

**Mineral development agreements
negotiated by Aboriginal
communities in the 1990s**

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Foreword

Between March and May 1995 the Centre for Aboriginal Economic Policy Research sponsored a thematic seminar series titled 'Policy Aspects of Native Title'. The following eight seminars were presented:

- 'Relative allocative efficiency of the *Native Title Act 1993* and the *Aboriginal Land Rights Act 1976*' by Siobahn McKenna (March).
- 'Resource development agreements on Aboriginal land in the 1990s: features and trends' by Ciaran O'Faircheallaigh (March).
- 'Negotiations between Aboriginal communities and Mining companies: structures and process' by Ciaran O'Faircheallaigh (April).
- 'Tourism enterprise and native title: the Tjapukai Dance Theatre, Cairns' by Julie Finlayson (April).
- 'Funding native title claims: establishing equitable procedures' by Jon Altman and Diane Smith (April).
- 'Native title and land management' by Elspeth Young and Helen Ross (April).
- '*Native Title Act 1993*: latest developments and implementation issues for resource developers' by Jon Altman (May).
- 'Native title and regional agreements: the Kimberley case' by Patrick Sullivan (May).

Five of these seminars have now been revised into *CAEPR Discussion Papers Nos 85-89*. Of the others, Siobahn McKenna's seminar was published earlier as *CAEPR Discussion Paper No. 79* and Jon Altman and Diane Smith's seminar was published as 'Funding Aboriginal and Torres Strait Islander Representative Bodies under the *Native Title Act 1993*' (Issues Paper No. 8, *Land, Rights, Laws: Issues of Native Title*).

Owing to the pressing public policy significance of the issues addressed in this series, these discussion papers are intentionally exploratory and aim to disseminate information to a wider audience than that able to attend the seminars at the Australian National University.

Jon Altman
Series Editor
July 1995

ABSTRACT

This paper describes and critically examines five resource development agreements signed between mining companies and Aboriginal communities between 1992 and 1994 in the Northern Territory and north Queensland. These include the Mt Todd Agreement, the McArthur River Agreement, the Cape Flattery-Hope Vale Agreement, the Mapoon-Skardon River Agreement and the Placer Pacific-Kalkadoon Tribal Council Agreement. It also discusses the general approach adopted by the Northern Land Council in the Northern Territory to negotiating exploration licence agreements under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The paper updates a somewhat dated literature that examines a series of mineral development agreements negotiated between Aboriginal interests and mining companies in the late 1970s and early 1980s. It also analyses the broader context within which the five recent agreements examined were negotiated and assesses the purposes and contents of the agreements themselves. In conclusion, the author comments on the broader political significance of some general trends that emerge from the cases considered and suggests criteria for evaluating these agreements.

Acknowledgments

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Introduction

During the late 1970s and early 1980s, a series of mineral development agreements¹ were negotiated between Aboriginal communities and mining companies or relevant government agencies (Altman 1983; Christensen 1983; Gray 1980). Between 1983 and 1991, few such agreements were signed, mainly due to development restrictions imposed by the Federal Government, particularly in relation to uranium mining; because of administrative problems associated with the operation of the *Aboriginal Land Rights (Northern Territory) Act 1976* (hereafter Land Rights Act), and because a prolonged period of depressed mineral prices in the mid-1980s discouraged mineral exploration and development in north Australia. During recent years a substantial number of mineral development agreements have again been concluded by Aboriginal communities and organisations, particularly in the Northern Territory and Queensland, and more are currently (June 1995) under negotiation.

Publication of up-to-date information on mineral development agreements is important because it allows Aboriginal organisations and communities to use positive precedents established elsewhere in seeking to maximise the benefits they achieve from mineral exploitation. This information also assists Aboriginal people and mining companies in attempting to reach mutually acceptable responses to potential problems associated with mineral exploration and development. However, while some recent agreements have received considerable attention in the media, very little information is available about other agreements because they often contain confidentiality clauses. In addition, there has been no attempt to develop a general overview of the sorts of agreements which are emerging from contemporary negotiations between Aboriginal people and mining companies, or to examine their broader significance for public policy or for relations between the mining industry and Australia's indigenous people.

This paper examines a number of individual agreements made between 1992 and 1994, and also discusses the general approach being adopted by the Northern Land Council (NLC) in negotiating exploration licence agreements under the Land Rights Act. The original intention was also to discuss agreements negotiated by the Central Land Council (CLC). However, to date no response has been received to two written requests, and a number of verbal requests, asking the CLC to provide relevant information.

