

## 8. Mining agreements, development, aspirations, and livelihoods

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In a time of global economic and climate uncertainty the expansion of resource exploitation projects in Australia is unprecedented. The consequent value of the minerals sector to Australian prosperity is in stark contrast to the economic poverty experienced by many Indigenous Australians, particularly those residing in mine hinterlands. This contrast is evident despite the existence of beneficial agreements between Indigenous groups and the mining industry, and in some cases the state, concerning the very mining that is generating such extraordinary profit. Indigenous poverty is only minimally ameliorated by such agreements (O'Faircheallaigh 2000, 2003a, 2004a, 2006; Taylor 2004a; Taylor and Bell 2001; Taylor and Scambarry 2005). This chapter draws on doctoral research of three agreements to highlight that poor agreement outcomes arise from the limitations that agreements impose on Indigenous livelihoods and aspirations (Scambarry 2007). The agreements considered by this research are the Ranger Uranium Mine Agreement in the Kakadu Region of the Northern Territory, the Yandicoogina Land Use Agreement (Y LUA) in the Central Pilbara of Western Australia, and the Gulf Communities Agreement (GCA) in the southern Gulf of Carpentaria in Queensland. All three agreements are considered best practice by the mining industry, the state and select Indigenous leaders, for their perceived capacity to deliver substantial and sustainable benefits to Indigenous people. However a combination of the scale of Indigenous disadvantage and the mainstream development parameters of the agreements themselves limit the attainment of sustainable outcomes for Indigenous people associated with all three agreements. This chapter argues that a fundamental limitation of these mining agreements is their incapacity to engage with and augment the diverse livelihood objectives of Indigenous people. This motivates ambivalent responses to mining on the part of Indigenous people. The invisibility of Indigenous cultural dispositions is further compounded by a growing policy emphasis on mainstream economic engagement, which entails many negative assumptions about Indigenous people and their capacity for economic engagement. Such assumptions are in tacit opposition to Indigenous cultural dispositions that ultimately underlie notions of identity and a claim to rights on the basis of cultural difference.

Indigenous people's experiences of initiatives promoting 'sustainability' in the context of mining agreements are primarily associated with royalty and compensatory payments directed at attaining community benefit. In modern mining agreements 'community benefit' packages broadly entail employment

and training programs, business enterprise development programs, payment of limited cash compensation, and heritage protection. Successes and failures within these realms are *ad hoc* within each of the agreements, with all three falling well short of their objectives to overcome Indigenous disadvantage via the creation of economic opportunity (see below). The reasons for this are numerous and complex, but include:

- the challenge of reconciling mainstream economic development initiatives (that seek outcomes almost exclusively in terms of economic engagement associated with the local mine economy) and Indigenous cultural prerogatives (that arise from, and construct, personal and group identity and are often expressed as livelihood aspirations)
- the level of accord between defined agreement beneficiaries and local Indigenous conceptions of relatedness
- the ability of Indigenous organisations arising from the agreements to represent the diversity of their memberships
- the effects of statutory and agreement defined conditions on the flow of benefits to intended beneficiaries
- the tendency of the state to retreat as a service provider with the arrival of private capital, and
- the extent of Indigenous autonomy over agreement benefits.

## The Agreements

The structures of the Ranger Mining Agreement, the YLUA, and the GCA are complex and define the space for Indigenous 'productive activity' within their contexts. Generally all three agreements provide for compensatory and 'community benefit' packages—trust funds and royalty equivalent payments, programs of employment and training, business development, education, and cultural heritage protection. Whilst all three agreements fall within the mining industry's sustainable development approach, critical differences emerge between the agreements that include the role of land councils and native title representative bodies (NTRBs), the intended purpose of funds arising from agreements, and issues of governance associated with agreement structures.

The Ranger Uranium Mine is located on Mirrar Gunjeihmi country within Kakau National Park in the Northern Territory. Approximately 50 per cent of Mirrar Gunjeihmi country is encompassed by the Ranger and nearby Jabiluka uranium mining lease. The Ranger Mining Agreement, pursuant to s.44 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (ALRA), is between the Northern Land Council on behalf of traditional owners and the Commonwealth. Analysis of the Ranger mine's nearly 30 years of history is instructive for understanding relationships between Indigenous people and the modern mining industry in Australia more broadly. Many conclusions can be drawn from the

impacts on the local Indigenous polity from the construction of a dedicated mining town (Jabiru), Indigenous employment and training schemes, and the emergent administrative framework designed to balance competing interests. The establishment of the Ranger mine was enabled by the recommendations of the Ranger Uranium Environmental Impact Inquiry (the 'Fox Inquiry') which also considered—and recommended favourably—the establishment of Kakadu National Park, and the recognition of land rights for Indigenous people (Fox, Kelleher and Kerr 1977). Whilst noting the opposition of the Mirrar Gunjeihmi people to the establishment of the Ranger mine, the Fox Inquiry sought a compromise between competing land interests in the region.

The recommendations of the Inquiry established arrangements to ameliorate the impacts of mining on local Indigenous people including the provision of economic benefits through the payment of royalties under the ALRA, and the implementation of complex land tenure arrangements. Notably the mining town of Jabiru that was established to service the mine became a restricted access area in order to minimise interaction between local Indigenous people and the mining community. The arrangements established by the Fox Inquiry are sometimes referred to as a 'social contract'.

The administrative arrangements established by this 'social contract' remain vexed 30 years after the establishment of the Ranger mine. Historically Ranger has had low rates of local Indigenous employment. Despite the payment of royalties under the terms of the Ranger Agreement the Indigenous share of the mine economy is minimal. This is a common pattern at all three mines considered. The impacts on Indigenous people of large-scale development follow the pattern set by Ranger (Taylor and Scambary 2005).

The YLUA is an Indigenous Land Use Agreement between Hamersley Iron (now known as Pilbara Iron) and the Yinhawangka, Banyjima, and Nyiyaparli<sup>1</sup> people of the Central Pilbara. The agreement is not registered with the National Native Title Tribunal. The agreement has a regional focus and concerns an area of approximately 26,000 square kilometres (Senior 2000), encompassing much of the traditional land interests of the three language groups, and a substantial area of Pilbara Iron's mining and exploration tenements in the region. Notably the Yandicoogina deposit is also the subject of mining tenements held by rival iron ore miner BHP Billiton. The Yinhawangka, Banyjima and Nyiyaparli people are parties to a separate agreement with BHP Billiton concerning the BHP Billiton-owned Yandicoogina Iron Ore Mine.<sup>2</sup>

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<sup>1</sup> The orthography used here accords with that recommended by the Wangka Maya Pilbara Aboriginal Language Centre. However, numerous spellings of these language group names are in use in the region.

<sup>2</sup> The Mining Area C Agreement between Yinhawangka, Banyjima, Nyiyaparli people and BHP Billiton establishes the IBN Corporation with the same membership as Gumala.

The GCA is a Future Act Agreement pursuant to s.29 of the *Native Title Act 1993* (Cwlth) (NTA), and is between the State of Queensland, Century Zinc Limited (CZL) and the Waanyi, Mingginda, Gkuthaarn and Kukatj people of the southern Gulf of Carpentaria. The GCA predates the 'Wik' amendments to the NTA of 1997, also known as the 'ten-point plan amendments'.<sup>3</sup>

The central features of the YLUA and the GCA, like the Ranger Agreement, are preferential concessions relating to provision of employment and training; Indigenous business development; heritage protection and financial recompense for mining; and heavy emphasis on integrating Indigenous people into the mine economy.

However, the dollar amount of the YLUA and GCA, approximately \$60 million over the anticipated 20-year life of both mines, is significantly less than royalty payments made by Ranger mine operator Energy Resources of Australia (ERA) through a complex set of arrangements to the Aboriginal Benefits Account (see below) (O'Faircheallaigh 2003a).<sup>4</sup>

Total royalties paid by ERA and distributed to the Aboriginal Benefits Account since the commencement of mining in 1980 are \$207.7 million (see also ACIL Economics and Policy Ltd 1993: 17; ACIL Economics and Policy Pty Ltd 1997: 3; ERA 2006). ERA erroneously states that the company has paid this amount to Indigenous interests (ERA 2006); in fact they are paid to the state, which then distributes mining royalty equivalent amounts to Indigenous interests and the Northern Territory Government. Traditional owner groups only receive 30 per cent of these payments via royalty associations that have been incorporated to receive such funds. The Gagadju Association was the nominated organisation to receive such payments from 1979 to 1995. From 1996 to the present the Gunjeihmi Aboriginal Corporation has received all royalty payments from Ranger.

