

Implementing and Monitoring Indigenous Land Use Agreements in the Minerals Industry: The Western Cape Communities Co-existence Agreement

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Introduction

Native title legislation in Australia has instigated changes in the relationships between the mining industry and indigenous people by providing a context for negotiating Indigenous Land Use Agreements (ILUAs).² This chapter examines the context, formulation and early implementation of one such ILUA, the Western Cape Communities Co-existence Agreement (WCCCA),³ signed by Comalco Ltd, the Queensland Government and numerous Aboriginal parties on western Cape York Peninsula, Australia, in March 2001.

The success in negotiating recent agreements has been followed by the realisation that their implementation requires special management attention, and greater awareness and resources by mining companies to their ongoing relationship with local Aboriginal people. In effect, much of the executive attention formerly paid to maintaining the development guarantee provided by government, requiring competency in legal affairs and public policy, must now be complemented by efforts in maintaining a local social mandate, requiring competence in managing and resolving social issues.

This chapter provides a case study on the first phase of monitoring and implementing the WCCCA. A recent study by the authors shows that progress in implementing this agreement involves democratisation of mining company–Aboriginal relationships and corporate culture change, having regard to various difficulties and challenges. These include, for example, implementing the WCCCA in an environment of high Aboriginal expectation of company and employee respect for Aboriginal culture, Aboriginal demands for employment and training, and on Comalco's part, strict safety standards and sound human resource policies. There is mutual acceptance by the Aboriginal parties and by Comalco that, for successful implementation of the WCCCA, the company and other stakeholders are required to contribute to capacity-building, such as assistance

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have followed a similar pattern. The key purpose of the WCCCA, for Comalco and Rio Tinto, was to recognise the standing and enhance the economic opportunity of indigenous people on western Cape York Peninsula, and hence to enhance Rio Tinto's security of access to the region's bauxite reserves.

In the Australian context, the WCCCA established a benchmark in its comprehensive coverage of terms in a social contract between a mining enterprise, neighbouring indigenous community stakeholders and a State government. Its operational infrastructure is based on mutual obligation, regular consultation and community self-governance of a revenue stream directed toward promoting regional development that is sustainable over generations.

The WCCCA exists within a broader context, one that is influenced by global and national trends and is linked to the aspirations, intentions and capabilities of local stakeholders. The context in which such agreements have emerged, and the agreements themselves, have necessitated a shift in responsibilities, capabilities and focus for mining companies and neighbouring communities. Whilst this may be understood at the commencement of negotiations, the magnitude of the shift has been generally underestimated by both communities and mining companies.

The findings from the WCCCA implementation review reveal that all parties to an agreement must embrace cross-cultural learning, the development of new capabilities and a mutual understanding and respect that infiltrates all levels of the company and the local community. Companies must adopt a deeper and more comprehensive level of community involvement than in the past and contribute to the future capacity-building of the indigenous community. Where once executive attention in the mining company was primarily focused on maintaining the certainty of mining tenure issued by the relevant central government, much of this attention must now be redirected towards embedded involvement in the local community and the region's economic development.

It is evident that the changes required in mining companies and local indigenous communities represent significant shifts, over generations, for both entities. The degree of societal change necessary for success to prevail requires considerable time, persistence, patience and understanding from all sides.

For the company, whilst the formulation and implementation of suitable policies and procedure are necessary conditions for this to occur, real achievement can only come through developing a pervasive culture of social competency.

Notes

- 1 The authors gratefully acknowledge Comalco for its permission to publish and present this chapter and to use the Review Report (of the implementation of the Western Cape Communities Co-existence Agreement) and related material. The authors also express

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- 2 An ILUA is a voluntary agreement between a native title group and others about the use and management of land and waters. Under the *Native Title Act 1993* (Cth) (*NTA*), an ILUA registered with the National Native Title Tribunal is legally binding on the people who are party to the agreement and all native title holders for that area even if they were not involved in the agreement. The ILUA provisions, included as part of the 1998 amendments to the *NTA*, accord flexibility in that agreements can be negotiated to suit particular circumstances. They can be made separately from a formal native title process, but may also be a step towards or part of a native title determination. Note that elsewhere in the world similar agreements are commonly referred to generically as Impact Benefit Agreements.
- 3 Note that the WCCCA is also known as the Comalco Indigenous Land Use Agreement (24 August 2001), for further details, see ATNS Database at <<http://www.atns.net.au/biogs/A000088b.htm>>.
- 4 Outstations developed when indigenous groups, led by senior traditional owners, left the large government settlements from the 1970s onwards to create smaller family-based residential communities with the aspiration of providing a more traditional lifestyle for the members of their customary group. There are hundreds of such outstations, most on land with a form of Aboriginal title and many are occupied seasonally.
- 5 Also known as the Gulf Communities Agreement (September 1997), for details see ATNS Database at <<http://www.atns.net.au/biogs/A000081b.htm>>.
- 6 For details on the Yandicoogina Land Use Agreement, see ATNS Database at <<http://www.atns.net.au/biogs/A000875b.htm>>.