were therefore required to meet the strict requirements of the company, including fit-for-work and health and safety requirements.

Even though the initial Martu Ranger Program worked well, it was recognised that it limited Martu participation through stringent requirements; for example, it excluded women with children. To make the program more inclusive, a second tier of Martu Rangers was commissioned to work on pastoral leases surrounding the mine, and this also engaged new partners including government and pastoralists.

## Outcomes

The Martu Ranger Program has helped facilitate Martu to manage country on mine land connecting to their Wiluna Native Title Claim and the Indigenous Protected Area to the north. The opportunities to get out onto country have demonstrated improvement in health outcomes of Martu.<sup>166</sup>

Martu are involved in direct environmental compliance activities at the mine, such as feral animal and weed control (see [Figure 9](#)), management of exploration sites and mine-site rehabilitation. However, they also have the opportunity to be involved in broader biodiversity initiatives. This includes the implementation of a biodiversity plan and involvement in land management activities, including fire management, reconnecting landscapes, erosion control and protection of fauna and flora.

A highlight was when Martu Rangers were involved in a threatened species monitoring program. There have been previous records on Jundee station of a population of brush-tailed mulgara, but they had not been seen for over a decade. The group successfully managed to trap a mulgara and will be involved in continued monitoring and protection of the species.

Through a cooperative model, the Martu Ranger program has attracted funding from a range of sources. The aim is to obtain more regional contracts and increase the number of Martu participants.

For Martu in the region, the program is well regarded, viewed as an appropriate model of Aboriginal employment. However, Martu see the need to increase the level of Martu participation, perhaps through linking to other income-generating ventures, such as tourism.

For two of the participants, the program has also provided an appropriate pathway to mainstream employment at the mine using a step-by-step approach.

## Key learnings for company–community enduring value

- Forming collective partnerships such as RPAs with strong intent to deliver on promises can solve seemingly intractable problems and help connect local communities to opportunities that emerge from resource development.
- Bottom-up approaches that understand community need and preferences and build on community strengths are important.
- Engaging Aboriginal people in direct business activities at the mine around environmental management can provide strong mutual benefits for both the company and the local community.
- Piloting the process and taking a step-by-step approach help to ensure program success and to meet the needs of both company and community.

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166 *ibid.*



## Case study 5: Establishing enduring value from biodiversity offsets: Great Victoria Desert Biodiversity Trust, Western Australia

### Issue

Resource companies in most states in Australia are legally required to offset any vegetation clearances or impacts on threatened species with positive environmental benefits at another site. For this to be effective, processes are required that help ensure long-term protection of representative ecosystems and species. Community participation has the advantage of maximising environmental benefits while also engaging and involving local communities, to ensure that environmental protection can continue once the scheme is completed.

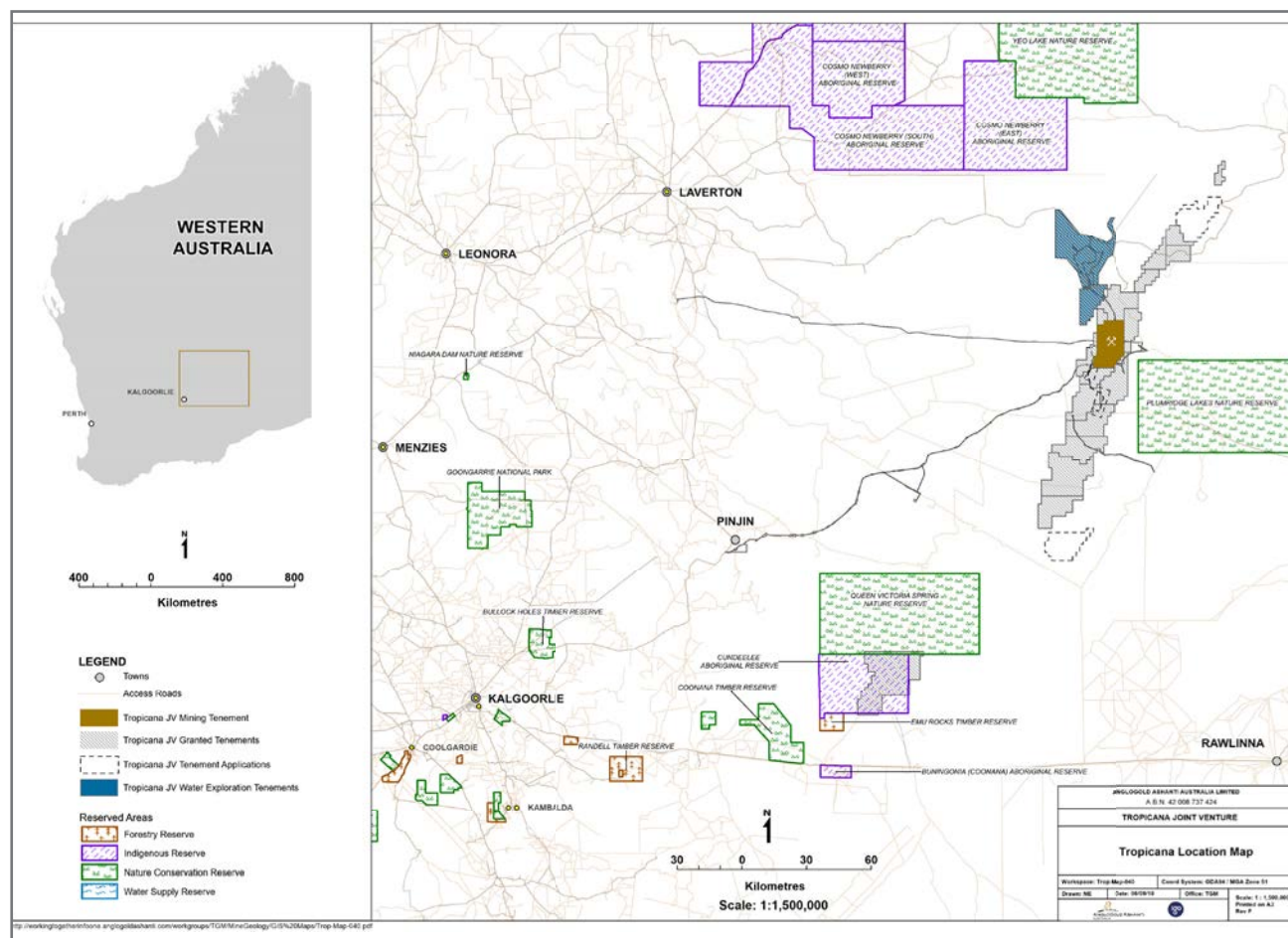
AngloGold Ashanti Australia Ltd and Independence Group NL, through the Tropicana Joint Venture,

operate the Tropicana mine, which is 330 kilometres east-north-east of Kalgoorlie, Western Australia (see [Map 5](#)). The TJV has committed to a biodiversity offset through the Great Victoria Desert Biodiversity Trust.

### Approach

Tropicana Joint Venture took an innovative approach to their biodiversity offsets, using a partnership model approach. They formed an independent trust called the Great Victoria Desert Biodiversity Trust (the Trust) to help protect and manage biodiversity in the largest desert region in Australia, the Great Victoria Desert (GVD) bioregion (see [Map 6](#)), located in the southern rangelands of Western Australia.

The GVD is a natural, largely intact desert environment containing marble gum, mulga and yarldarlba over spinifex grassland. It contains a number of threatened species such as the sandhill

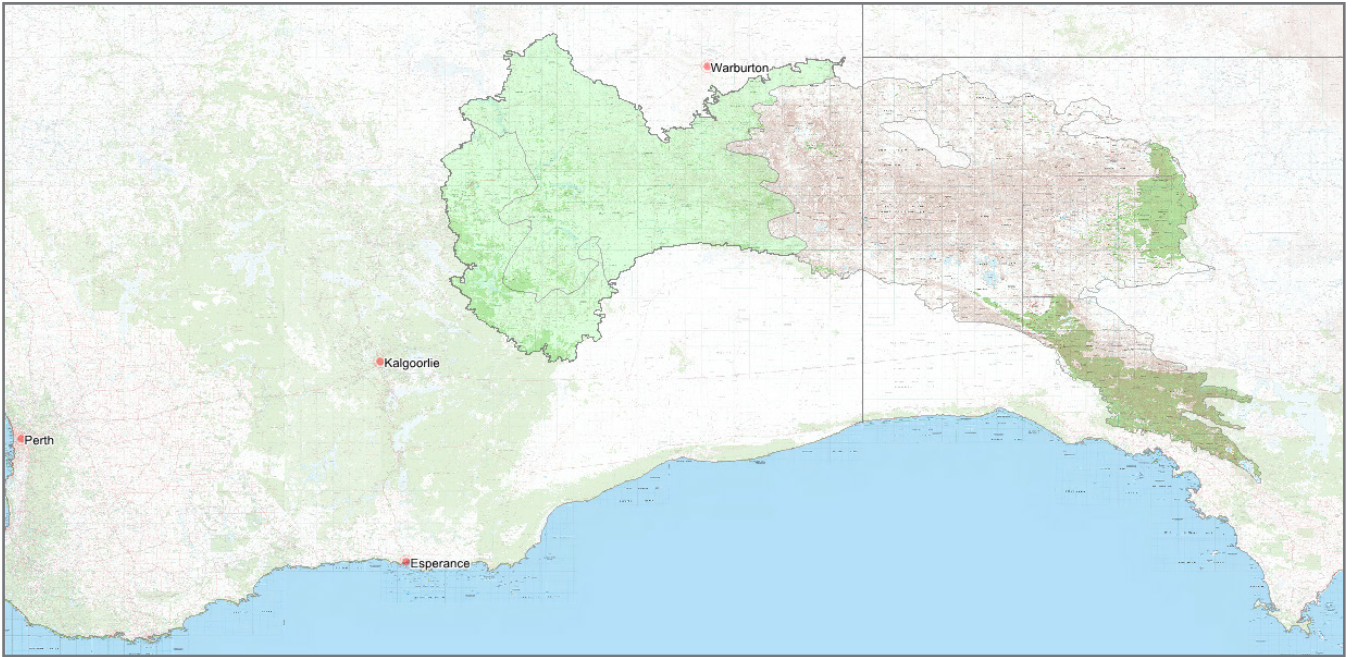


**Map 5: Tropicana Gold Project location**

Source: Bastow (2014, p. 5)







**Map 6: Great Victoria Desert**

The trust area is shown in pale green to the western part; the eastern and south-eastern marked areas are also part of the GVD

Source: Great Victoria Desert Biodiversity Trust (2015, p. 5)

dunnart (Figure 10) and malleefowl. The GVD is sparsely populated, but Traditional Owner groups include the Pila Nguru (the Spinifex and Pilki people) and Yilka, both of whom have strong connections to country.