In each case, information is provided on the context within which mineral development agreements were negotiated, and on the purpose and content of the agreements themselves. The conclusion comments on the broader political significance of some general trends which emerge from the analysis of individual agreements, and also suggests some criteria on which these agreements can be evaluated.

Northern Land Council exploration licence agreements

The Land Rights Act, as amended in 1987, obliges a mining company which has obtained a right from the Northern Territory Minister for Mines to explore on Aboriginal land, to lodge an exploration licence application with the relevant land council within three months. In doing so the company is also required to provide a detailed outline of its proposed exploration program and of any potential environmental and social impacts. When a land council receives a licence application a 'negotiation period' commences, which is normally 12 months. Within 30 days of receiving an application the land council must notify any Aboriginal group or community, including any traditional owners, that may be affected by the grant of a licence, and subsequently consult with them concerning the exploration proposals and the terms and conditions to which any grant should be subject. On the basis of these consultations the land council must, before the 'negotiating period' expires, either consent or refuse to consent to the application. If consent is given, the traditional owners cannot subsequently deny the licence holder a mining right in the licence area. In other words, the Land Rights Act does not allow disjunctive agreements which require the granting of consent separately in relation to exploration and, at a later point in time, to mining. Disjunctive agreements were permitted prior to the amendment of the Land Rights Act in 1987.

Where the land council does not refuse its consent but fails to reach agreement with the applicant regarding terms and conditions for grant of a licence, provision is made for conciliation and, if this fails, for arbitration. The outcome of any arbitration is binding on the land council and on traditional owners. If a holder of an exploration licence wishes to proceed to mining, the procedure is almost identical to that involved in processing an application to explore. The key difference, of course, is that while an exploration licence agreement (ELA) can be rejected, a mining lease application cannot.²

The NLC felt that the 1987 amendments placed Aboriginal landowners in an invidious and indeed ridiculous position, requiring them to approve mining at a stage when virtually no information was available on what it would entail, and denying them a key bargaining factor (the power to withhold consent) when they negotiated terms and conditions for granting of mining leases. The Council initially believed that while it could no longer insist on disjunctive agreements, it could still conclude such agreements under the Land Rights Act if mining companies were willing to do so. However, the Northern Territory Government mounted a successful legal challenge against an agreement negotiated in this way. The NLC then attempted, without success, to have the Land Rights Act changed so as to again allow disjunctive agreements.

It is against this background that the NLC has, since late 1993, developed and applied its current approach to negotiation of ELAs.³ Some ten ELAs have been concluded to date and a number of others are currently under negotiation. The basic aims of the approach are twofold:

- i. to ensure that traditional owners gain some benefit from mineral exploration activity on their land, and to minimise any adverse effects from exploration activity;
- ii. to provide as much certainty as possible regarding the general parameters which will apply to the development of any commercial mineral deposits which are discovered. This ensures, to the extent feasible, that traditional owners know what they are committing themselves to, and what sorts of benefits they can expect, when they consent to exploration.

The mechanism developed by the NLC is a standard form contract for an ELA, which is then modified through a process of consultation and negotiation to take into account the specific needs and concerns of particular traditional owners and mining companies. Since conditions relating to mining cannot be included in the ELA itself, a set of ‘mutually agreed mining parameters’ are negotiated and placed in an Appendix. These parameters (discussed below) seek to establish general principles which will govern mining on Aboriginal land and give a specific indication of the benefits which traditional owners can expect to achieve (for example in relation to compensation payments). However they also leave some leeway for adjustments when the terms and conditions are negotiated for the granting of a mining lease, by which time much more information is available to traditional owners and the mining company.

The ‘mutually agreed mining parameters’ are unlikely to be enforceable through the courts, given that they have no legislative base under the Land Rights Act. Thus a mining company could, in theory, insist that completely new terms and conditions be negotiated for granting of a mining lease. It would be unlikely to do so, given its desire to obtain landowner approval and to avoid the delays involved in conciliation and arbitration. However to strengthen the legal position of landowners, a joint venture contract is negotiated between an Aboriginal corporation, representing the traditional owners, and the mining company involved. This contract incorporates the same ‘mining parameters’ included in the ELA appendix, and is concluded outside the framework of the Land Rights Act.

As indicated above, the specific provisions of individual ELAs and the related ‘mining parameters’ vary. The following discussion provides a general indication of their context.