There has been much conjecture over the distribution and expenditure of royalty payments throughout the history of the Ranger project. It is commonly assumed that traditional owners personally receive large sums of money. Over time this assumption has resulted in the non-provision of government services on an equitable needs basis to Indigenous people in the Kakadu region (Kakadu Region

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<sup>3</sup> The 'ten point plan' amendments, were in direct response to the High Court's decision in *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [1996] HCA 40 ('Wik decision'), which found that native title could coexist with pastoral leases. In the event of any conflict the High Court found that the rights of pastoralists would prevail. The intention of the amendments was to seek a compromise for conflicting interests, with Prime Minister Howard claiming that 'The fact is that the Wik decision pushed the pendulum too far in the Aboriginal direction. The 10 point plan will return the pendulum to the centre' (Amended Wik 10 Point Plan, Media Release, 8 May 1997). The amendments had significant beneficial impacts for land access for the mining industry, and were undoubtedly influenced by the Australian Mining Industry Council's sustained campaign for blanket extinguishment of native title rights and interests.

<sup>4</sup> For a description of the complex of royalty distributions arrangements of the Ranger Agreement see Altman 1983: 56–61.

Social Impact Study 1997a; O’Faircheallaigh 2004a), and allegations of profligate expenditure by individuals and organisations alike. Such views are a historical legacy of the Queensland Mines Ltd (QML) Agreement, which related to the nearby Nabarlek uranium deposit. Negotiated after the Ranger Agreement, the QML Agreement saw the distribution of cash payments to members of three associations prior to any distribution of Ranger money in 1979.

The community benefit package of the YLUA was envisaged to include approximately \$60 million in cash payment to the Gumala Aboriginal Corporation, representing the 430 members of the Banyjima, Niyaparli and Yinhawangka peoples, over the anticipated 20 year life of the Yandicoogina mine. However, increased production in response to world demand for iron ore make it likely that the mine will have a 10–15 year lifespan, and Gumala will be paid significantly more than the anticipated \$60 million.

In addition a range of training, employment, heritage protection and business enterprise development initiatives are contained in the agreement, and there are provisions for the staged return of Rocklea station which is owned by the mining company. ‘Community’ benefits from the agreement are primarily administered via the Gumala Aboriginal Corporation in the form of trust funds known as the General Trust and the Elderly Infirm Trust, the latter ceasing after the first five year period of the agreement. Gumala has developed a business enterprise unit known as Gumala Enterprises Pty Ltd (GEPL), and has entered into joint business ventures in transport, equipment hire and camp management services in the Pilbara region. The trusts are designed to provide assistance to the membership through the delivery of programs such as investments, culture, law, community development, business development and education. The capacity of the trusts to make financial payments to individual members is restricted by the charitable nature of the trusts. In the first five years of operation the trusts received approximately \$15.3 million from Hamersley Iron. The lack of direct access to these funds for Indigenous parties to the agreement due to trust arrangements has led many Gumala members to perceive that they have no control over the compensatory benefits derived from the YLUA. Such dissatisfaction is encapsulated in the comment from Banyjima man BF, at the time of fieldwork, when he stated that ‘We have the richest trusts, but the poorest people’. As such the existence of substantial trust funds and the poor and declining socioeconomic status of Indigenous people who might lay claim to them is considered an indictment by many of the capacity for agreements such as the YLUA to achieve any substantial economic development or sustainable outcomes for Indigenous people.

The GCA is a complex document that commits the five native title groups, CZL, and the Queensland Government to a relationship that is designed primarily to facilitate the mining and transportation of ore from the Century mine. In addition

the objectives of the GCA for Indigenous people include the reduction of welfare dependence, and the promotion of economic self-sufficiency, better health and education standards, access to country, and community and cultural development. Undoubtedly, such aims flow from Indigenous people's symbolic approach to negotiations, and their desire to achieve appropriate recompense for past injustices, including dispossession of traditional lands and subsequent enduring poverty (Blowes and Trigger 1998: 109). Existing Indigenous disadvantage in the region poses serious challenges for realising these goals (Martin 1998a: 4). Failure of the GCA to attain any substantial improvement in the relative disadvantage of Indigenous people, particularly the Waanyi language group, is the subject of intense efforts of the Carpentaria Land Council Aboriginal Corporation to seek amendments to the agreement (Flucker 2003a, 2003b). Such attempts include the conduct of a review of the GCA by the Waanyi Nation Aboriginal Corporation, which followed a nine-day occupation of the mine canteen in 2002 by approximately 200 Waanyi people (see also Martin, Chapter 5; Trebeck, Chapter 6).<sup>5</sup> Like the YLUA the GCA contains provisions for the incremental return of pastoral land holdings owned by CZL.<sup>6</sup>

Arguably the most successful element of the GCA is the average 15–20 per cent employment of local Indigenous people at the Century mine, an employment ratio that eclipses the national average of 4.6 per cent Indigenous employment in the mining industry (Barker and Brereton 2004). In the life of the mine approximately 550 people from the Gulf of Carpentaria have been employed, and between 100 and 120 Indigenous people at any one time between 2001 to the present (Barker and Brereton 2004). Predominantly, Indigenous people are employed in the mine pit as truck drivers and operators, but significant numbers

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<sup>5</sup> In 2002, after a meeting held at Bidanggu outstation to discuss a review of the GCA, approximately 150 Waanyi men, women and children drove to the Century mine site, announced their presence at the site office, and then occupied the mine canteen. The Queensland Government ordered the mobilisation of the police special squad to the mine site, but was thwarted in its initial efforts to dislodge the protestors by declarations in the media by Waanyi spokespeople that the protestors were unarmed and mainly elderly people and children. Intense negotiations began between the general manager of the mine and the protestors. The sit-in lasted for nine days and severely disrupted the meal routines for the approximately 400 strong fly-in-fly-out workforce. In addition, the unprecedented move to occupy part of the mine site sent shock waves through the business community and threatened to halt production at the world's largest zinc mine ('Aborigine protest threatens zinc mine', K. Meade, *The Australian*, 19 November 2002). The sit-in exposed the mine to serious financial risk which could have been critical for the continuation of the operation given that Pasmafinco (the operating company at the time) was experiencing financial difficulties at the time. The sit-in arose through dissatisfaction with the perceived limited scope and lack of independence of 'The Five Year Review of the GCA' undertaken by the Gulf Aboriginal Development Company Ltd, Pasmafinco and the State of Queensland.

<sup>6</sup> Turn Off Lagoon has been returned to Waanyi People, and in 2007 CZL retains a 49 per cent stake in Riversleigh and Lawn Hill Stations. Lawn Hill Station is a commercially lucrative pastoral enterprise carrying 50 000 head of cattle. Both Lawn Hill and Riversleigh stations are managed by the Lawn Hill and Riversleigh Pastoral Holding Company, which currently sublets the properties to non-Indigenous commercial pastoral enterprises and also conducts a pastoral training program in association with these two stations. In addition the Ganggalidda people, who are not parties to the GCA, have received title to Pendine and Konka Stations.

are also working in mine administration and service areas associated with the mining camp. Reasons for such high Indigenous employment overall include the operation of Community Liaison Offices in the communities of Doomadgee, Normanton, and Mornington Island, funding by the State of Queensland for mine related TAFE training, and the proactive employment strategies of the major contractor, the Roche Eltin Joint Venture, which operates the mine pit.

The three agreements considered here arise from different legislative and administrative regimes. Differences between the agreements also relate to the local circumstances in which each of the agreements were negotiated. The YLUA and the GCA emphasise the economic engagement of Indigenous people, rather than the payment of royalties as with the Ranger Agreement. However cash payments are made in both the YLUA and the GCA, although they utilise the 'real economy' discourse and emphasise participation in mainstream economic activity.

Across all three agreements significant numbers of intended agreement beneficiaries are unable to participate in programs of employment, training or business development due to their status in relation to development-defined socioeconomic indices. Many Indigenous people who have land interests affected by major mining developments are precluded from participating in the mine economy by chronic health issues, limited education, a criminal record, substance abuse issues or old age (Taylor and Scambary 2005). The status of Indigenous Australians against standard social indicator areas including health, housing, education, and labour force participation are indicative of levels of poverty that deserve the moral outrage reserved for the Federal Government response to the incidence of child abuse in Indigenous communities resulting in the Northern Territory emergency intervention.

However, such moral outrage denies the agency and productive capacity of many Indigenous people that arises from an extensive range of skills and knowledge that lie outside the mainstream economy, and that inform Indigenous responses to poverty. Whilst the under-resourcing of services to Indigenous people is one reason for poverty that prevents participation in the mainstream economy, its day-to-day alleviation is often sought through the use of natural resources and the accompanying corpus of knowledge. Scarce government assistance has been inadequate for decades, entrenching Indigenous disadvantage. In many locations this places extreme pressure on the livelihoods of Indigenous people through institutional exclusion and excessive coercion to participate in the 'mainstream'. The denial of access to land and infrastructure essential to the conduct of customary activities and beliefs has added further constraints on Indigenous livelihoods.

Almost universally Indigenous people seek to shape their economic engagement by utilising their skills as Indigenous people, rather than highlighting the

capacity and skills deficit identified by standard social index assessments. This raises the possibilities for alternative forms of engagement by reference to diverse Indigenous aspirations for the future. In the context of mining agreements such aspirations are characterised by a desire for agreements that engender more innovative economic relationships, in both mainstream economic opportunities and in enhancing customary sector economic activity (Altman 2005a).