The Trust was established as a non-profit organisation with a governing board made up of Parks and Wildlife, Western Australia Government, two AngloGold Ashanti Australia representatives and an independent chair.

According to Kathryn Sinclair, the Trust's Operations Manager, the Trust is a new way of delivering environmental offsets:

AngloGold Ashanti Australia [in the Tropicana] Joint Venture went above and beyond compliance in the establishment of the Trust. They chose a unique model which not only met regulatory requirements but extended beyond this to deliver a lasting legacy to the region. The Trust focuses on threatened species and also examines the landscape-scale processes affecting biodiversity in the region. In addition, the Trust aims to work closely with Traditional Owners of the region, to utilise their

Traditional Ecological Knowledge as well as providing employment to assist in ongoing biodiversity management in the region.

The approach the Trust took was holistic, establishing processes to benefit the region as a whole and assist everyone involved in its management, including:

- undertaking research of the region, acknowledging that there is little known about the GVD and a particular need for better understanding of threatened species ecology and management
- developing a bioregional plan to synthesise all known information about the GVD in a way that is accessible to everyone and that helps identify appropriate on-ground management strategies
- doing on-ground activities, such as fire and predator management activities, to help manage and protect the landscape and threatened species
- providing capacity building for local communities, including creating opportunities for local Aboriginal people through Indigenous Ranger Programs.





**Figure 10: Sandhill dunnart**

Image credit: Ray Lloyd, [www.faunatrack.com.au/](http://www.faunatrack.com.au/)

The Trust initially focused on research to help build scientific legitimacy and determine future directions. The aim is that this scientific information will pave the way for more on-ground works.

The Trust activities have been designed to get the best value during the current 10-year life of the program (which began in 2013).<sup>167</sup> However, according to Kathryn, because the Trust is set up as a non-profit organisation, there are opportunities to engage other partners in the region, potentially increasing the Trust's life and delivering enduring benefits to the region.

## Outcomes

Since its inception, the Trust has made significant progress towards its vision of understanding and conserving biodiversity in the GVD.

A key first step was to run a series of workshops about threatened species, bringing community and experts together to compile knowledge on three such species (sandhill dunnart, marsupial mole and malleefowl). The workshops also scoped on-ground strategies/approaches to reduce threats to these species and help ensure their ongoing survival. From this process, threatened species management plans can be developed.

The Trust has also funded its first-round project grants with assistance from a technical advisory panel that devised key criteria to ensure projects met the key objectives of the Trust.

The projects funded include:

- an Adaptive Management Partnership Project, which is a collaborative project between government, NGOs and Traditional Owners and is developing the Bioregional Plan for the region
- a knowledge hub to collate and spatially represent all known biodiversity data of the region that can be used by all stakeholders in the region
- two projects to contribute to threatened species management for the malleefowl and sandhill dunnart.

The Adaptive Management Partnership Project has a clear focus on Traditional Owners being involved in gathering, understanding and managing biodiversity and cultural values on their Country.

## Key learnings for companies

- Innovative approaches can be used with biodiversity offsets to maximise benefits both environmentally and socially.
- Collaboration and engagement through the process provide multiple benefits and are the basis for long-term value.
- Establishing an independent organisation with clear aims as a partnership between different groups improves outcomes and the life of the project.
- Resource companies can be prepared to go beyond compliance to generate meaningful enduring outcomes when a pathway is envisioned.

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<sup>167</sup> Great Victoria Desert Biodiversity Trust (2013)



## Case study 6: Linking corporations with Indigenous land management – the Aboriginal Carbon Fund

### Issue

Companies can now invest in the management of Aboriginal lands by offsetting their carbon emissions through the Aboriginal Carbon Fund (AbCF). Whether mining companies are trying to offset their carbon footprint (e.g. by measuring the vehicle fleet emissions), go completely carbon neutral, address the UN Sustainability Development Goals or simply follow a CSR approach, the AbCF can offer greater benefits for a mining company than just those resulting from the purchase of carbon credits. These wider benefits include meeting community aspirations in regional and remote Australia by creating local benefits.

### Approach

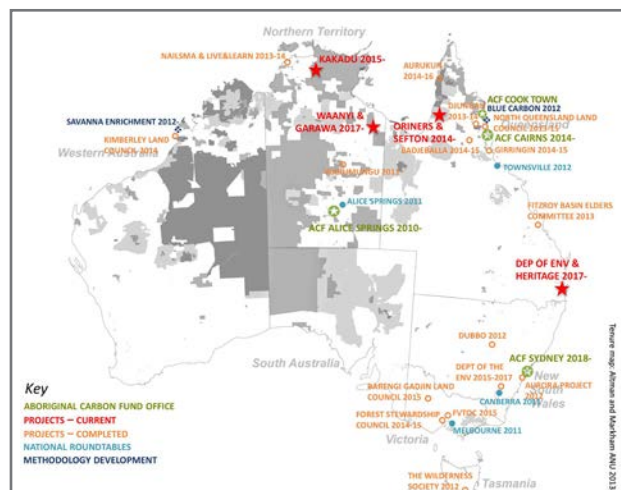
The AbCF helps connect companies who want to purchase carbon credits with Traditional Owners (TOs) who undertake carbon farming projects on their traditional lands (see [Map 7](#)). The Fund is a not-for-profit company limited by guarantee that was established in the Northern Territory in 2010. Carbon farming creates opportunities for income generation and job creation that help TOs maintain their social responsibility to their families. Carbon farming also means that people can work on country and manage the program in line with cultural traditions. Carbon farming can also be focused on regions of high ecological value to improve environmental benefit and be integrated within agribusiness schemes.

The carbon farming management practices undertaken through carbon farming include fire management and vegetation restoration, which help to restore a more natural balance. Fire management helps to reinstall a 'cool' fire regime in tropical savanna country by reducing the incidence of large wildfires, which lessens hot burns and their devastating impact on the natural environment and intensity of carbon delivery to the atmosphere. The AbCF can issue carbon credits to mines that engage TOs to conduct these cool burns on country. Also, according to Rowan Foley, the AbCF

General Manager, degraded land often has the best potential for vegetation renewal. Rowan says that the Fund seeks to develop long-term business relationships between companies and TOs:

We made the strategic decision to change from the normal western science-based model (i.e. Gold Standard, CCBA, etc.) to exploring a more community-based philosophy for the development of a co-benefit verification standard on Aboriginal lands.

Lisa McMurray (Caritas Australia) gave a presentation at our strategic planning workshop explaining that the environmental sector approach is quite different to the international development approach, which is human-centred and focuses on high quality relationships, long-term engagement, learning, adaptation, working together and community development principles.



Map 7: Aboriginal Carbon Fund projects, 21 April 2016

Source: Aboriginal Carbon Fund (2016)

One example of this difference is the 'South' evaluation technique. In an attempt to redress dominant international development paradigms that see technical experts usually coming from the 'North' (i.e. European corporations conducting audits, government departments and UN agencies largely based in northern European cities such as London, Paris, Belgium, Zürich, etc.), the South-to-South model embraces the expertise of the Global South community-based partners. As a result, southern experts become the





trainers, brokers and capacity builders within the development process. The model acknowledges the power differentials at play between North and South entities. However, to customise the evaluation verification standard it may be renamed 'North to North' to better suit the Australian Aboriginal and Torres Strait Islander context.

The general operational procedures of AbCF are:

1. there should be at least four co-benefit domains: social, cultural, environmental and economic
2. training will be incorporated into the Certificate II Carbon Farming ranger course
3. a system of north-to-north independent evaluation (with peer review) will be developed
4. the appreciative inquiry methodology will be used to obtain data
5. the co-benefit report template will be user friendly for community-based ranger groups to utilise
6. to minimise green tape and keep costs low, the verification standard should mimic the actual carbon projects with three audits over the life of, for example, a savanna-burning project.

The following principles inform the development of a co-benefit verification standard:<sup>168</sup>

1. beneficence – benefitting others, purpose of learning and accountability
2. capacity building and empowerment – skills training, local people leading, local evaluators, community monitoring
3. do no harm – avoid discomfort, embarrassment, intrusion, fear
4. respect – cross-cultural contexts, honouring privacy, dignity, withdraw anytime
5. acknowledgement of historical and institutional power imbalances
6. informed consent
7. privacy and confidentiality – how will the information be used?
8. evaluation merit and integrity – accountability, quality criteria, experienced and knowledgeable

team, rigour, validity, triangulation, declare limitations, assumptions, attribution

9. participatory methodology.

## Outcomes

AbCF has grown since its beginning and now has a national presence with offices in Alice Springs, Cairns and Melbourne (see [Map 7](#)). The Fund has attracted interest from major corporations such as the National Australia Bank, the Commonwealth Bank and AGL Energy.

A key role of AbCF has been to broker projects between corporate Australia and TO groups, which has previously been difficult. According to Rowan, the AbCF 'build[s] the bridges that enable the business to take place'.