ELAs usually provide for traditional owners to achieve a (free) equity position in any project developed as a result of exploration on their land (usually 5 per cent, but possibly higher depending on the company involved). There may also be provisions for the developer to help owners increase their equity if mining proceeds, for example, through provision of an interest-free loan or through an issue of equity financed from royalty income foregone by traditional owners.

The agreements also contain a range of provisions designed to ensure protection of the environment and sites of significance and to minimise the possibility of adverse social impacts. These include an arrangement whereby traditional owners, though minority shareholders in a project, have a majority of voting rights in regard to decisions on, for example, management of significant sites or access to alcohol. It is

usually agreed that a 'fly-in fly-out' mode of development will be utilised, as opposed to the development of a conventional township and associated facilities, helping to minimise both social and environmental impacts. More specific environmental issues are also dealt with, such as water containment and pit rehabilitation.

Liaison committees are established to maintain communication between owners and the company during the exploration stage and to supervise site clearance and approve work programs at the beginning of each year. Once mining commences, the developer pays an agreed administration fee to the NLC. Part of this fee funds the monitoring of environmental, cultural and social impacts by land council officers and traditional owners.

Financial compensation received by traditional owners during the exploration stage is modest, and is related to the extent of exploration activity. If a mine is developed, compensation is paid during the construction phase, reflecting the fact that this often involves extensive physical and social disruption. Payments usually amount to about 1 per cent of construction costs. The fiscal regime which will apply to mining varies from case to case both in terms of the level of payments and their method of calculation, for example, because of the nature of the minerals being sought. The regime may also be subject to further negotiation when terms and conditions are agreed for a mining lease. The NLC would certainly expect this to occur if, say, exploration yielded an unexpectedly valuable deposit, and seeks to include provisions which provide it with a capacity to achieve such an outcome. Conversely, the 'mining parameters' may include a provision which sets a ceiling on the royalty payments a company could incur during the early phase of a project.

The fiscal regime usually involves a negotiated (non-statutory) royalty equivalent to about 2-3 per cent ad valorem (i.e. of the value of mineral sales). There is also provision for annual rental payments, related to the area of land involved, but typically expected to yield about \$100,000 per annum. One reason for seeking rentals is to provide at least a modicum of stability in the income accruing to traditional owners in a context where sharp changes in output or prices can dramatically affect royalty income, for instance, as has occurred during recent years with Ranger Uranium Mines. The provision of equity can also represent an important source of income for traditional owners if projects prove to be profitable.

Employment opportunities for local Aboriginal people are limited during mineral exploration, but companies usually give a general commitment to make the maximum possible use of local labour. With reference to the construction and mining phases, the 'mining parameters' tend to focus on the principles which will govern company policy and practice, rather than on specifying particular activities or levels of employment. For example, companies are expected to initiate training programs for local Aboriginal people as early as possible in project development, to increase their capacity to take advantage of employment opportunities available at the mining stage. They also make a commitment to train, as far as is practicable, interested local people to fill permanent positions at all levels in the mining operation. It is assumed that more detailed provisions regarding employment and training would be developed as part of the terms and conditions for mining leases. The mining parameters also include a preference clause in relation to awarding of contracts to local suppliers.

The Mt Todd Agreement

During 1991 and 1992 Zapopan NL undertook exploration on land which had earlier been the subject of an unsuccessful claim by Jawoyn people under the Land Rights Act, and which was now the subject of a repeat claim. The company had talked to the Jawoyn regarding protection of sacred sites, but had not sought their permission to mine or offered them specific benefits from the development. As with other mining projects, the Mt Todd development received strong support from the Northern Territory Government, but it also had the backing of the Federal Government under its 'fast-tracking' initiative, designed to expedite development of major projects so as to stimulate employment and exports.

The Jawoyn had, over previous years, entered into a number of co-management and commercial arrangements regarding, in particular, Nitmiluk (Katherine Gorge) National Park, and were keen to ensure similar arrangements in relation to Mt Todd. In the wake of the Mabo decision, the Jawoyn Association organised a meeting with Zapopan and Northern Territory Government and Federal Government representatives, and stated that the Jawoyn would lodge a native title claim unless the other parties participated in negotiations designed to ensure local Aboriginal people derived substantial benefits from the project. Whether successful or not, a native title claim was likely to cause substantial delays in project development, an outcome which both governments and the company were anxious to avoid. In December 1992 the Jawoyn offered to negotiate an arrangement which would facilitate its development while preserving any native title rights they might have in land affected by the project. (In the event native title rights were not in fact preserved: see below.) They requested, in return, a package of benefits, including jobs and land. Negotiations moved quickly, and the Mt Todd Agreement was signed on 15 January 1993.⁴