Modern mining agreements arise from legislative frameworks such as the ALRA and NTA that privilege the continuation of Indigenous traditions in the recognition of rights to land, and provide mechanisms to negotiate agreements with resource developers. However, resulting mining agreements de-emphasise the cultural prerogatives of Indigenous people in favour of mainstream economic development initiatives, predominantly within the mine economy. The capacity and desire of Indigenous people to engage in mine employment and training is influenced by diverse life histories resulting in considerable diversity of residence, access to their traditional lands, education standards, health standards, and customary knowledge and experience.

## **Indigenous policy and mining agreements**

In the 1990s Indigenous policy in Australia changed significantly as the tenets of economic liberalism were adopted, increasing the role of the private sector in Indigenous affairs both in terms of philanthropy and in ways consistent with 'practical reconciliation'. This process has continued in the new millennium with the abolition of representative structures such as the Aboriginal and Torres Strait Islander Commission (ATSIC), the introduction of 'mutual obligation frameworks', and most recently with the Federal Government's intervention into the administration of Indigenous welfare, land, and moral life of Indigenous people in the Northern Territory. Diminishing state capacity and growing demands for state services (Quiggin 2005: 22) have been felt acutely in remote and regional parts of Australia—the areas where mines exist and significant numbers of Indigenous people live. In this context mining agreements with Indigenous people vest considerable 'state-like' powers in the industry in relation to defining social policy and delivery of services in select remote and regional areas of Australia. This sits uncomfortably with the industry as corporations resist the pressure to fulfil the role of service delivery (Mining Minerals and Sustainable Development 2002) which is traditionally the domain of the state—creating uncertainty for Indigenous people residing in mine hinterlands.

In 1991 the Report of the Royal Commission into Aboriginal Deaths in Custody recommended that, in light of the extent of Indigenous disadvantage identified in the course of the enquiry, 'Reconciliation of the Aboriginal and non-Aboriginal communities must be an essential commitment on all sides if change is to be genuine and long term' (Commonwealth of Australia 1991). The report urged bilateral support for its recommendations and in the same year the Council for

Aboriginal Reconciliation was established as a statutory authority under the *Council for Aboriginal Reconciliation Act 1991*. The legislation also set the terms for a process to be conducted over a ten-year timeframe to advance formal reconciliation between Indigenous and non-Indigenous Australians. The critical endpoint for this formal process was set to be the Centenary of Federation in 2001.

Initial articulations of the policy of reconciliation were focused on a rights-based approach and accompanied by events such as the High Court's judgment in *Mabo No. 2*, and the subsequent passage of the NTA which established a national framework for the recognition of pre-existing Indigenous rights in land. Previous Indigenous policies also came under scrutiny—such as that of forcibly removing Aboriginal children from their families in the context of the Stolen Generations Inquiry.<sup>7</sup>

A change of government in 1996 ushered in a different approach to reconciliation that focused on the attainment of 'statistical equality' under the rubric of 'practical reconciliation'. The Howard government claimed that the symbolic rights-based approach of the previous administration had been unsuccessful. Practical reconciliation seeks to address Indigenous disadvantage in relation to tangible indicator areas such as housing, health, education and employment (Altman and Hunter 2003), whilst downplaying the 'rights' or symbolic reconciliation agenda of the previous administration.

The policy shift to practical reconciliation is evidenced by the amendments to the NTA in 1998 which significantly reduced the extent of rights recognised under the legislation. These amendments were designed to create certainty of tenure for pastoral and mining interests, in light of competing claims of prior Indigenous ownership.

Following the abolition of ATSIC in 2005, 'mainstreaming' became the dominant term for the change in direction of Indigenous policy due to its emphasis on the delivery of services via already established government departments and state mechanisms, and the de-emphasis of existing Indigenous service delivery and representative organisations ('the Indigenous sector'). Features of mainstreaming include the attempted coordination of service delivery across State and Federal agencies, and an emphasis on shared responsibility agreements at the local level based on principles of mutual obligation. A premise of mainstreaming is the notion that 'passive welfare' has had a devastating impact on Indigenous Australians (Rowse 2006: 169). The main proponent of this view is Indigenous leader Noel Pearson, who asserts a four-point plan for the development of a 'real economy' on Cape York Peninsula in Queensland. Pearson's plan entails access

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<sup>7</sup> In 1995 the Human Rights and Equal Opportunity Commission established the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, also known as the Stolen Generations Inquiry, which conducted hearings nationally throughout 1995–96.

to traditional subsistence resources, adaptation of welfare programs into reciprocity programs, the development of community economies, and engaging in the real economy (Pearson 2000: 83). The last aspect of Pearson's plan—engagement in the real economy—has been assimilated into Indigenous policy frameworks of both the state and the private sector as equating with middle Australia objectives of mainstream economic engagement. Principle indicators of such engagement are culturally informed and include gainful employment and private ownership of property.

Accompanying this policy shift, or perhaps informing it, there has been a disciplinary shift in policy development away from the humanities and in particular, anthropology, towards economics (Altman and Rowse 2005: 159). Altman and Rowse question whether the variant objectives of Indigenous policy 'achieve equality of socioeconomic status or [...] facilitate choice and self determination' (Altman and Rowse 2005: 159). They indicate that the former is the focus of economically-informed social policy, which downplays 'difference' in favour of equality, whilst traditionally the latter has been based on the advice of anthropology and its emphasis on 'cultural difference'. In this sense culture is something that 'aggregates people and processes, rather than integrates them' (Cohen 1993: 195–6).

The emerging tension in Indigenous policy is central to mining agreements—in particular, how the influence of economic liberalism on practical reconciliation excludes (or at best de-emphasises) the cultural imperatives of Indigenous economic agency. As Altman and Rowse note 'This approach ignores a point made by anthropology: that to change peoples' forms of economic activity is to transform them culturally' (Altman and Rowse 2005: 176).

Mining agreements are one way in which mainstream economic participation of Indigenous people is pursued. While modern agreements promote an ethos of economic participation, they are also subject to considerable variation in the involvement of the state. For example, the Queensland Government is a party to the GCA, and the Federal Government is a party to the Ranger Agreement, whilst the Western Australian Government is not a party to the YLUA. In all three cases the state's primary concerns are to ensure the unimpeded development of mineral resources, and minimise liabilities arising from the impairment of native title (O'Faircheallaigh 2006: 9) and, in the case of the Ranger mine, the ALRA. Limited programs such as the Working in Partnership program are funded by the Federal Government to promote greater participation of Indigenous people in the mining industry (Department of Industry Tourism and Resources 2006). More recently, Closing the Gaps initiatives promote 'place based training initiatives' with the resource sector as part of broader strategies to increase economic participation and to address the divergent life expectancies between Indigenous Australians and the wider population.

Tension exists between the mainstreaming approach to Indigenous affairs and the substantial Indigenous sector that acts as an interlocutor with the state in the delivery of services (Rowse 2006). Organisations that were established under the ALRA and NTA are critical to the negotiation of agreements. NTRBs are federally funded to represent the interests of Indigenous people within a geographic area under the terms of the NTA. In the Northern Territory, land councils established under the ALRA have assumed responsibility for representation of the native title interests of their constituents within their geographic boundaries, and are also recognised as NTRBs. With the NTA 1998 amendments, NTRBs have experienced a substantially increased workload due to increased complexity in the operation of the Act, and the introduction of strict time frames associated particularly with negotiation processes. Other agencies integral to the carriage of processes under the NTA, including the Federal Court of Australia and the National Native Title Tribunal, have received substantial funding increases to address this increased workload. However, NTRBs have experienced an overall decline in funding, and increased intervention by the Federal Government in the discretionary use of funding. O’Faircheallaigh notes that this has reduced the capacity of these organisations to represent the interests of their clients adequately (O’Faircheallaigh 2006: 11–2). Increasingly, the mining industry and other third party developers are funding NTRBs, and Indigenous people directly to fast-track processes associated with the NTA in order to reach timely development outcomes (Minerals Council of Australia (MCA) 2006). Although such direct funding is aimed at pragmatic outcomes, it raises the serious prospect of a conflict of interest in adversarial negotiations over land use (Morgan, Kwaymullina and Kwaymullina 2006).

A submission to the Commonwealth Government by the peak mining industry organisation, the MCA, notes that 60 per cent of mining operations in Australia are adjacent to Indigenous communities (MCA 2006: 25).<sup>8</sup> The same submission notes that NTRBs ‘provide a critical platform for industry to negotiate mutually beneficial outcomes’ and recognises that ‘NTRBs have been chronically under-resourced in fulfilling their legislative functions in representing Indigenous interests’ (MCA 2006: 30). Such a shortfall in resourcing, ‘has delayed the negotiation of mutually beneficial agreements and forced mineral companies to meet the resourcing gap’ (MCA 2006: 30).