A recent volunteer for the Fund from CBA, Allister Logan, outlined some of the benefits:

If the small amount of money carbon farming brings in can help keep these people on their land, passing on generations of knowledge, culture and good stewardship of country, then we have done our job. It was an amazing experience and I cannot wait to see more country and hear more stories from people like this.

TOs involved in large-scale projects, such as in the Top End and Kimberley, have also described the positive impacts on people's lives from the project such as increased employment, better threatened species management, healthier people and less drinking and violence. According to Warren Greatorex, head of Kimberley TOs, 'it has benefited our inner spirit; this makes up our DNA, who we are'. It is the process of going back on country that rejuvenates this spirit.

The AbCF is working on a number of tools to make carbon farming viable across a range of Australian contexts, including the use of burning, revegetation and restoration works.

<sup>168</sup> Principles drawn from international development sector community development standards such as OCED DAC codes, ACFID, Australasian Evaluation Society (Foley, R. 2017, pers. comm. 20 March, 22 May, AbCF, Alice Springs)



## Key learnings for companies wanting to create enduring value for communities

- There is potential to develop locally based opportunities for carbon offsetting (such as offsetting a mining company's carbon footprint from its vehicle fleet) to benefit local communities, but this requires connecting with the right companies, such as AbCF.
- Companies, particularly those with global reach, are receptive to ensuring that their CSR programs, including those required under legislation or international obligation (see [Module 6](#)), do achieve local community benefits; companies such as AbCF can provide this.
- Developing long-term relationships and trust between the company and local community helps foster long-term benefits and has multiple spin-offs for the company, the community and AbCF.

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# Appendix A: Risk Assessment and Action Planning

## A Appendix A

### Introduction

Campbell and Heppenstall<sup>169</sup> were commissioned through this toolkit project to provide a demonstration of a risk assessment and management actions for a mine in remote Australia from the perspective of surrounding communities. The main section of the toolkit provides a summary of risk assessment and action planning as a useful tool in influencing the decision-makers and how mines and their impacts for communities are managed over their lifecycles. Here we provide more detail on risk assessment and action planning, including a description of how these are applied to the case location of the Ranger uranium mine in the Northern Territory.

### Risk assessment process

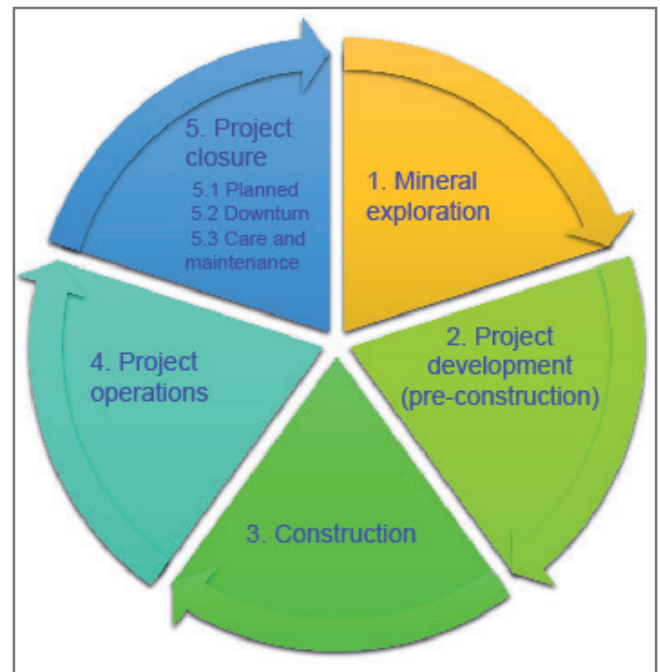
The risk assessment process can be summarised in six steps:

#### Step 1: Identify the hazards

This step involves identifying the hazards associated with the mining activity throughout the mine lifecycle stages – see [Figure A 1](#).

#### Step 2: Assess the likelihood of the hazard

This step involves assessing the chance that the hazard would occur and is called 'likelihood assessment' – see [Table A 1](#).



**Figure A 1: Mine lifecycle**

The lifecycle of a mine can be summarised by five specific stages: 1. mineral exploration, 2. project development, 3. construction, 4. project operations, and 5. project closure, which feed from one to other. There may be a 'trip back' loop if one stage is hindered or stalled, so a project could move to care and maintenance in stage 5 while commodity prices are very low, with a subsequent return to operations once higher prices return, that is, an anticlockwise movement from stage 5 to stage 4. Hazards are different in each stage.

Source: Ninti One Limited (2015b)

<sup>169</sup> Campbell and Heppenstall (2016)



**Table A 1: Example descriptions of likelihood**

Likelihood	Description
Rare	Event may occur only in exceptional circumstances
Unlikely	Event could occur but is not expected
Possible	Event could occur
Likely	Event will probably occur in most circumstances
Almost certain	Event is expected to occur in most circumstances

### Step 3: Determine the consequence

Determine what impacts would occur from a hazard – the impacts are called ‘consequences’. This can be done either quantitatively (in measured number terms) or qualitatively (e.g. as descriptor categories). Here we use the categories insignificant, minor, moderate, major, significant.

### Step 4: Measure the risk of a hazard

The risk is based on the combination of likelihood and consequence and can be easily read when these are tabulated so as to show the likelihood multiplied by the value of the consequence<sup>170</sup> – see [Table A 2](#) as an example.

**Table A 2: Generic risk matrix to attach risk to a hazard**

Likelihood	Consequence				
	Insignificant	Minor	Moderate	Major	Significant
Rare	N	L	L	M	M
Unlikely	N	L	M	H	H
Possible	N	L	H	H	E
Likely	N	M	H	E	E
Almost certain	N	M	E	E	E

Note: risk is denoted as N=negligible; L=low; M=moderate; H=high; E=extreme)

### Step 5: Develop risk management strategies

The developed management strategies should be designed to manage the identified risks – examples of generic risk management actions are given in [Table A 3](#).

<sup>170</sup> Risk can also be assessed quantitatively; for example, likelihood is described as percentage chance of occurring and consequences is valued in monetary terms. Risk is therefore the product of likelihood and consequence. Such a quantitative approach would then easily supplement a benefit-cost or economic risk assessment.

**Table A 3: Potential risk management actions**

Likelihood	Possible action	Reporting
Negligible	Take no action	No
Low	Non-specific action	No
Moderate	Specified action	Yes
High	Possible increases in safety, management activities required	Yes
Extreme	Additional safety, management activities required	Yes

### Step 6: Effectively communicate the risks

Once the risks are identified and assessed, it is important to effectively communicate these to ensure that the stakeholders’ (community, industry, etc.) concerns can be voiced and addressed. Risk communication ensures that people outside of the risk assessment process understand the risk outcomes. The communication needs to be pitched correctly to different audiences so they can understand the risk and accept the risk management decisions. Similarly, communities can use risk communication to explain what concerns they may have about perceived and real risks and how they would like to see the risk managed. Open, two-way communication is necessary to ensure that fears and motivations can be understood.

Communication is often strengthened by placing risks within a benefit–cost context. By doing so, different stakeholders can better understand the benefits versus the costs that they may derive from a given risk. Here we do not go into the detail of benefit–cost analysis but direct readers to the vast literature on the topic, including work undertaken by Ninti One.<sup>171</sup>

### Risk Assessment Application

Given this background, the risk assessment tool therefore consists of three matrices that can be used to assess risk for generic mining situations:

1. likelihood
2. consequence
3. risk.

[Appendix A](#) of Campbell and Heppenstall’s report provides an example of how these risk matrices can be developed for a specific type of mining: uranium mining. They develop comprehensive

<sup>171</sup> Blackwell et al. (2014b)



**Table A 4: Consequence matrix for uranium mining: Contamination of surface water with radionuclides (e.g. uranium)**

Impact consequence	Environmental	Social/cultural	Social (human health) if alpha radiation (emitted by waste contaminations) ingested
Negligible	Concentration of uranium (U) is lower than or equal to pre-mine levels	Concentration of U is lower than or equal to pre-mine levels – and is acceptable to Traditional Owners	Concentration of alpha radiation is lower than or equal to pre-mine levels
Low	Concentration of U is above pre-mine levels but below the threshold for ecological sensitivity	N/A	Concentration of alpha radiation is 1–2 times pre-mine levels
Moderate	Concentration of U is approaching or meeting the threshold for ecological sensitivity	N/A	Concentration of alpha radiation is 2–5 times pre-mine levels
High	Concentration of U is significantly higher than the threshold for ecological sensitivity	Concentration of U is above pre-mine levels – and is unacceptable to Traditional Owners	Concentration of alpha radiation is 5–10 times pre-mine levels
Extreme	Concentration of U is more than twice the threshold for ecological sensitivity	N/A	Concentration of alpha radiation is above 10 times pre-mine levels

Source: Ferguson and Mudd (2011); Adapted from Campbell and Heppenstall (2016, p. 20)

**Table A 5: Example risk assessment matrix to assess risk to human health of ingesting/inhaling/being exposed to radon gas while uranium mine is in operation**

Type of exposure*	Workers at mine site in contact with uranium ores/ waste products	Population living/ working within ~0.4 km of mine site	Population living/working more than ~16 km from mine site
Inhalation of alpha radiation (via radon gas)	High Risk can be reduced by wearing a suitable mask	Moderate Risk can be reduced to moderate by wearing a suitable mask	Low
Ingestion of alpha radiation (via radon gas from contaminated waste products or surface/groundwater or soil)	High Risk can be reduced by ensuring any dust is not ingested	Moderate Risk can be reduced by ensuring any dust is not ingested	Low Risk can be reduced through careful monitoring of drinking water and elimination of eating wild and contaminated foods
Exposure to gamma radiation (via contact with uranium wastes/ contaminated materials)	Moderate Risk cannot be easily reduced	Low	Negligible

Note: To show the risk, model likelihood of almost certain is assumed. This table is for illustrative purposes only and needs more data to be used to inform risk calculation.