The Mt Todd Agreement has received significant and highly favourable exposure in the media.⁵ The Federal Minister for Aboriginal Affairs, Mr Tickner, has called it 'a model for handling life after Mabo'.⁶ The Australian Financial Review described it as a 'model deal', and the Jawoyn Association's Executive Officer, John Ah Kit has promoted it as an approach which other Aboriginal communities could follow.⁷

It is not difficult to see why the Agreement won such widespread support. It allowed the Federal Government to argue that Mabo would not, as its critics suggested, inevitably place barriers in the way of resource development.⁸ It represented a milestone in the Northern Territory Government's (often very poor) relations with its Aboriginal constituents, both because of the Government's willingness to negotiate with Aboriginal traditional owners and its unprecedented action in supporting a land grant under the Land Rights Act (see below). It also offered encouragement to the reconciliation process, bringing together parties which over the last 20 years have been at the centre of some of the sharpest conflicts between indigenous and non-indigenous Australians. The fact that the Jawoyn had very recently played a major and much-publicised role in halting development of the Coronation Hill project further heightened its significance in this regard.

However, in addition to recognising the significance of the process from which it emerged and its importance in countering some of the more extreme reactions to Mabo, it is important to assess the Mt Todd Agreement on its own terms, in other words, on the basis of the benefits it offers the Jawoyn and of how and by whom those benefits are created.

The Agreement was concluded between the Northern Territory Government, Zapopan NL, and the Jawoyn Association. Under the Agreement, the Jawoyn agreed to extinguish 'all rights in the nature of native title' in respect of the land involved and to withdraw their repeat claim and not to advance or support any further repeat claims or native title claims. They accepted the benefits offered under the Agreement as 'full and fair compensation' for the extinguishment of all rights in the nature of native title, and agreed to provide support for the company's exploration and mining activity on the land concerned.

Under Schedules to the Agreement, the Northern Territory Government, undertook:

- i. to support the listing of certain areas of land held by the Jawoyn under lease as Aboriginal land under the Land Rights Act. This land (approximately 1,000 square kilometres) was listed in 1994;
- ii. to incorporate a portion of the land in the Nitmiluk Park, and to obtain title to another parcel of land, issue freehold title to the Association and incorporate this in the Park;
- iii. to provide, within five years, a water supply, housing for up to six families and other facilities to a Jawoyn outstation and also, if the need were demonstrated, single men's accommodation for Aboriginal workers at Mt Todd, at an estimated cost of approximately \$1,000,000;
- iv. to complete capital works to the value of \$60,000 to help develop tourist accommodation at Eva Valley Station;
- v. transfer the Nitmiluk Visitor Centre to the Association, and contract the Association to provide cultural advice at the Centre;
- vi. increase the annual rent paid to the Jawoyn for Nitmiluk Park lands from \$115,000 to \$140,000.

Zapopan undertook to employ an Aboriginal employment and training officer to identify employment and training opportunities for Aboriginal people in connection with the Mt Todd project, and to establish an employment and training committee to oversee and promote employment and training opportunities for the Jawoyn. It also agreed to train five 'suitable Aboriginal people' to fill designated positions at the mine. Aboriginal employment has in fact exceeded the minimum requirements set down by the Agreement, and had reached 27 per cent of the workforce by April 1995.

Zapopan also agreed to help establish a company owned and operated by the Jawoyn to provide a bus service for transporting workers to the Mt Todd site. Zapopan would provide, maintain and insure a bus for the service, which would become the property

of the Association. It undertook to provide five scholarships for Jawoyn people to attend non-university institutions in the Northern Territory and one to attend the Northern Territory University.⁹

The parties recognise Jawoyn attachment to the land and traditional Jawoyn culture in the planning, development and decommissioning of the Mt Todd Project, and the company agreed that non-Jawoyn employees (including those of contractors) would be obliged to participate in a cross-cultural training and education program developed in consultation with the Association.

The Agreement includes a rider which allows Zapopan's directors and senior managers to take decisions which conflict with principles or guidelines it contains if they believe that such decisions are taken 'bona fide in the best interests of Zapopan, its shareholders and lenders'.