As the mining industry seeks to promote the development of ‘sustainable regional communities’ beyond the life of the mine (MCA 2006: 23), and via the negotiation of agreements with Indigenous people, the inadequacy of state services in the provision of community infrastructure and social services is increasingly hampering such efforts (MCA 2006: 25; see also Holcombe, Chapter 7). The industry has criticised the government for the increased onus upon it to provide

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<sup>8</sup> ‘Communities’ in this sense refers to the physical locations where Indigenous people reside.

such services in the absence of social service provisioning (Mining Minerals and Sustainable Development 2002). A key conclusion is that mining agreements on their own are largely incapable of effecting significant mainstream economic outcomes for the majority of Indigenous people who are parties to them.

O'Faircheallaigh's recent study of approximately 45 mining agreements in Australia suggests that the limited success of such agreements flows from the NTA's weakness as a statutory regime for negotiation (O'Faircheallaigh 2000, 2003a, 2004a, 2006; among other papers that make up the study; see also Altman, Chapter 2; Martin, Chapter 5).

## **Development, aspirations, and livelihoods**

The development ethos that informs the current policy direction in Indigenous affairs, and is a keystone to the formal engagement between the mining industry and Indigenous people in the context of agreements, defines Indigenous people as underdeveloped. Esteva (2005: 7) signals this corollary to post-war development discourse and grounds 'the burden of connotations that it carries' in the language of evolution, growth and maturation. In his historical account of the emergence of development, Esteva emphasises the hegemonic nature of a capitalist project to alleviate perceived poverty and underdevelopment in a colonising and homogenising manner.<sup>9</sup> Esteva (2005: 18) asserts that the social construction of development is integral to an autonomous economic sphere and the generation of scarcity:

Establishing economic value requires the disvaluing of all other forms of social existence. Disvalue transmogrifies skills into lack, commons into resources, men and women into commodified labour, tradition into burden, wisdom into ignorance, autonomy into dependency. It transmogrifies people's autonomous activities embodying wants, skills, hopes and interactions with one another, and with the environment, into needs whose satisfaction requires the mediation of the market.

Esteva's rejoinder to the coercive dependencies that he identifies as being produced by development and the market economy, is to draw attention to the strategies of the 'common man' at the margins of economic hegemony, to re-embed economic practice in culture, and develop a 'new commons'. Esteva (2005: 21) envisages a cultural revival of sorts, and a reclamation of the definition of needs in the name of reducing scarcity. Culturally embedded education and healthcare, he asserts, removes the need for absent teachers and schools, doctors and hospitals and reaffirms the multiple strategies for survival entailed in Indigenous cultural knowledge and relationships to the environment (Esteva 2005: 20–1). Esteva's work serves as a useful reminder of how alternative modes

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<sup>9</sup> There is a broad literature criticising 'development' (see for example Crush 1997; Escobar 1995; Hobart 1993; Mehmet 1995; Nederveen Pieterse 1994).

of economic interaction might privilege the skills and capacities derived from Indigenous knowledge systems, in lieu of the skills and capacities conventionally valued by Western industrial measures.

Like Esteva's new commons, critical analysis of the development paradigm has generated a post-development discourse that beckons consideration of non-market economic relations and customary activities as legitimate forms of economically productive action. Gibson and Graham's notion of a 'diverse economy' is premised:

...on unhinging notions of development from the European experience of industrial growth and capitalist expansion; decentering conceptions of economy and deessentialising economic logics as the motor of history; loosening the discursive grip of unilinear trajectories on narratives of change; and undermining the hierarchical valuations of cultures, practices and economic sites (Gibson-Graham 2005: 5).

The Gibson and Graham study of the municipality of Jagna in the Philippines identifies a diverse economy consisting of 'a thin veneer of capitalist economic activity underlain by a thick mesh of traditional practices and relationships' (Gibson-Graham 2005: 16) that ground what they term the 'community economy'. They explain this community economy as:

Those economic practices that sustain lives and maintain *wellbeing directly* (without resort to the circuitous mechanisms of capitalist industrialisation and income trickle down) that *distribute surplus* to the material and cultural maintenance of community and that actively make a *commons* (Gibson-Graham 2005: 16).

Reference to this approach is not to suggest that a return to the primordial past is desired by Indigenous people, but rather that the alterity of Indigenous culturally grounded economic activity is maintained despite the colonial experience. From research conducted over a 25 year period with Kunwinjku people of Western Arnhem Land, Altman has developed a model for the analysis of the interdependencies of the market, the state and the customary components of the economy (Altman 2005a: 36). Altman's hybrid economy recognises the 'intercultural' context of the economy in remote areas where the products of customary activities supplement resources from other sectors. Hunting, gathering and fishing often significantly supplement household and community production and consumption (Altman 1987; Bomford and Caughley 1996; Griffiths 2000), and are supported indirectly by the state, for example in the form of Community Development Employment Projects payments. The production and sale of Indigenous art is informed by cultural knowledge, facilitated by government funded art centres, and driven by profits from a lively international art market (Altman 2005a: 38). Other examples of hybridity include the commercial use of

wildlife, cultural tourism, and bio-diversity management (Altman 2005a). Underlying the growing importance of this last factor is increasing global concern for the state of the environment, particularly in terms of climate change and dwindling water resources. The majority of Indigenous Australians reside in urban and metropolitan areas. However approximately 26 per cent of Indigenous Australians, or 120 000 individuals reside 'on what is increasingly referred to as the Indigenous estate, an area that covers about 20 per cent of the Australian continent or about 1.5 million square kilometres mainly made up of environmentally intact desert and tropical savanna' (Altman, Buchanan and Larsen 2007). Increasingly, Indigenous people in these regions are engaging in programs of biodiversity management that utilise Indigenous knowledge systems in the control of exotic weeds and feral animals. Traditional fire management practices particularly in the tropical savannas are being adapted to pastoral management, biodiversity protection, and innovatively in privately negotiated carbon abatement programs (Northern Land Council 2006). Government bodies, such as the Australian Quarantine and Inspection Services and the Australian Customs Service, are forming partnerships with Indigenous people living in remote areas and employing them to undertake important activities including border control and disease management. Such activities are formalising the hybrid economy model espoused by Altman, through increased public sector funding for bio-diversity projects.

Within the current policy debate in Australia that is increasingly asserting the failure of self-determination approaches over the last 30 years, economic liberalism and the pursuit of practical reconciliation has found support for greater market integration from influential Indigenous spokespeople such as Noel Pearson and Warren Mundine. Pearson's 'real economy' model highlights a disjuncture between post-colonial Indigenous cultural dispositions and Indigenous society's capacity to attain development outcomes. Central to Pearson's argument is the concept of 'welfare poison', which he maintains has undermined traditional society and authority and instituted a destructive dependence on the state (Pearson 2000a, 2000b).<sup>10</sup> Pearson's four point plan for the establishment of the 'real economy' shares a number of tenets with both Gibson-Graham's diverse economy, and Altman's hybrid economy (Altman 2007a; Gibson-Graham 2005). But, as Altman notes, Pearson's emphasis upon engagement with the market economy has gained prominence and provides 'moral authority' to the 'pro-growth' discourse of Indigenous development. The intervention of the Commonwealth Government in the Northern Territory through the acquisition of communally owned land, infrastructure, and capital items that are purchased with government money and the introduction of income management schemes for Indigenous welfare recipients has extended the moral authority of the state

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<sup>10</sup> 'Misguided policies a toxic cocktail', N. Pearson, *The Australian*, 24 October 2000.

into unprecedented involvement in the daily lives and affairs of Indigenous people. Such an outcome is paradoxically contrary to Pearson's vision of reducing the institutional involvement of government in the lives of Indigenous people.

The invisibility of the customary economy masks the value that is derived from the exploitation of land based resources by Indigenous people residing on their traditional estate—and exercising agency in determining their own future. During the 1970s many Indigenous people moved away from government and mission settlements to their traditional lands. The 'homeland movement' was primarily a north Australian phenomenon and was enabled to some extent by policy and legislative developments. Altman (1987) notes that decentralisation assisted in the revitalisation and continued practice of hunter-gatherer technologies and practice. Increasing mineral prospecting, particularly in Arnhem Land in the Northern Territory, and the desire to protect sacred sites was also a motivating factor in decentralisation (Gray 1977).

While the approaches of Gibson-Graham, Pearson and Altman present different understandings of non-market economic activity, overall their work can be characterised as taking a livelihood approach to economic development (de Haan and Zoomers 2005). The term 'livelihoods' refers to the diverse activities in which Indigenous people engage in order to sustain themselves. Livelihoods include tangible economic activities associated with the cash economy including paid employment, welfare and commercial enterprise; and resources from the customary sector derived from activities such as hunting, fishing and gathering. Livelihoods are reliant on networks of relatedness of people to kin and country and entail a complex of obligations defined by a corpus of Indigenous law and custom. In this sense livelihoods encompasses intangible aspects of social life that are reliant not only on physical resources, but also on symbolic resources associated with relatedness to and knowledge of country. These resources are drawn upon constantly in the mediation of the authority of Indigenous individuals within groups, and in the assertion of the distinctiveness of Indigenous identity to the broader world. Livelihood pursuits entail aspects of productive agency aimed at deriving forms of value that are not reducible to an economic analysis. That is, the effort expended in accessing, maintaining and utilising symbolic resources yields definitive constructions of personal and group identity.