\* noted by Moorhouse et al. (2011)

Source: Campbell and Heppenstall (2016, Table 7, p. 21)

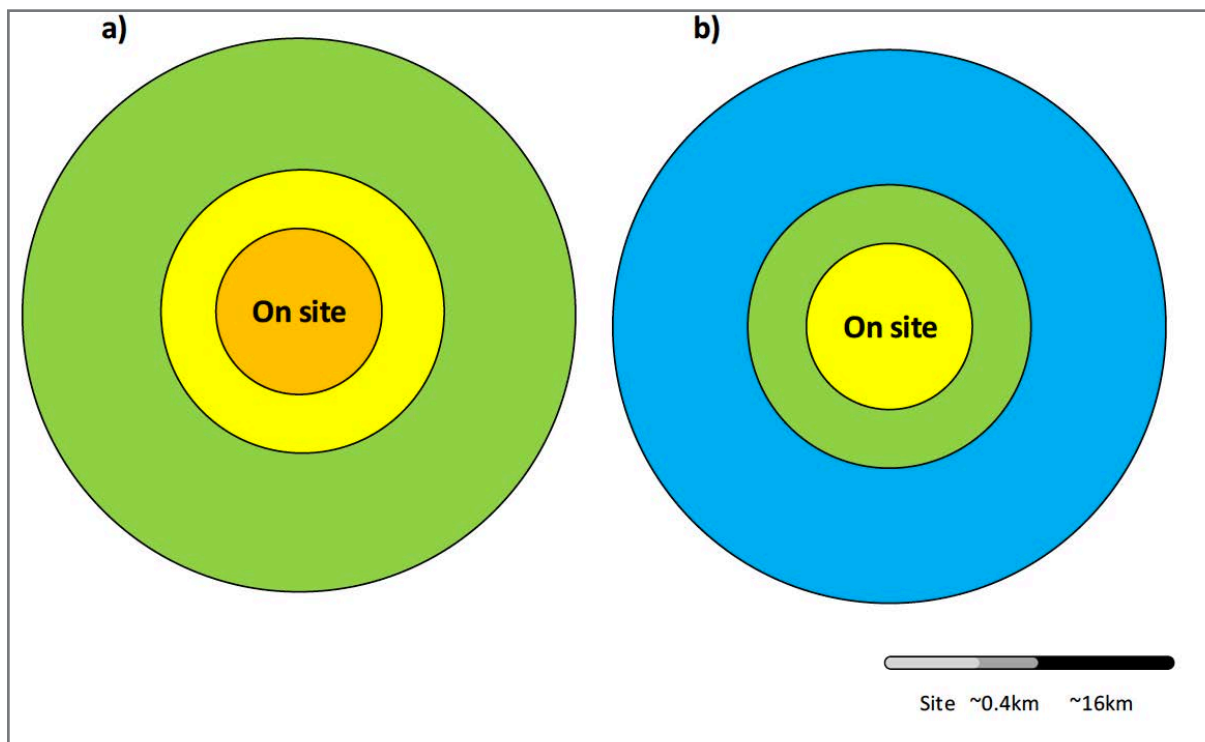
**Table A 6: Example risk assessment matrix to assess risk to human health of ingesting/inhaling/being exposed to radon gas 20–80 years after uranium mining began**

Type of exposure	At site	Within ~0.4 km of site	More than ~16 km from site
Inhalation of alpha radiation (via radon gas)*	Inconclusive – more studies needed. Current measurements indicate low or negligible.	Inconclusive – more studies needed. Current measurements indicate low or negligible.	Negligible
Ingestion of alpha radiation (via contaminated surface/ groundwater; or soil)**	Inconclusive – more studies needed. Current measurements indicate low or negligible.	Inconclusive – more studies needed. Current measurements indicate low or negligible.	Negligible
Exposure to gamma radiation (via contact with uranium wastes) †	Moderate (50% of sites show above 10 times background, 35% show 2–10 times background)	Low (5% chance of a structure showing significant radiation above background)	Negligible

\* As noted by Mudd (2005)    \*\* *ibid.*    † As noted by US EPA (2013)    Source: Campbell and Heppenstall (2016, Table 8, p. 21)



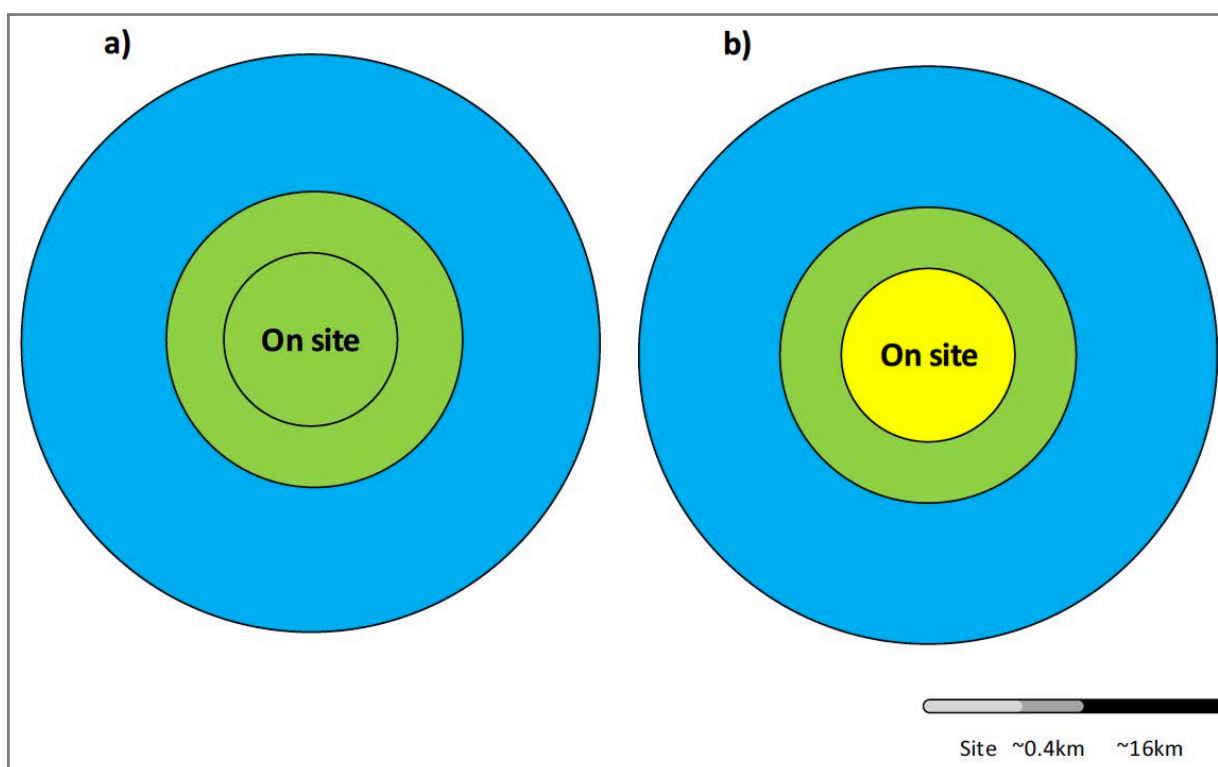




**Figure A 2: Risk visualisation conceptual model during lifecycle stage 4: Mine operations**

Risk visualisation can occur based on distance from a mine (spatial) using examples of: a) inhalation of alpha radiation (via radon gas), and b) exposure to gamma radiation (via contact with uranium wastes/contaminated materials). Risk colours: high, moderate, low, negligible

Source: Campbell and Heppenstall (2016, Figure 2, p. 11)



**Figure A 3: Risk visualisation conceptual model by distance from mine (spatial) and through time (temporal: 20–80 years after mine lifecycle stages 4 and 5: Mine operations and closure)**

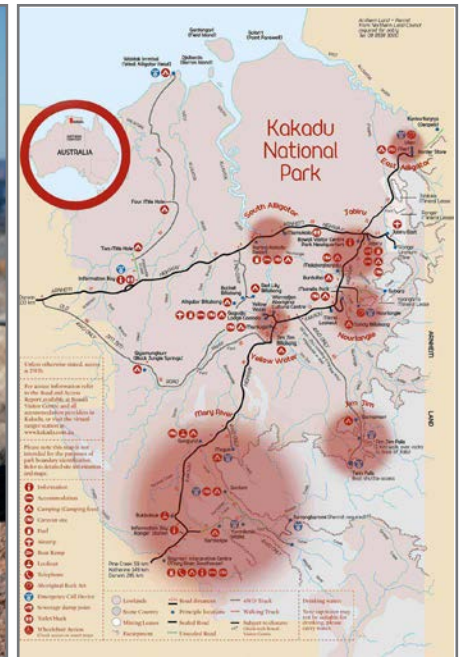
The same examples from [Figure A 2](#) are used: a) inhalation of alpha radiation (via radon gas), and b) exposure to gamma radiation (via contact with uranium wastes/contaminated materials). Risk colours: moderate, low, negligible.

Source: Campbell and Heppenstall (2016, Figure 3, p. 12)





Figure A 4: Ranger uranium mine from fence perimeter  
Sources: wikimedia commons



Map A 1: Jabiru and Ranger related mining leases, Kakadu National Park, NT, Australia  
Source: Parks Australia (2013)

hazard/impact (direct and indirect) matrices corresponding to the stages of the mine lifecycle, then a consequence table for one specific risk, surface water contamination (presented here in [Table A 4](#)), followed by risk tables about ingestion of / inhalation of / exposure to radon gas while the mine is operating ([Table A 5](#)) and once the mine is closed ([Table A 6](#)).