Livelihoods are described generally as a range of activities associated with the customary sector, including fishing, hunting, gathering, the production of art and craft, the conduct of ritual, and the maintenance of family and kin relations. Livelihood aspirations emerging from fieldwork undertaken in relation to mining agreements are expressed in terms of the resources perceived to arise from such agreements. They include a range of activities premised on access to and management of land and the development of supportive and representative

organisations. Contrary to current policy assertions, access to land is a key Indigenous aspiration. Thus any statement about the centrality of land based relationships and responsibilities is a political assertion of a means of redressing scarcity and social dysfunction associated with living in regional urban environments. In the central Pilbara, Indigenous residents desire access to land for the establishment of family-based 'communities', and the access to resources that residence upon one's own country brings. In the Kakadu region the establishment of a number of outstations was facilitated by the Gagudju Association, which emerged as a successful Indigenous organisation in the context of the establishment of Ranger mine and the declaration of Kakadu National Park. Converse to this positive outcome, Mirrar Gunjeihmi people express their opposition to the development of the nearby Jabiluka deposit in terms of loss of land and hence cultural identity (Gunjeihmi Aboriginal Corporation 2001).<sup>11</sup> In the southern Gulf of Carpentaria access to land, for living-areas and rangelands, is also a key aspiration.<sup>12</sup>

Associated with Indigenous aspirations for access to country are aspirations for a multitude of resources to support such access. Vehicles to get there, funds to build houses, to buy generators and to sink bores, represent some of these tangible and associated aspirations. Access to cash resources to purchase equipment is sought from multiple sources including mining agreement trust funds, government grant funding, and in many cases through labour force participation, or business enterprises.<sup>13</sup> Indigenous aspirations identified can be grouped into a number of general areas that emphasise the interdependencies of models such as those outlined above. The maintenance of family and kin structures reinforces relatedness and rights to land and defines membership, exclusivity and authority within the Indigenous polity, and supports political assertions of cultural distinctiveness. Representative Indigenous organisations present a resource in assertions of rights arising from cultural distinctiveness, particularly when made against the state, and the mining industry. Such organisations are integral in claims to land under relevant statutes, negotiations relating to land access, and in the establishment of partnerships in enterprise development that generate resources required for a broad range of livelihoods. Intra-Indigenous politics and conflict can compromise the efficacy of such organisations to achieve outcomes for their constituents, but also highlight the need for innovative governance design in order to accommodate processes for

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<sup>11</sup> The Ranger mine town of Jabiru and the Jabiluka leases occupy nearly 50 per cent of the Mirrar Gunjeihmi clan estate (Fox, Kelleher and Kerr 1977: 266; Parliament of the Commonwealth of Australia 1999: 77).

<sup>12</sup> In order to secure its mineral interests in the area, the GCA designates that CZL incrementally return significant land holdings to native title holders (Martin 1998: 6), with CZL maintaining a 1 per cent stake to ensure the availability of this land for future exploration.

<sup>13</sup> All three mining agreements considered here have programs that encourage and facilitate enterprise development.

resolution and management of disputes. A key factor that emerges from examination of mining agreements is the impact that different definitions of 'community' associated with mining agreements can have on the stability of agreement-based Indigenous organisations (see below).

Family and kin structures are intrinsic to the range of pursuits associated with the Indigenous customary economy. Customary rules and norms associated with social relationships influence rights to hunt, fish and gather and to utilise land resources. Such rules and norms are reinforced through the myriad symbolic resources associated with a sentient landscape, and, more formally in many areas, through the conduct of ceremonial activity. Such activities generate a range of social values that identify Indigenous people. Notably, significant numbers of Indigenous people engage in mainstream economic activity without apparent detriment to their sense of identity. For example, a number of Century mine employees indicated their aspiration to obtain 'rangelands'<sup>14</sup> upon which to hunt and live and regarded their employment as a strategic path to gaining the necessary resources to realise this goal. Clearly there is significant diversity within and across the field sites analysed that has not been addressed by the current mainstream approach of the state or the mining industry thus far.

The assumption made here is that value is derived by Indigenous people and groups through culturally informed productive action and serves to create and reaffirm cultural identity, 'which is the fundamental expression of their being' (Throsby 2001: 11). At this point it is useful to consider the terms productivity and value, culture, and cultural identity in more detail. Indeed this fundamental expression is the basis for 'a productive life' (or a good life) and is much greater in its scope than suggested by representations of Indigenous agency in mining agreements. As Povinelli notes:

Aboriginal notions of work, labor, history, and authenticity are assessed and, in many ways, forged by hunter-gatherer discourses and by Western law, but Aborigines' real-life activities and dialogues also critique and challenge the reified categories of 'hunter-gatherer theory' and produce identity not in any way reducible to them (Povinelli 1993: 27).

Whilst interaction with the mining industry represents only one segment of Indigenous lifeworlds, this forum offers potential benefits, in particular resources that can support and augment the customary economy, by establishing its material and, indeed, symbolic worth through the assertion of cultural difference. However, as a corollary, Indigenous agency is also motivated by a desire to minimise the cost that such engagement may present to expressions of cultural identity. Multiple understandings of how value can be derived underpin the

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<sup>14</sup> The term 'rangelands' is used in the Gulf region to refer to tracts of land that are available for the pursuit of livelihood activities such as hunting and fishing to the exclusion of other activities such as mining and pastoralism.

choices made by Indigenous Australians and determine the types of productive action taken.

The distinction Altman and Rowse (2005) make between approaches to Indigenous policy grounded in economically informed views emphasising equality and sameness, and approaches based upon anthropologically informed views that emphasise diversity and choice, are indicative of the broader disciplinary relationship in which the role of culture is only recognised within economic systems when it can be commodified. As Throsby suggests, the dominant neo-classical paradigm in economics, which constructs economics as being without a cultural context, is not culture-free. Indeed the economy is a system of social organisation (Throsby 2001: 8–9). Economists employing neoclassical modelling to account for culture, do so only within economic terms and as such ‘remain remote from an engagement with the wider issues of culture and real-world economic life’ (Throsby 2001: 9). Throsby argues that questions of value are intrinsic to both economics and culture and that they provide a mechanism for the recognition of ‘cultural value’. Throsby’s definition of cultural value consists of a range of typical characteristics or components including the aesthetic, the spiritual, the social, the historical, the symbolic, and the authentic (Throsby 2001: 28–9). However, whilst cautioning that economic and cultural value must be kept distinct, and that economics has a limited capacity to recognise cultural value in its entirety, he urges that it is ‘in the elaboration of notions of value, and the transformation of value either into economic price or into some assessment of cultural worth, [that] the two fields diverge’ (Throsby 2001: 41). Indigenous people make assessments of cultural value in accordance with their own traditions, heritage, and institutions. Assessments of cultural and economic value diverge in the context of mining agreements, and are reflected in the structures of the agreements that define the types of available choices Indigenous people can make about the nature of their engagement. Assessments of cultural and economic value then inform emergent relationships between Indigenous people, the mining industry, and the state.

Holistic notions of culture that encompass all facets of the way people do things inevitably encompass economic practice. Many determinist accounts of culture draw relationships between the cultural imperatives of pre-capitalist societies and economic activity. For Throsby ‘cultural capital’ captures the value of a ‘cultural product’ (or cultural productivity *per se*), in both its tangible and intangible forms, while recognising the economic and cultural importance of such a product.

The term culture has a myriad of meanings and implications in the popular and academic lexicon. It is useful however, to consider culture in terms of an aggregation of individuals into groups on the basis of shared ‘attitudes, beliefs, mores, customs, values, and practices’ (Throsby 2001: 4). It assumes that a group’s

use of 'signs' and 'symbols' to convey meanings is important to the production of its cultural identity (Cohen 1993), and in the sanctioning of the behaviour of individuals both in relation to the group and also external to it. Difference and diversity within the group is implied by the use of the term 'aggregation', which also serves to distance this definition of culture from populist renderings that blur the distinctiveness of cultural groups by assuming homogeneity within them.

Cultural identity implies that an association of individuals is defined by a set of common characteristics, and that the group is reliant on symbolic transactions, and mutual identification. As with culture, cultural identity depends upon symbolism, derived from everyday life, and productive action—as Povinelli asserts in relation to the Belyuen (Povinelli 1993). Individuals are 'active in the creation of culture rather than passive in receiving it' (Cohen 1993). As Cohen notes the action of individuals in developing culture, has implications for the politicisation of cultural identity. He asserts that cultural identity is a matter of autobiography in that 'when we consult ourselves about who we are, it involves more than a negative reflection of who we are not' (Cohen 1993: 198); it also entails context specific judgments and choices, that reflect mutual understanding of signs and symbols. This kind of activity is designed to assert inward identification with a group, and distinction from other cultural identities.

The invisibility of the customary economy when perceived through mainstream notions of the 'productivity', or productive labour, of Indigenous people in the 'customary sector' (Altman 2001a: 5) limits the value that can be derived both by the mining industry and Indigenous people from their mutual engagement. To explain, Indigenous productivity is steeped in cultural continuity and is an integral mechanism for the production of cultural identity (Povinelli 1993). The value of Indigenous productivity in the customary economy is realised through multiple activities including quantifiable pursuits such as hunting and gathering, and the production of art (Altman 2005a); and in less quantifiable activities such as development and maintenance of outstations, engagement in family or kin relations, conduct of ceremony or by engaging with a sentient landscape in the production, reproduction, and reinterpretation of cultural identity, as Povinelli notes by 'just being there' (Povinelli 1993: 31). The quantifiable activities Altman outlines are not productive in a purely economic sense, rather as Povinelli observes:

it is a form of production in the fullest cultural and economic sense of this term, generating a range of sociocultural meanings and political-economic problems and rewards. Hunting and gathering grounds Belyuen Aborigines' relationship to the Cox Peninsula and, vis-à-vis other ethnic groups in the region, [and] defines their Aboriginality (Povinelli 1993: 26–7).

Such cultural value can only be truly realised by those who produce it, and those who receive it. However, manifestations of the nature or essence of cultural value are readily identifiable in the chains and modes of interaction between Indigenous people and the mining industry. For example, statements about the lack of desire to work for the mining industry in the Pilbara and which are supported with statements about the damage that mining does to the country, or the preference to work 'for my community instead', clearly demonstrate a set of priorities, the pursuit of which entails assessments of value, or cost. Similarly in the Kakadu region the Mirrar Gunjeihmi people mounted an international campaign against the development of a second uranium mine on the Jabiluka lease adjacent to the Ranger Uranium Mine lease.<sup>15</sup> Opposition to the establishment of the Jabiluka mine by the Mirrar Gunjeihmi is clearly articulated in terms of the cost that has been incurred by them as a result of the Ranger uranium mine. The anti-Jabiluka campaign in 1998 invoked the authority of Indigenous identity in opposition to the threats and constraints presented by mining to their cultural autonomy. Similarly at the Century mine the success of local Indigenous employment programs demonstrates not only Indigenous access to employment, but also local Indigenous people's desire to work there.

When considering cost and value, it is important to determine what motivates people in making a choice about the terms and nature of their engagement. Throughout this chapter the link between Indigenous productive action and cultural identity is implicit; this relationship is not necessarily quantifiable in economic terms, Nonetheless it is observable in the relationships between stakeholders associated with mining agreements.

Cohen notes that a minimal condition for the politicisation of cultural identity is individuals' realisation that ignorance of their culture undermines their integrity, and that such marginalisation creates power imbalances with respect to the marginalisers (Cohen 1993: 199). He notes that culture is expressed symbolically, and as such has no fixed meaning, and that may make it invisible to others. Both Povinelli and Merlan note that Indigenous culture is represented in Australia in popular discourse through legislative and policy frameworks (Merlan 1998; Povinelli 1993). Politicised cultural identity mitigates against reified notions of Indigenous identity, by drawing on a symbolic repertoire to assert distinctiveness. Politicised cultural identity also strives to protect and maintain the body of symbolic resources required for the continued construction and reinterpretation of culture, and which reified notions of Indigeneity are perceived to threaten. For example, in the Pilbara some individuals perceived full-time work in the mining industry as jeopardising the attainment of Indigenous aspirations for the future by placing barriers between them and symbolic resources central to their identity as individuals and as Indigenous

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<sup>15</sup> For detail on the Jabiluka campaign by Mirrar Gunjeihmi see Trebeck, Chapter 6).

people. Working a twelve-hour shift means distance from family and country and its symbolic value. Conversely, Pearson's claim of the destructiveness of 'welfare poison' assumes the erosion of culture that such dependency has inured, and views the real economy as a means of re-establishing the role of individual responsibility.

Relationships between Indigenous parties to agreements and the industry are never definable purely in terms of Indigenous people's desire or lack of desire to engage in programs provided under the rubric of 'community benefits'. In struggling to maintain links between the present and the mythic and historical past, in the pursuit of aspirations for the future, many older people suggest that young people should both engage with the mine economy, and fulfil obligations of a cultural nature. The need to garner resources from multiple sources—including wage labour, compensation, business development, and engagement in Indigenous cultural and social life—are seen by many Indigenous people as essential in maintaining and augmenting cultural identity. A parallel can be drawn between Richard Davis' observations in relation to Indigenous pastoralists in the Kimberley when he states that 'commercial pastoralism allows Aborigines the capacity to accrue the social and cultural capital that has historically rested with white pastoralists whilst maintaining a radical alterity to them' (Davis 2005: 58). Such alterity is demonstrated by BL, a Kaiadilt man from Bentinck Island in the Gulf of Carpentaria, who, whilst working at Century mine, also maintains a radical opposition to a cyclone-mooring buoy associated with the Century port facility at Karumba, and constructed on a sacred site within his traditional estate.<sup>16</sup> Reconciliation of Indigenous alterity with participation in the mine workforce is highlighted in the statement made by a Gangalidda worker at the Century mine, when he stated his goal as 'helping my people achieve their white dreams but staying black to do them'.

The incorporation of Indigenous values within a mining context is difficult, but clearly not insurmountable. A major obstacle to such incorporation is the industrial disposition of the mining industry that struggles to accommodate cultural diversity within its corporate framework. Similarly, the incorporation of mainstream economic values in Indigenous lifeworlds is difficult, but not insurmountable—the principle obstacles being institutional exclusion that creates incapacity to engage through the fostering of a skills deficit, and by placing barriers between individuals and their cultural identity that the majority of Indigenous people find unacceptable.

However, Indigenous people continually seek to influence both industry and the state to accept modes of engagement that allow for the augmentation of

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<sup>16</sup> See 'Mad about the buoy', D. Marr, *The Good Weekend*, 18 August 2001.

Indigenous identity, and hence the derivation of value from cultural, political and economic arenas of Indigenous life.

Adverse relations between the mining industry and Indigenous people arise from fundamentally different interpretations of land and its resources. Many Indigenous people associates with his study characterised 'country' as sentient and meaningful, producing socially embedded management practices that yield both tangible and symbolic resources. This contrasts with a non-Indigenous view of landscape that through the exploitation of its resources, becomes socially embedded, and therefore meaningful. Both views contain judgements about the productive value of land, and in turn the knowledge and capacity required to attain such value. However, the two views are not incontrovertible. A clear example of this is the 1946 Pilbara pastoral workers' strike which saw approximately 800 Indigenous pastoral workers simultaneously walk off 25 pastoral properties. The strikers sustained themselves through the prolonged industrial action by engaging in lucrative independent mining activity. The miners organised themselves collectively into successful corporations that accounted for traditional land affiliations and decision making processes.<sup>17</sup> Wilson characterises the strike and the emergent mining operations as the 'Pilbara Aboriginal social movement', which he states was implicitly a claim to citizenship rights (Wilson 1961: 97), occurring within a broader context of Indigenous struggles for recognition and rights (see Attwood 2003). State policies of protectionism and assimilation have enabled the historical dominance over Indigenous interests—firstly of the pastoral industry, and later the mining industry—a situation that endures in the current era. This subordination of Indigenous interests, as highlighted by the Pilbara pastoral strike, obstructs the visibility of Indigenous agency in deriving value from the land, and suppresses the possibilities of the divergence of notions of cultural and economic value in the context of mining agreements, but also more broadly.

The reluctance of the industry to assume responsibilities of service delivery is an increasing source of tension in the tripartite relationships entailed in mining agreements, and one that suggests an emerging nexus between Indigenous consent to mining and access to non-discretionary citizenship rights. In the context of mining agreements, trust funds and in-kind support from the mining industry are increasingly funding Indigenous health, housing and education programs in order to produce the competencies required for mine employment. This emerging role of the industry is converse to the Indigenous sector which is the target of funding cuts, increased scrutiny from government oversight, and devolution of functions to mainstream government departments. Given the

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<sup>17</sup> A key figure in the strike movement was Don McLeod, controversial as an activist and for his links with the Australian Communist Party. Some accounts credit McLeod with masterminding the strike movement and subsequent successful mining collectives that grew out of it, though Wilson (1961, 1980) gives a more nuanced account of McLeod's influence.

historic dominance of mining interests over Indigenous interests a key consequence of agreements such as the YLUA and the GCA is the inculcation of Indigenous people residing in mining areas into the narrow agenda of mineral development.

In the context of the three agreements considered, the relationships between the mining industry and regional land councils and NTRBs can be characterised as fraught. Such relationships arise from the historic opposition of the industry to the statutes under which these organisations operate, and the constraints they place on mineral development. Amendments to statutes such as the ALRA and the NTA have favoured the industry in its pursuit of security of tenure for commercial mining operations. Past representations by the mining industry of land councils and NTRBs as recalcitrant, anti-development, and self-interested in debates about the workability of legislative mechanisms were reflected in the Howard Government's mainstreaming approach of seeking to bypass intermediary Indigenous organisations in service delivery (Vanstone 2005). However, ongoing management of the agreements considered here, and the relationships that they engender, suggest a clear role for such organisations, and the development of specific and local expertise to represent Indigenous people in dealings with the mining industry. This is despite the varying roles played by such organisations in the three agreements, and the varying support they currently draw from their Indigenous constituents.