In addition to the risk tables, visual examples of risk outcomes should be presented based on distance from the mine (spatially) as presented in [Figure A 2](#) and on the mine lifecycle by distance from a mine (spatio-temporally) as presented in [Figure A 3](#). Assessing risk across time as presented in [Figure A 3](#) is critical to ensuring that mining delivers enduring (lasting) value.

### Risk assessment example: Ranger uranium mine

#### Background

The Ranger mine is in the Northern Territory, Australia (see [Figure A 4](#)) and has been operating since 1981. The mine site area of approximately

5 km<sup>2</sup> is surrounded by Kakadu National Park,<sup>172</sup> which is a UNESCO World Heritage Area recognised for its environmental and cultural heritage (see [Figure A 5](#)).<sup>173</sup> Of prime importance is that the Ranger mine is situated on the ancestral lands of the Mirarr people, who have protested the mining operation and their treatment throughout the history of the mine.<sup>174</sup> The Mirarr were denied 'their fundamental human right to determine what happens on their land'<sup>175</sup> by a subsection of the *Aboriginal Land Rights (Northern Territory) Act 1976*, which exempted Ranger from the provision giving the Traditional Owners the right to veto development on their land.<sup>176</sup> At its inception, the Ranger mining project did have some degree of support from certain regional Aboriginal leaders and the Northern Land Council. The basic denial of rights that occurred with the establishment of the mine had significant impacts on the Mirarr, the relationship between the Mirarr and the mining

- 172 Harries et al. (1997)
- 173 UNESCO (2018)
- 174 Graetz (2015a)
- 175 *ibid.*, p. 137
- 176 Graetz (2015a)



company (Energy Resources of Australia [ERA]) and on the proceeding mining operations.<sup>177</sup>

The climate, characterised by a wet and dry season, causes problems for waste disposal and rehabilitation regimes at Ranger.<sup>178</sup> The water management system regularly discharged 'relatively benign' water (derived from run-off from non-mineralised stockpiles into mine-impacted catchments) through wetlands to the creek. 'Very mildly contaminated' mine-site run-off water (which has been in contact with uranium-mineralised stockpiles) has been applied to land and wetlands, but not discharged into the creek.<sup>179</sup>

There were a series of incidents at Ranger mine between November and December 2013, one of which was a serious leach tank failure where a slurry mixture containing ore escaped containment.<sup>180</sup> Since December 2013 operations at Ranger have been suspended.<sup>181</sup> Based on the literature, 25 direct (Table A 7) and indirect (Table A 8) hazards of the Ranger mine on the community were identified.

#### *Environmental value impact highlights*

Of particular concern at Ranger mine are impacts on surface water. There is ongoing monitoring of several watercourses downstream of the mine site for contamination with both radioactive isotopes and other mining-associated contaminants (e.g.  $\text{MgSO}_4$ ).<sup>182</sup> Some streams or creeks have at times exceeded trigger values for other mining contaminants<sup>183</sup> and there is additional concern about the high trigger value for uranium contamination ( $5.8 \mu\text{g/L}$  over background) which is currently in use.<sup>184</sup>



Figure A 5: Photograph of Ranger uranium mine tailings wetland

Source: Blackwell personal collection, 2014

#### *Human health value impact highlights*

There are three pathways for human health impacts in uranium mining:

1. inhalation of radon gas (alpha radiation) through proximity to uranium ore or radioactive waste products
2. ingestion of alpha radiation through eating food that has contaminated dust or soil on it or drinking contaminated water
3. absorption of gamma radiation through the skin (through touching/proximity to ore or waste productions).

Of particular concern in the case of Ranger is that in remote northern communities, any impacts to human health values will be exacerbated by remote location, lack of health care infrastructure and, in the Aboriginal communities, also by cultural barriers.<sup>185</sup>

#### *Social and cultural value impact highlights*

Mining has been the primary agent of colonisation in this region, and has brought with it 'complete social upheaval: introduction of roads, buildings, mine, national park rules, infrastructure, white people, alcohol, processed food, diseases, language, education, expectations and demand, loss of sacred sites, and reduced access to country'.<sup>186</sup> Of additional concern is that in Mirarr tradition,

177 Graetz (2015b)

178 Harries et al. (1997), Ferguson & Mudd (2010)

179 Ferguson & Mudd (2011)

180 ERA (2013)

181 Graetz (2015b)

182 Ferguson & Mudd (2011)

183 Supervising Scientist (2015)

184 Ferguson & Mudd (2011)

185 Moorhouse et al. (2011), Blackwell (2012)

186 Graetz (2015b)





**Table A 7: Collated direct hazards of the Ranger mine**

Hazard	Pathway	Impacted values	Relevance of hazard to Ranger
Surface water contamination with chemical by-products of the mining process	Disposal of solid and liquid wastes	Environmental, social, cultural	YES, magnesium and sulfate levels are above ecological sensitivity threshold (in Magela Creek downstream of Ranger).
Surface water contamination with radionuclides (U)	Disposal of solid and liquid wastes: surface water transport of radionuclides as source of environmental radioactivity <sup>1</sup>	Environmental, cultural, social	YES, U levels are higher than natural variability and are unacceptable to Traditional Owners, although they are below the ecological sensitivity threshold set by the Supervising Scientist of 6 µg/L. <sup>2</sup> Thus, impact is on cultural/social values, not environmental.
Groundwater contamination with radionuclides (U)	Disposal of solid and liquid wastes: groundwater transport of radionuclides as source of environmental radioactivity <sup>3</sup>	Environmental, social (human health)	Unconfirmed; probable
Groundwater contamination with other mining-associated compounds	Disposal of solid and liquid wastes	Environmental, social (human health)	Unconfirmed
Soil contamination plus cycling of radionuclides through the environment	Disposal of solid and liquid wastes	Environmental, social (human health), economic	Unconfirmed
Radon release (alpha radiation) from waste rock, low grade ore and tailings	Exposure of ore, disposal of solid and liquid wastes	Environmental, social (human health)	YES. <sup>4</sup> Elevated cancer rates in community perceived from Ranger. <sup>5</sup> Ingestion of radon most likely exposure pathway. <sup>6</sup>
Gamma radiation release from radionuclides in near-surface materials	Exposure of ore, disposal of solid and liquid wastes	Environmental, social (human health)	YES. Sites have gamma radiation levels 30–250 times background: not acute or immediately dangerous, but chronic permanent increases of environmental concern. <sup>7</sup>
Loss of access to land and to traditional sources of food and water	Mining structures, waste disposal; contamination of host environment	Cultural, social (human health), economic	YES. 'Uranium mining has also taken our country away from us and destroyed it – billabongs and creeks are gone forever, there are hills of poisonous rock and great holes in the ground with poisonous mud where there used to be nothing but bush'. <sup>8</sup>
Negative aesthetic impacts on the land	Mining structures, waste disposal	Cultural, social	Unconfirmed; probable

Notes: 1. Mudd (2005); 2. Ferguson & Mudd (2011); 3. Mudd (2005); 4. Mudd (2008); 5. Graetz (2015a); 6. Moorhouse et al. (2011); 7. Mudd (2005); 8. Margarula (2005, p. 8)

Source: Campbell & Heppenstall (2016)



**Table A 8: Collated indirect hazards of the Ranger mine**

Hazard	Pathway	Impacted values	Relevance of hazard to Ranger
Consumption of contaminated food and water	Drinking from unregulated water sources near mines; consuming traditional foods from contaminated areas	Social (human health), cultural	Unknown, probable: Contaminated food and water directly impacts the physical and spiritual wellbeing of Aboriginal peoples ... consumption of traditional foods and medicine from their land may be impacted due to increased risk of consuming contaminated country foods near to mining sites. <sup>1</sup>
Loss of connection to the land	As a result of contamination of host environment	Cultural, social	YES. 'There are two main approaches to the way Mirarr view their responsibilities – looking after country (gunred) and looking after people (guhpleddi). Gunred encompasses control of country including the prevention of both destruction of country and desecration of sites. It is also the recognition, assertion and promotion of cultural rights and the carrying out of living tradition on country. Guhpleddi is intrinsically tied to gunred because Bininj [Aboriginal and Torres Strait Islander people] and country are as one. It encompasses an extremely complex set of relationships between Mirarr, other Bininj and country.' <sup>2</sup>
Loss of Aboriginal languages	Due to need for English language establishments and institutions in northern mining communities	Cultural	Unconfirmed; probable
Change in lifestyle (negative lifestyle changes such as sedentary activity and increasingly Westernised diet)	Due to lack of access to traditional environment	Social (human health)	Unconfirmed; probable
Changes to community structure (community disruption, negative mental health impacts)	Due to an influx of transient workers	Social, cultural	YES. 'The creation of the township of Jabiru and the influx of miners, tourists and public servants [also] led to systemic racism impacting the lives of the Mirarr from health and education to employment opportunities, housing options and service provision ... brought a town, many non-Aboriginal people, and many arguments between Aboriginal people, mostly about money. Destruction of our ancient political, social and cultural fabric resulting in depression and hopelessness.' <sup>3</sup>
Feelings of guilt/responsibility and negative mental health impacts	Caused by disasters relating to uranium mined at the site	Social, cultural	YES. 'The impact of the Fukushima disaster upset the Mirarr very deeply.' <sup>4</sup>
Sudden changes in personal wealth (and political power imbalances) and attendant negative social impacts (e.g. alcoholism, unemployment)	Associated with delivery of mining royalties	Social	YES
Negative impact on practice of Mirarr tradition	Caused by loss of access to land and traditional sources of food and water, as well as secondary social impacts	Cultural, social (human health)	YES. 'There was a perception among Mirarr women that a billabong at Mudginberri had been poisoned by the mine, which meant that Mirarr women refused to drink from the billabong or catch fish, with attendant health impacts.' <sup>5</sup> YES, Mirarr reported being affected by the decline in their living tradition owing to 'alcoholism, community violence, chronic health problems, disinterest in education, structural poverty and collective despair and hopelessness'. 'Mirarr contend that they experienced lost access to sites of spiritual significance, desecration of these sites, rights violations and, ostensibly, "cultural genocide"'. <sup>6</sup>
Negative impact on cultural festivities and rituals	As a result of shifting male roles (e.g. from traditional hunters to miners)	Cultural	Unconfirmed; probable



Hazard	Pathway	Impacted values	Relevance of hazard to Ranger
Increased employment opportunities	Jobs created from mining development	Economic	MIXED: NO, jobs are taken by non-Aboriginal people or Aboriginal people from other places, rather than training being provided locally. <sup>7</sup> This may be true, but a more recent analysis of local jobs for Aboriginal and Torres Strait Islander people in the NT by local government area shows that West Arnhem (the LGA for Jabiru) has Aboriginal and Torres Strait Islander local employment well over 60% as a percentage of total local employment. <sup>8</sup> Local employment refers to those workers whose place of work and residence are the same.
Increased business development opportunity	Additional businesses created that directly and indirectly supply the mining industry and its support industries	Economic	This is the opposite of a hazard and provides enduring benefit to local people where it is converted to assets that provide enduring benefit (see the discussion about community ownerships of the mine in Module 7).
Increased income from royalties – equivalent and private	Royalty equivalents are paid via the Northern Territory Government to Traditional Owners; private royalties are paid directly to Traditional Owners	Economic	This is the opposite of a hazard and provides enduring benefit to local people where it is converted to assets that provide enduring benefit (see the sections in Module 7 on economic participation and ownership for more contextual detail).

Notes: Grey text shows benefits rather than costs

Source: Campbell & Heppenstall (2016)

1. Moorhouse et al. (2011); 2. Katona (2001, pp. 189–99); 3. Graetz (2015a, p. 138, pp. 138–39); 4. Graetz (2015b, p. 149); 5. Graetz (2015a, p. 138); 6. *ibid.* (p. 139); 7. Supervising Scientist (1997); 8. Blackwell et al. (2014a, p. 79)

Guhpleddi (looking after people) is intrinsically tied to Gunred (looking after country), because Bininj (Aboriginal and Torres Strait Islander people) and country are as one.<sup>187</sup> Thus, any impacts to environmental values will have secondary impacts to cultural and social values.

#### *Direct hazards*

[Table A 7](#) outlines the direct hazards identified through the desktop research on Ranger uranium mine. A number of potential hazards from Ranger mine could be assessed.

#### *Indirect hazards*

[Table A 8](#) outlines the indirect hazards identified through the desktop research on Ranger uranium mine. As can be seen there are number of potential hazards from Ranger that could be assessed.

#### *Netting off benefits and costs – ethical?*

Finally, there are some negative risks (i.e. benefits) from the mine which have been included in [Table A 8](#) in the last three rows with grey text; these would not normally be included in a risk assessment. These additions are made to show the thought processes of identifying benefits in addition to risk because these benefits could in fact be risks depending on their ultimate consequences for local people; notice how the evidence on job creation is mixed. They are also included because these would need to be netted against the costs in a benefit–cost analysis, but some of the above risks may be difficult to quantify in monetary terms or it may be unethical to monetise them. See the sections in [Module 7](#) on economic participation and ownership for more contextual detail.

187 Graetz (2015a)







# Appendix B: Corporate Social Responsibility (CSR) and CSR Tools

## B Appendix B

### Introduction

This appendix provides more detail on CSR and CSR tools that can be used by communities to leverage enduring benefits from the mine cycle. We also provide some key tasks in this appendix to help communities, where it is desired, take action on these matters.

CSR is the responsibility that companies have to contribute to wider society, particularly within the locality of their operations. CSR is connected to gaining a Social Licence to Operate (SLO), the right for the company to be there from a community perspective, and to ensuring that the benefits of the development outweigh the costs.

Companies can meet CSR requirements while providing only tokenistic support to local communities and resources that provide only short-term benefit. However, if CSR is planned strategically and in collaboration with other partners, particularly the community, it can lead to significant benefits for the community and a positive community attitude towards having the company in the region. For this to occur, the company, community and stakeholders need to work together to develop the CSR program.

### Defining CSR

An ISO standard<sup>188</sup> has been written for CSR and includes aspects such as how the company:

- treats employees, including their working conditions
- communicates and engages with the community and stakeholders
- contributes to community benefit or outcomes
- protects the environment
- upholds human rights values.

Despite the attempt to define CSR in this way, CSR means different things to different people. For an NGO, it can mean the company provides a high level of environmental and social benefit without any direct benefit to the business. For a resource company employee, it can mean creating community benefit to leave a positive impact and create long-term acceptance of the company's right to be there. For a community, it might mean establishing long-term benefits from the mine to support community development.

From a community perspective, a company that implements good CSR will be willing to:

- build in community benefit at all stages of the mine lifecycle and across many different aspects: infrastructure, employment, business opportunities, social investment

<sup>188</sup> International Organization for Standardization (2005)



- be well connected to the local community and stakeholders and see itself as part of the community<sup>189</sup>
- be responsive to stakeholders and involve them in processes
- build policies and systems to ensure that corporate values are delivered at the site level
- work in collaboration with other partners to build CSR initiatives that help build long-term solutions.

### What can CSR achieve?

Through such a model, CSR can greatly enhance the benefits that emerge from the resource development such as:

- providing significant financial resources to communities
- helping communities build new social capital and link into networks and processes not previously available
- helping build capacity and skills in the community to access opportunities not previously available through the mining process
- helping encourage stakeholders to work together to create long-term options for communities that potentially last after the mine's life.

### Understanding community and company perspectives on CSR

Despite communities not being in control necessarily of the entire CSR process, companies are usually willing to listen to communities' and stakeholders' wishes because of their desire to gain an SLO and also achieve benefit within the community.

**Task:** What does the community wish to see from the CSR program? Specific questions include:

- What are the key benefits the community would like to obtain?
- How should the company communicate and show progress?
- Does the community know of any models of how CSR frameworks could work?

- What are the key long-term benefits the community would like to see?

Some of the tools outlined below also help to answer some of those questions.

It is also important to find out as much as possible about the company's intended approach to CSR. This achieves two key things. Firstly, it provides important information on what potential opportunities the community has and how they can be accessed. For example, if the company has a local procurement policy, this presents opportunities to develop local businesses and jobs to service the company.

Secondly, this information also leads to identifying potential gaps in the company's CSR policy. If, for example, the community is unable access a company CSR policy statement, it might be worth asking the company why one has not been developed. Another example is if the company has signed up to a specific mandate or policy framework (see [Module 7](#)), it might be worth asking the company how this is being implemented on the ground.

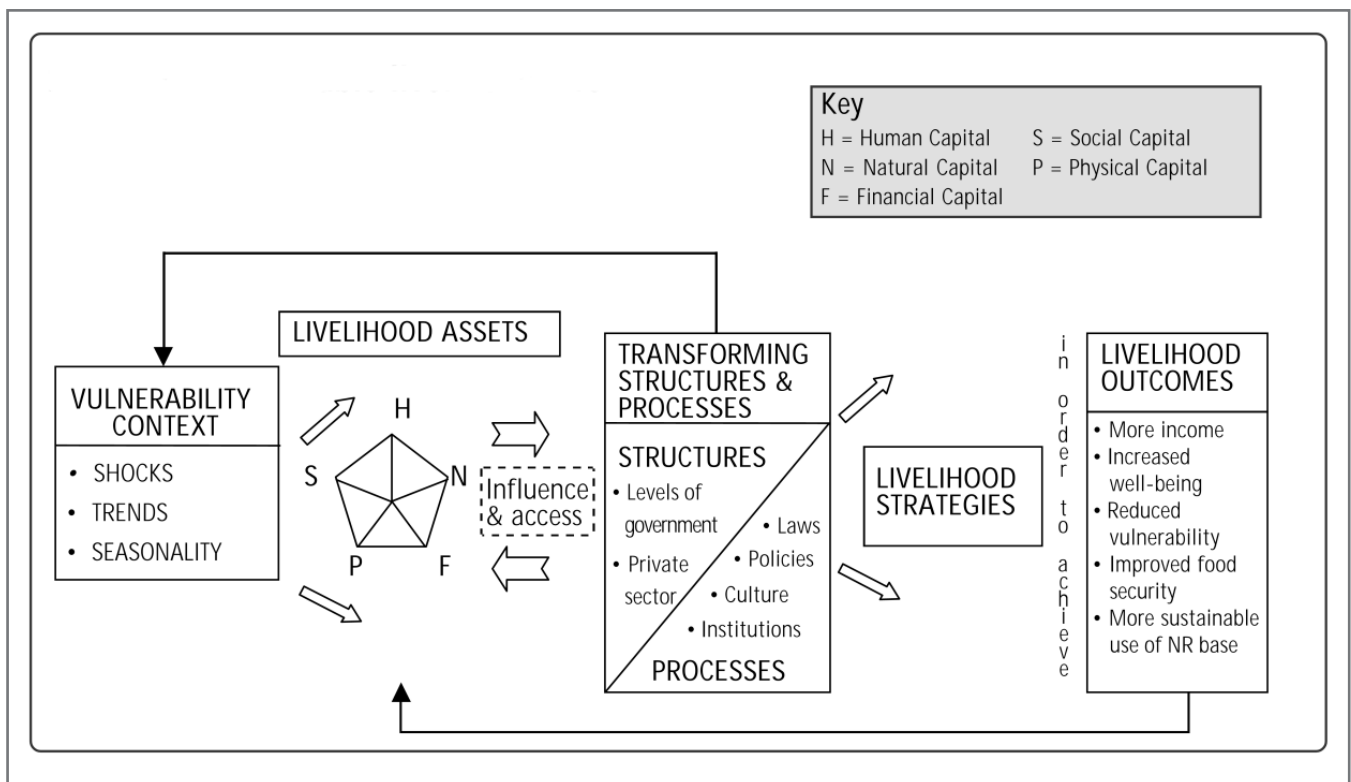
**Task:** Find out as much as possible about the company's CSR policies. Look up the contact details of the community engagement person on the company website. Questions to ask include:

- **What resources does the company put into CSR, including staff and other resources?**  
Knowing who the CSR staff are means the community has a point of engagement with the company and knows who is responsible for ensuring community or public benefit.
- What relevant CSR policies (if any) does the resource company have? Do they have a CSR overarching policy statement? Has this been endorsed at the highest level? Is it publicly available? Answers to these questions help communities understand the company's commitment and the commitment of the company's leadership to CSR. They will also help determine whether the company is succeeding in meeting that commitment (endorsement at highest level and public availability of CSR documents means companies are moving in the correct direction of meeting their commitments).