The representative and governance expertise of existing organisations is variable across the three regions, and is influenced by the relatively recent establishment of many NTRBs and land councils (for example, the Pilbara Native Title Service), and diminishing levels of resources available through state funding (O'Faircheallaigh 2006). Also, the adversarial relationships between land councils and NTRBs and the mining industry have led to situations where representative organisations are bypassed or heavily criticised, as in the Century mine negotiations.

An enduring example of organisational dysfunction that has influenced modern mining agreements is that of the Kunwinjku Association and the Nabarlek Traditional Owners' Association emerging from the QML Agreement (1979–95) with the Northern Land Council concerning the Nabarlek uranium mine in western Arnhem Land. Research documenting the poor governance of these associations, and unclear definitions of agreement recipients, indicates that significant sums of money derived from the agreement were wasted (Altman and Smith 1994; Kesteven 1983; O'Faircheallaigh 1988). The most recent of these research publications is the review of the Nabarlek Traditional Owners' Association undertaken by Altman and Smith (1994) on behalf of the Northern Land Council, and subsequently published. Altman and Smith's research notes a number of factors that are still relevant, including: the finite life of mines and,

hence, financial flows to Indigenous people; the limited capacity for strategic responsiveness to organisational capacity shortfalls of Indigenous agencies by government departments, the mining industry and Indigenous representative organisations; and legislative ambiguity in the purpose of mining money to be compensatory or benefit sharing payments, hence public or private, in their application. Such factors indicate, as does this chapter, that consideration of poor governance and poor accountability in the context of mining agreements extends beyond the Indigenous sector to include the mining industry and the state. Altman and Smith note that the Northern Land Council was subject to intense and perhaps excessive scrutiny for its role in the QML Agreement compared to other stakeholders, but commend the organisation for sponsoring and allowing publication of the research 'in the interests of learning from the mistakes of the past' (Altman and Smith 1994: 1). Such reflexivity is rare in the assessments of mining agreements by stakeholders. Though this example is dated and singular, it nonetheless is transparent and demonstrates the potential and desire of Indigenous organisations in furthering engagement with external parties—a capacity that has in many cases been obscured by the oppositional stances by the state and the mining industry to the discourse of Indigenous rights that inevitably accompanies the representation of Indigenous interests.

Altman and Smith's (1994) research occurred on the cusp of a new agreement era emerging from the passing of the NTA, and coincided with the new approach of Rio Tinto to work with the new legislative framework (L. Davis 1995), an approach subsequently adopted by the industry.<sup>18</sup> The business case for the new approach is influenced by the maintenance of corporate image through the portrayal of mining companies as good corporate citizens (Trebeck, Chapter 6). Obtaining a social licence to operate is premised on companies working in partnership with communities in the areas in which they operate and the generation of community benefit. The Nabarlek case is considered a worst-case example, and one which if repeated might reflect poorly on mining companies as contributing to Indigenous social dysfunction. The new approach of attaining Indigenous community benefit through mining agreements entailed a reactionary response to the perceived wastage associated with the royalty regime under the ALRA, which is extrapolated from Nabarlek to apply generally to all mining agreements under the ALRA. The post NTA practice of tying compensatory payments to specific purposes defined in mining agreements as 'community benefits packages', mitigates against Nabarlek type situations, but also reduces Indigenous autonomy over funds derived from what are essentially commercial

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<sup>18</sup> However, this new cooperative approach did not deter the industry from strenuous lobbying for amendments to the NTA in 1998 to provide commercial certainty over the pastoral estate that covers 40 per cent of Australia, resulting in the 'ten point plan' (see footnote 2 above).

negotiations under the NTA.<sup>19</sup> The dominant role of the mining industry in setting the terms of modern mining agreements was enabled by the unexpected High Court decision in *Mabo No. 2*; subsequent uncertainty under the new NTA legislative regime; its national focus; and the absence of Indigenous organisations in many parts of Australia that could assume the mantle of being representative bodies under the NTA.

## Community

Expertise to identify people whose land interests and lives are impacted by mining development is reliant on knowledge of local tenure systems, political and social allegiances. Land councils and NTRBs, despite any current shortcomings, are ideally institutionally situated to fulfil this role and subsequent representation of Indigenous interests in negotiations with resource developers.

Associated with all three agreements considered here are incongruous definitions of the relevant community that arise from initial assessment of land interests impacted or affected by the mine. The renegotiation and realignment of the community of benefit by Indigenous people themselves at all three locations has emerged over time. At Ranger mine the Gagudju Association was created to represent the interests of all Indigenous people affected by the mine. Membership of this association was expansive. However, over the life of the agreement relationships amongst the membership have forced a renegotiation of the community of impact and the emergence of a new organisation—the Gunjeihmi Aboriginal Corporation—with a discrete membership comprising of the land owning group subject of the Ranger and Jabiluka lease areas. In the Pilbara, the Gumala Aboriginal Corporation represents an alliance between three language groups. This alliance is threatened by the negotiation of discrete mining agreements outside the Gumala coalition, but within the country of, and on behalf of the membership of the three language groups; and the increasing assertions of language group autonomy over substantial funds held in trust by Gumala. In the southern Gulf of Carpentaria the Indigenous parties to the GCA are members of four language groups. However, the Wellesley Islands Sea claim concluded that Gangalidda people, who are not formally a party to the GCA, had succeeded to the country of Mingindda people, who are a party to the GCA. It follows then that legal definitions of the affected community have been altered significantly.<sup>20</sup>

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<sup>19</sup> A parallel can be drawn with the restrictions placed on agreement derived expenditure in the 1982 agreement between Pancontinental and the Northern Land Council concerning the Jabiluka prospect (Altman 1983).

<sup>20</sup> A corollary to the inflexibility of the respective agreements to accommodate change membership dynamics is the changed corporate identity of mine operators as a result of corporate takeover at all three locations.

The assumption that initial definitions of the community will encompass the unity of the group for the life of an agreement is inevitably challenged by influences internal to the group, and also by extraneous pressures, as noted above. This is particularly so where community definitions were initially expansive as at Ranger, or entail coalitions as in the Pilbara. Indigenous regional land interests and the intra Indigenous relationships and politics they entail are dynamic and context specific. The process of defining the region of impact of mining varies from region to region and mine to mine and is affected by a number of considerations including: the extent of Indigenous knowledge of local land interests, particularly in urban and regional areas; the scale of development as in the Pilbara; or the potential environmental impacts as in the southern Gulf of Carpentaria and in Kakadu National Park. The YLUA and the GCA statically define the community, and despite five year reviews of both agreements, there appears little scope for reflecting local re-assessments of the relevant community. However, re-definition of the community risks the loss of relevance and efficacy of static agreement structures and organisations in the attainment of agreement outcomes. The decline of the Gagudju Association is a clear example of the adverse impact of the assertion of discrete rights and interests. Inadequate consideration of discrete land interests in the GCA was also a factor in the 2002 Century mine sit-in, demonstrating that mines themselves are not enclaves isolated from the lives of Indigenous people. The mining industry's management and understanding of the complex Indigenous politics associated with land interests and access to benefits is limited. The absence of organisations that possess the relevant specialist expertise to represent Indigenous interests risks drawing the industry further into realms outside its core commercial functions, and raises the potential for conflict.

Undoubtedly the lack of definition of discrete land interests of Indigenous groups party to mining agreements, and the incumbent lack of visibility of rights and interests arising from localised land tenure, limits the workability of agreement governance, and ultimately agreement outcomes. This is not to suggest that agreements cannot be reached on a regional basis, but rather that such agreements must account for local land interests that they encompass in order to maintain their relevance and regional legitimacy.

The objectives of mining agreements to attain regional economic development outcomes are also constrained by the financial scale of the multi-year agreements themselves. In 2003 the Gunjeihmi Aboriginal Corporation received approximately \$1.17 million of the approximately \$7.6 million annual payment of Ranger Uranium Mine royalties paid to the Aboriginal Benefits Account. Individual payments accounted for approximately \$500 000; when divided between the approximately 240 royalty recipients, this resulted in an annual payment of approximately \$2400 per person (see also Altman 1997: 180). A further \$20 000 was allocated for whitegoods, furniture and other household

items across the membership. The remaining \$1.5 million was allocated to a range of social services for the membership and the region, including aged care facilities, purchase of one community vehicle, and infrastructural and consumable outstation support (including repairs, maintenance and fuel for generators for example). Money was also allocated for investment and administration for the Corporation itself (Gunjeihmi Aboriginal Corporation 2003).

Whilst there are four language groups who are party to the GCA, the objectives of the agreement seek to positively influence the socioeconomic status of Indigenous people living in the region. The regional Indigenous population is estimated to be 6000 (Earth Tech 2005: 20), whilst an estimate of the membership of the language groups is approximately 900 people. A crude calculation of the \$60 million value of the mine over a twenty year period gives an annual expenditure of between \$500 and \$3300 per person per annum. This does not account for at least \$30 million of the agreement funds being dedicated by the State of Queensland to the development of mine/regional infrastructure such as the mine access road. Consideration of this would halve these figures.