<sup>189</sup> Fordham (forthcoming)

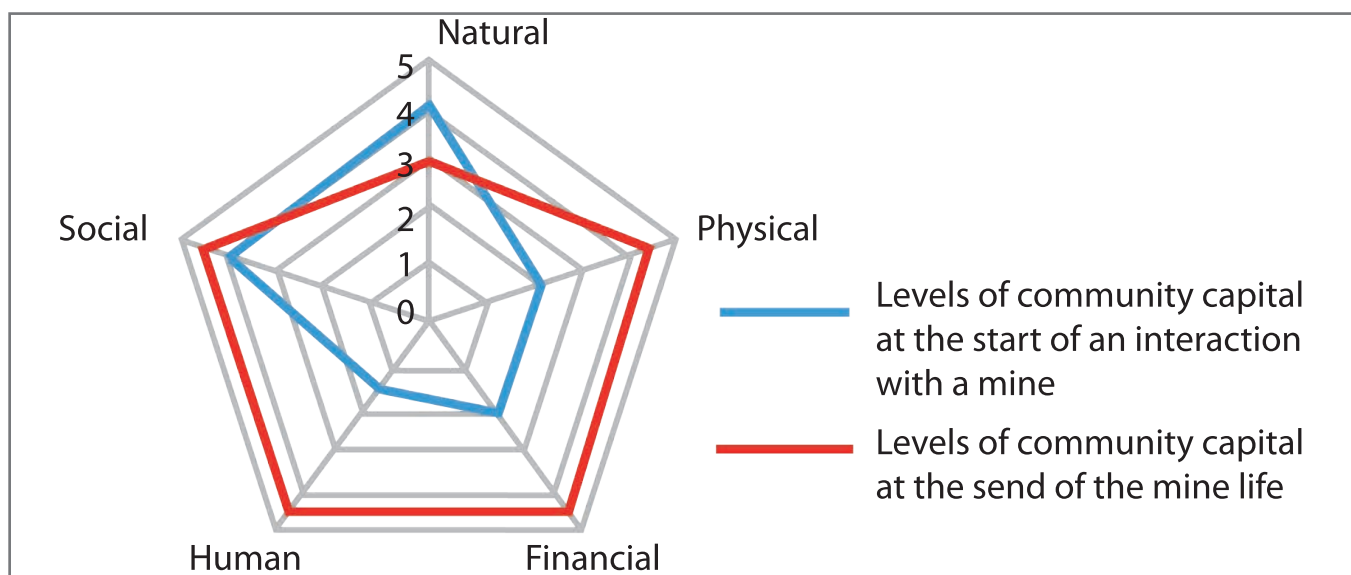






**Figure B 1: Sustainable livelihoods framework**

Source: DFID (1999)



**Figure B 2: Capitals impact diagram**

Source: Davies et al. 2012

- **What other policy frameworks does the company have that contribute to wider community benefit?** Examples include community investment programs, local employment and skills development and major environmental and social investments. These answers help identify further opportunities for communities.
- **Has the company committed to any relevant industry level or international level commitments as part of its CSR policy?** This is useful information that may help connect the community to new opportunities, or the community may be able to think up a strategy to help achieve this linkage.



- **Does the company have specific targets for its CSR? If not, why not? If so, how is the company planning to measure these?** This helps build in mechanisms of accountability for achieving CSR.

## CSR tools

A range of tools can help communities get the most out of the CSR process with a focus on long-term community benefit. These tools are outlined here from a community perspective, that is, areas where communities can potentially have influence. While the CSR processes operating within the company are important, they are not necessarily something the community can have control over. The tools under consideration here are:

- multi-stakeholder groups and community consultative processes
- developing a community vision
- CSR planning around assets and risks
- scoping new project ideas for linking CSR to community benefit
- direct involvement in the mine operation
- building alternative futures to mining through CSR.

## Multi-stakeholder groups and community consultative processes

For CSR to be effective in producing wider benefit and long-term value, typically people have to get together and talk and make decisions that consider different points of view. To do this requires the formation of multi-stakeholder groups outside the company corporate process and somewhat independent of it.<sup>190</sup> Such groups think strategically about wider community and environmental issues. Multi-stakeholder groups typically contain a range of other stakeholders including resource companies, community representatives, NGOs, government agencies and service providers.

Resource companies and other stakeholders in the mine region have shown capacity to lead such groups and they have been, at times, supported by government funding. Key tasks that such forums can undertake include:

- planning future strategies for the community to achieve long-term value (see 'Developing a community vision' in the next section)
- dealing with cumulative impacts of mining
- planning how resource development can intersect with community needs to value add
- planning the delivery of specific projects, for example environmental or social projects, including how the community can engage in that planning process.

For issues affecting Aboriginal and Torres Strait Islander people, these forums have also assisted Traditional Owner groups to form strategies to make the most out of Indigenous Land Use Agreements and to increase Aboriginal employment and opportunity in an area. This has included bringing in external expertise to provide advice on issues such as business opportunities but typically in an advisory capacity.

From a community perspective, CCCs have also been demonstrated to work well as multi-stakeholder forums, with a number of examples demonstrating that they can help set a positive vision of how to maximise benefits from mining (see [Case study 2](#) about Iron Road). Such committees are usually advisory only, but with good CSR staff they can influence overall company process. This works much better when done early in the mine lifecycle.

**Task 3:** It is worth finding out whether there are any multi-stakeholder groups that can assist the CSR process and to scope whether the community consider this worthwhile. This includes considering:

- Does the community have a vision (see below), and is there a forum to operationalise this vision? This also points to a role for local government and other service providers.
- How are the impacts of the mining process being addressed? Is there a forum for community to express their views, see what the company is doing and formulate solutions? If cumulative impacts are an issue, is there also a forum to address these?
- Have specific goals/targets been set for the CSR program? Is there a forum to look at how well these are being achieved? This helps build in some company accountability for communities.

<sup>190</sup> Fordham (forthcoming).



## Developing a community vision

The impact of CSR programs can be greatly limited when there is no clear, agreed vision for the future of the community. In such circumstances, it can be very difficult for a resource company to know where it can best contribute.

There are some good examples where communities have established appropriate visions for themselves. One example is the Lihir landholders in Papua New Guinea, who put together a sustainable development plan to ensure that the local communities derived long-term benefits from the Newcrest-owned mining operation there. The plan was developed by the community itself, with appropriate technical support, and included aspects such as:

- entrepreneurial development and lateral thinking
- improving personal capacity and personal development around a vision of sustainability
- building skills and capacity
- improving economic and business development
- improving educational outcomes and linking to vocational opportunities.

The plan provided a basis for Newcrest to fund activities within the region, aligning with the community goals. It was not possible to fund everything contained in the plan, but it provided a clear basis of going forward and key arrangements to enable this to happen.

**Task 4:** In developing a community vision, some key aspects to consider are:

- How is the community defined? Although it is often easier to consider only one part of the community, there is great strength in unifying different groups and interests based around a mutual goal, for example wishing to protect or preserve the landscape.
- Are there any existing strategies, for example local government strategies, that can provide some future direction for communities?
- How can the existing strengths of the community be built on to formulate a vision?
- Have the diverse interests of the community been taken into account? What about potential points of innovation?

- How can the region or site diversify its future opportunities? What are the key economic drivers for the community? Diverse economies are more resilient in facing change and maintaining future viability.
- Have the relevant partners been engaged in the process, for example local government?

Resource companies typically frame their activities around addressing risks, including risks to their businesses.<sup>191</sup> They are often developed around Social Impact Assessments (SIAs), which involve understanding key characteristics of the community, the key mining risks to the community or region and how to mitigate these risks. Despite SIAs being a valuable tool when developed early in the mine lifecycle, the focus on risk limits opportunities for planning for CSR, in particular making use of community assets.

It is important that opportunities are also scoped and incorporated in SIAs. A good example of this is the SIA for the expansion of the Ranger uranium mine, which is publicly available.<sup>192</sup> However, for community-based planning it is important to understand that this often happens at a higher level than a specific company–community process. The community needs to plan for itself, with the resource company supporting this through the SIA process.

Research shows that resource companies have been involved in developing community-based plans that help expand on a community vision and provide a future direction for the community.<sup>193</sup> There can be emphasis on developing options that provide communities with futures away from mining (see section below on [Building alternative futures](#)). Such plan development involves significant consultation and engagement with a range of players including the community, relevant stakeholders and, potentially, advisors who can scope visions that might not be readily seen from a community perspective. Such approaches are most effective when undertaken early in the mine lifecycle.

A number of asset-based community development models provide some useful tools for helping to

191 Owen & Kemp (2012)

192 Banarra Pty Ltd. (2014)

193 Fordham (forthcoming)





undertake community-based planning, link CSR to wider community benefit and ensure that the assets of the community are recognised and incorporated into planning strategies.