Similarly the YLUA provides for approximately \$60 million for 430 people over the anticipated 20 year life of the Yandicoogina mine, though these funds are tied to stringently controlled trust funds that are not generally accessible to the membership.

Programs of employment and training, business development, heritage and environmental protection target compensatory benefits at tangible outcomes. Indigenous support for these programs is premised on the economic and social advantage that they represent, but also on the accessibility of such programs to the intended agreement beneficiaries. Inaccessibility of such programs diminishes their relevance in the repertoire of available resources, and generates ambivalent responses. At the Century mine, Indigenous employment is viewed as a successful outcome from the agreement, but one which was undermined by the poor workforce representation of local/mine adjacent Waanyi people, and compounded by dysfunctional agreement structures culminating in the confrontational/activist 2002 sit-in at the mine canteen discussed above. In the Pilbara, the perception of there being no clear progression into employment at the conclusion of training programs, poor land access, and lack of access to trust funds generates Indigenous ambivalence. At Ranger, the request by Mirrar Gunjeihmi to ERA not to employ Indigenous people at all reflects their anti-mining stance, but also a desire to avoid the negative social consequences associated with an influx of Indigenous migrants. Mirrar Gunjeihmi opposition to the development of the Jabiluka prospect also reflects an assessment of cost incurred in terms of reduced cultural autonomy and enhanced social dysfunction as a result of their experience of the Ranger mine. The perception that mining agreements bring prosperity to Indigenous people is promulgated by the mining industry and the state to reduce

opposition. However, the documented experience of Indigenous people impacted by the Ranger mine is that cost shifting from the state to both the regional recipients of 'areas affected' payments and the mining company ERA has resulted in the region being arguably economically and socially worse off than nearby comparable regions of the Northern Territory (Kakadu Region Social Impact Study 1997a; Taylor 1999). The withdrawal of the state in the delivery of what should be non-discretionary citizenship rights in the Kakadu region should be cautionary, both to the attainment of mainstream economic objectives implied by modern mining agreements, and the mainstream 'closing the gaps' approach of current Indigenous policy.

## **Conclusion**

Many people who participated in this research maintain that they have seen little benefit from mining agreements. This is largely due to their relative socioeconomic status (see for example Taylor and Scambary 2005). This is not to deny the in-kind assistance and programs that mining companies have engaged in at all three regions. Rather it suggests that the anticipated outcomes associated with the agreements, and arising from varied and complex negotiating processes, have not eventuated. In the Pilbara for example, the existence of a substantial trust fund associated with the YLUA is viewed positively, but the current inability of the Gumala membership to readily access funds creates the widespread perception that they have little autonomy within the agreement to determine the shape of their future. Conversely, in the Gulf of Carpentaria, poor corporate governance associated with the GCA and unstable recipient organisations do not assist in the creation of a capital base, and similarly undermine intended agreement outcomes. The history of the Ranger mine and associated Indigenous organisations highlights the loss of autonomy of the Mirrar Gunjeihmi through the dispersal of their authority in the administrative frameworks designed to minimise the impacts of mining. However, through the interplay of local identity politics associated with Ranger mine and later the Jabiluka protest, the Mirrar Gunjeihmi have re-emerged as powerful actors in the region. This has had consequences for other regional interests, especially the neighbouring Bunidj and Murrumburr people, through the dilution of their authority in the organisations and institutions associated with mining in the Kakadu region.

Despite the provision of mainstream economic opportunities, access to land remains a critical issue at all three sites considered. In the Kakadu region the Ranger and Jabiluka leases occupy approximately 50 per cent of the Mirrar Gunjeihmi estate. Whilst the YLUA and the GCA make provision for the return of pastoral land holdings of the respective mining companies, the outcomes and equity of such provisions are unclear to many. Title to a number of leases in the Gulf of Carpentaria has been granted, though the continuation of commercial

pastoral operations on Lawn Hill Station is seen by some to preclude Indigenous use of the area. In the Pilbara, the timeframes for the return of leasehold land is unclear. The desire to access land for livelihood and religious pursuits is a central finding of this research and one that suggests the need to broaden the terms of engagement entailed in mining agreements.

Tangible livelihood outcomes are economic, and are considered by many Indigenous people to be reliable in comparison to the risks of dependency associated with obtaining resources through engagement with the market and the state. Symbolic resources are also derived through the conduct of livelihood activities and are central to the maintenance and construction of distinct Indigenous identities. The symbolism of everyday life is drawn upon in the inward assertions of identification with a group of people, and outwardly in the assertion of difference to other cultural identities. Examples are provided from all three field sites of the continued practice of livelihoods associated with the customary sector. Whilst the yield of livelihood practices has not been quantified here, the nature of cultural value that is derived from such activities is manifest in the choices individuals make about their lives and their limited level of engagement with the mine economy. Assessments of costs and benefits are considered in terms of economic gain, but also in terms of personal and group identity. As such, cultural value derived is only truly perceptible to those who produce it. However, this is not to suggest that poor outcomes against agreement objectives are reducible to the choices Indigenous people make about the nature of their engagement with the mine economy. Rather, the choices people make are to a large extent dictated by the opportunities that are available. This chapter has highlighted the structural obstacles to mainstream economic engagement presented by poverty, social and economic exclusion, and structures arising from the agreements themselves that define narrow terms of engagement. Like the pastoral industry before it, the obstacles to cultural autonomy that are presented by the presence of the mining industry also impact on the customary sector. Access to land—for the purpose of establishing residence, or accessing resources, or maintaining links to important sites in the sentient landscape—is a key aspiration across the three field sites, and is integrally linked to the range of tangible and symbolic resources that land access provides.

The possibility for a convergence of economic value and Indigenous cultural value is clearly reflected in the dual aspirations of Indigenous people across the breadth of this study to enhance both their market engagement, and engagement with the customary sector. Across Northern Australia the recognition of cultural value in financial terms is emerging in innovative partnerships that emphasise Indigenous land management practices. Extensive networks of Indigenous ranger groups are already involved in projects associated with the maintenance of biodiversity, disease control, border control, feral animal and weed management, fire management, and green house gas abatement. Such projects recognise and

enhance the value of Indigenous knowledge and capacity deriving from relationships to land, and have the potential for developmental outcomes in terms of the generation of economic resources. The benefits to Indigenous people, aside from those arising from fee-for-service arrangements, include the opportunity for the continuation of cultural traditions, the maintenance of heritage, and the maintenance of distinctive identities.

The possibility for the application of 'community benefit' packages associated with mining agreements in areas of land management is noted in this chapter, particularly given the extensive pastoral land holdings of mining companies. This is not to suggest that programs of mainstream engagement aimed at the mine economy should be abandoned, but rather to suggest a possible area in which the application of community benefits can be fruitfully augmented. Further innovation is required in the forms of engagement between the mining industry and Indigenous people to promote Indigenous empowerment and autonomy. Central to this is the recognition of who Indigenous people are, and respect and accommodation for the diverse range of knowledge and skills they possess.

The aspirations of Indigenous people associated with the Ranger mine in the Kakadu region, the Yandicoogina mine in the central Pilbara, and the Century mine in the southern Gulf of Carpentaria are multiple and diverse. Emerging from the broad scope of this research are numerous Indigenous narratives concerning distinctiveness, authenticity, equality, autonomy and responsibility. These narratives reach beyond the local relationships with the mining industry and state entailed in mining agreements, and draw upon the historic experiences of Indigenous people to demand both citizenship rights and symbolic rights. Indigenous struggles to seek redress of social and economic exclusion draw upon normative modes of social transaction and cultural process that rally against reified representations of indigeneity, and suggest ongoing cultural transformations. Such transformations are reflected in strategies and aspirations for the future that seek to innovatively resolve conflicting notions of productivity and value through positive assertions of Indigenous distinctiveness within the broader realm of an Australian national identity.

Through examination of three mining agreements it is clear that Indigenous people residing in mine hinterlands engage and respond to global influences while at the same time engaging with the customary. A clear example is the Century mine workers who drive haulpac trucks in the mine, but still draw upon the tangible and symbolic resources of their country in the construction of identity and the maintenance of tradition. This chapter has drawn on research associated with three mining agreements across Australia to demonstrate how agreement outcomes are constrained by the very limitations that they place on the agency of the Indigenous people they seek to engage. This chapter suggests that successful engagement between the mining industry and local Indigenous

people who reside in mine hinterlands is dependent on accommodation of existing Indigenous skills and knowledge. Examples abound from across all three locales of Indigenous people successfully striving to engage in multifaceted ways with the mainstream economy, and the mine economy, whilst not compromising their innate cultural identity. Poor understanding of Indigenous capacity by the state and the mining industry perpetuates dichotomous relationships with Indigenous people. Such relationships, combined with the historic under-funding of services by the state, and the lack of recognition of the citizenship rights of Indigenous people, limits the capacity for economic and social engagement, and compounds Indigenous poverty.