### Sustainable Livelihood Framework

The first planning framework is called the sustainable livelihood framework (SLF) (see [Figure B 1](#)) which looks at developing five key capitals for a community:

- **Natural:** Air, water, soil and biodiversity
- **Financial:** Economic flows into the community
- **Human:** Education, skills and capacity building
- **Social:** Capacity to connect to projects, processes, skills, technology and be involved in decision-making
- **Built:** Infrastructure such as transport, buildings, communications, energy and water,

In an SLF model developed by Davies et al.<sup>194</sup> the mining company is required to move resources from natural capital, for example, mineral resources to other key capitals within the community, as depicted in [Figure B 2](#).

**Task 5:** As a community, scope the key community assets across these five capitals and where improvements or inputs could be made. Next, consider where the resource company could contribute:

- **Natural:** How is the company intending to offset its biodiversity impacts from the development? Can this be done to benefit the local area? Is there community involvement in mine-site rehabilitation?
- **Financial:** Have any provisions been made for long-term investment programs that will last after the mine is completed? Can resources from the resource company be leveraged along with other group support to provide a higher benefit?
- **Human:** How can the local community be trained to facilitate employment and business opportunities from the mine? The company should be prepared to help with this.
- **Social:** How can the community be involved in participating in the mine process and decisions about the mine? How can the community be

connected to other organisations and processes through the CSR program?

- **Built:** Can company-built infrastructure be shared with the community? Can any of the mine infrastructure be handed back to the community region once it is completed? If so, a plan should be developed to define how this infrastructure will be maintained (and refurbished) once the mine ends.

### Asset-based community development

The SLF framework has been useful in a range of contexts but has been criticised for being too pre-determined in relation to the nature of the community assets.<sup>195</sup> A wider planning approach called Asset-Based Community Development (ABCD) is also useful in the mining context. This still involves the consideration of community-based assets but has a more flexible definition of the assets, defining them by the key priorities of the community itself. This helps empower the community to recognise its assets and how to build on them. Such assets may not necessarily have a direct financial benefit but are considered important to the community. ABCD provides a better understanding of what the community needs to do to improve its position, including how and with what combination of assets and individuals.<sup>196</sup>

**Task 6:** As a community, scope the key assets (irrespective of the capitals of Task 5) of the community and how these can be built on through interaction with the resource company. Are there new or additional assets and ways for building these through interaction with the resource company using the ABCD approach?

This task might help the community gain more insight into how the resource company can provide value and support community-led processes. It could include developing an understanding of assets, capacity, resources and strengths of the communities and things the community values through a storytelling process, which can then be conveyed to the resource company. Such a process requires:

<sup>194</sup> Davies et al. (2012)

<sup>195</sup> Owen and Kemp (2012).

<sup>196</sup> *ibid.*



- resource companies that are prepared to listen and understand community perspectives
- the process to be led with a sense of exploration and learning, not closed off by experts and which encourages the community to explore options
- a desire to build strategies to improve community outcomes
- diverse members of the community to be brought together to identify strengths and assets
- a recognition that resource company employees based in the area are part of the community's assets with associated skills and knowledge.

### Scoping new project ideas for linking CSR to community benefit

Undertaking community planning processes through formal (e.g. local government planning forums) and less formal means (community-based or community group planning forums) around building community assets can be a good way for communities to identify their priorities, which help inform future directions for CSR. A key requirement is to take the planning frameworks developed and distil these into key projects.

Resource companies, particularly site-based staff, are more likely to support CSR projects that align with business requirements and needs. This common identification of goals and returns is called 'shared value', that is, the projects have both a business and community benefit. It helps the company integrate CSR within its business processes and improves the likelihood of shared value because the company commits resources.

Key business drivers for companies, as well as the profit motive, include<sup>197</sup>:

- minimisation of risks to the operation (risk to operations being halted and loss of SLO)
- access to land
- operational cost reduction
- human capital to improve operational outcomes
- enhanced brand value and reputation.

**Task 7:** Brainstorm some community ideas regarding relevant CSR projects to fund based on community needs, aspirations and capacity building.

Consider those projects in light of company business needs (this may require discussion with the company) and then develop a ranked list of priority projects.

Some examples of shared value are provided below. The case studies in [Module 9](#) also illustrate shared value.

### Strategies for direct and indirect involvement in the mine operation

#### Community involvement in monitoring mine impacts

There is merit in local communities gaining skills in environmental monitoring and being engaged to undertake monitoring at the mine site or near the mine. Such involvement helps communities feel assured that environmental values are being protected, and that they are informed about environmental breaches. It also provides a useful way of building skills and capacity and generating income from business opportunities. The company benefits from cost savings, as it does not have to fly staff in. There are some good models of community involvement in monitoring; please refer to [Case study 3](#) about Toro Energy for an example.

#### Community involvement in mine-site rehabilitation and mine-site closure planning

Communities have a strong interest to ensure that the mine site is appropriately rehabilitated and that there is a plan for what happens to the mine after closure. Being involved in mine rehabilitation helps communities take ownership of some of the issues and provides an opportunity for them to contribute local skill and expertise, particularly for Aboriginal and Torres Strait Islander people. There are many current examples where companies have engaged local people to assist with mine rehabilitation, including Arrium Mining in South Australia with the Barngarla Traditional Owners and Iluka Mining, also in South Australia, with the Far West Traditional Owners (see [Case study 1](#) on Barngarla and [Case study 3](#) on Wiluna). This has provided a business and income opportunity for local communities, where people can learn new skills and contribute towards rehabilitating landscapes. In many cases rehabilitation can occur progressively rather than

<sup>197</sup> Esteves (2008)



just at the end of the mine lifecycle, thereby providing long-term opportunities.

Regardless of jurisdictional requirements or guidelines, many resource companies are now planning early for mine closure and rehabilitation, and this typically involves consulting with communities about what will happen to the mine after it closes. In Western Australia, for example, this is mandated under legislation. Involving communities in mine closure processes helps them prepare for what needs to happen in the community after the mining company has left. Some innovative models for post-closure include:

- tourism enterprises at the mine site
- land conversion back to its natural value, to create conservation and wildlife value
- land conversion back to pastoral country
- the creation of natural water features
- the use of mine infrastructure for residential communities and shared facilities.

### **Local business opportunities developed through servicing the mine operation**

Communities can develop business ventures which can be supported within the mine's operation and supply chain. However, such proposals typically take significant time to meet the stringent requirements of the company. Companies with sound CSR programs have mechanisms to help facilitate this process, such as providing advice to communities of future opportunities and requirements well before they need to be in place.

There is also an important role to be played by advisors and mentors – such as business development officers, business consultants or experienced staff – who can provide expertise to communities and help them develop such proposals. Often projects will be joint ventures with more experienced companies to help get projects started. A good example is provided in [Case study 1](#) about Barngarla.

### **Building alternative futures to mining through CSR**

Many local communities are looking to secure alternatives futures to mining so that once the

mine closes the community is still viable. It is worth considering the futures that are possible in the region and how they can be grown and supported during the mine life while resources are available. Many resource companies are prepared to support such community futures as part of their CSR programs. Some potential community futures are outlined below, with examples of how resource companies have helped support them:

- **Tourism:** A number of communities have identified tourism as a future that they wish to see post mining. There are examples where this has involved developing a tourism venture around the mine, for example tourism at Iron Knob in South Australia. In other cases, the local community is on a major tourism route and needs support to expand its facilities to make use of this opportunity. This will involve more actors than just the resource company.
- **Natural resource management:** In some examples, companies have helped improve natural resource management of the region as a way to add local value and compensate for mine impact. This support is provided through innovative use of the biodiversity offset schemes and through supporting landscape-scale restoration and rehabilitation projects. A good example is provided in [Case study 5](#) about the Great Victoria Desert Biodiversity Trust. It also includes involving Aboriginal people in land management activities at the mine; an example is given in [Case study 4](#) about the Indigenous Ranger Program.
- **Business development:** As described above, business development presents a substantial opportunity for local communities to derive significant economic benefits from resource extraction and to improve skills and capacity. A range of business ventures have been supported by resource companies, including cultural awareness training, mine-site rehabilitation, direct mine operations such as crushing and screening, catering services, environmental monitoring and environmental management. Good examples are provided in [Case study 3](#) about Wiluna and [Case study 1](#) about Barngarla. The challenge is to ensure that such business enterprises are diverse enough to survive once the mine closes.





- **Arts and cultural activities:** Resource development has been able to support arts and cultural activities in communities that help support longer term futures. This includes supporting local Aboriginal and Torres Strait Islander artists through purchasing art works or supporting art galleries, museums and exhibitions. Companies have also supported cultural events that help maintain the social fabric of communities and help provide the social structures to maintain a sense of community.
- **Energy efficiency and climate change:** Communities around Australia are finding ways to develop climate change adaptation and mitigation strategies and improve energy efficiency. There are only a few examples available of where resource companies have supported such strategies; see [Case study 6](#) about the Aboriginal Carbon Fund. A shared value approach proposed by communities is likely to garner the support of companies.
- **Primary production and bush food production:** Resource companies have supported local primary producers by providing off-farm income through contracting opportunities, the provision of infrastructure such as water bores and roads and through sharing resources such as health services and communication infrastructure. There has been also some interest in Aboriginal groups developing bush food enterprises.<sup>198</sup>



198 For the bush foods research program, see [old.crc-rep.com/research/enterprise-development/plant-business](http://old.crc-rep.com/research/enterprise-development/plant-business); for the precision pastoral program, see [old.crc-rep.com/research/enterprise-development/precision-pastoral-management-tools](http://old.crc-rep.com/research/enterprise-development/precision-pastoral-management-tools).









# Working Bibliography

This bibliography provides an introductory list of some additional and related reading. The most important of these for is item 1, the Canadian toolkit. In addition, throughout each of the modules above, there are references to highly relevant CRC-REP ECVI research articles and related materials which can be referred to for more detailed research on specific topics. The full collection is also housed at [www.researchgate.net/project/Enduring-Community-Value-from-Mining](http://www.researchgate.net/project/Enduring-Community-Value-from-Mining).

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