While the Commonwealth is not a party to the Agreement, it made a declaration to the effect that it supported, in principle, requests from the Jawoyn Association for funds to undertake a skills audit and employ staff to promote Aboriginal employment and training. It also expressed its support for a Jawoyn request to the Aboriginal and Torres Strait Islander Commercial Development Corporation (ATSICDC) that it give early consideration to proposals involving the Jawoyn Association purchasing equity in tourist ventures operating in Nitmiluk Park and in a contract mining operation at Mt Todd.

Subsequent to the Agreement, the Jawoyn Association signed a joint venture agreement with the Henry and Walker group and the ATSICDC (which owns 8 per cent of Henry and Walker) to undertake contract mining. Zapopan awarded the contract to Henry and Walker, which passed it on to the joint venture after approval from Zapopan. The Jawoyn hold a 25 per cent interest in the joint venture, with the ATSICDC holding 25 per cent and Henry and Walker 50 per cent. The Jawoyn Association may eventually buy out the ATSICDC share in the joint venture.¹⁰

The Mt Todd Agreement obviously offers very substantial benefits to the Jawoyn. However, a number of features of the Agreement may, if they are used as precedents, have significant and in some cases negative implications for other Aboriginal communities. (This point is discussed more fully in the conclusion.) First, most of the benefits are created as a result of government (and especially Northern Territory Government) commitments, rather than as a result of commitments by the developer. Most of the company's initiatives involve expenditures which it would have undertaken in any case on economic criteria. According to Zapopan's Executive Chairman, they were 'part of the mine's production costs'.¹¹ Second, the Agreement does not include any provision for royalties or similar compensation payments, nor does it contain provisions relating to environmental protection, both of which were apparently sought by the Jawoyn. Third, the rider allowing Zapopan to take decisions which conflict with principles or guidelines contained in the Agreement, if such decisions are regarded as in the company's best interest would seem, *prima facie*, to represent a significant potential limitation on the company's commitments.

The McArthur River Agreement

The McArthur River zinc/lead deposit, one of the largest in the world, is currently being brought into production by Mt Isa Mines (MIM) Holdings (which owns 70 per cent of the project) and its Japanese joint venturers. It is located near Borroloola, south-east of Darwin, on pastoral leases owned by MIM. The project received Northern Territory Government and Federal Government approvals in 1992.

In February 1993 the NLC indicated that a Mabo-style claim might be lodged over the land on which the project was based unless MIM negotiated with local Aboriginal people (who in principle supported the project). The issues included employment and training, protection of sites of significance, compensation for damaged sites, and possible purchase of pastoral leases for them. In response, the Northern Territory Government indicated its intention to introduce legislation to prevent any such claim, by validating mining titles issued at McArthur River between 1975 and 1993. In May 1993 the Federal Government, citing the national economic benefits expected to accrue from the project, agreed to support the Northern Territory's legislation (introduced on 28 May 1993) and to pay legal costs if the legislation were challenged in the courts. The NLC canvassed the possibility of mounting such a challenge unless the legislation incorporated an agreement dealing with the concerns and aspirations of local Aboriginal people.¹²

MIM initially stated that relevant approvals had been obtained and that the project would proceed without further negotiations, but later agreed to hold discussions with the NLC and traditional owners. In early June 1993 the NLC again canvassed the possibility of lodging a native title claim, citing failure to achieve any progress in talks regarding a compensation agreement. Negotiations continued for a further three weeks but in late June Kurdanji traditional owners rejected a proposed agreement offered by the Northern Territory Government, the Federal Government and MIM, and the NLC suspended negotiations. Under this proposal, the Kurdanji would have been offered 50 per cent of a joint venture pastoral operation (with MIM), based on land provided by the Northern Territory Government, the Federal Government and MIM. The traditional owners argued that the offer was far from adequate because it contained:

- i. no financial compensation;
- ii. no acceptable land offer as compensation (because the properties involved did not cover land with which the Aboriginal people had traditional affiliation);
- iii. no effective Aboriginal involvement in environmental monitoring or control;
- iv. no protection of Aboriginal native title;
- v. no serious attempts to monitor or ameliorate social impacts of the mine, in particular the effects of alcohol abuse.

MIM reportedly refused to accept any Aboriginal ownership or control of land it currently leased, and rejected a proposal for an Aboriginal living area on the

McArthur River pastoral lease which would constitute less than 0.002 per cent of its area. MIM also refused to guarantee any jobs for Aborigines on the mining project, saying that it would supply only a maximum of eight training positions, and a maximum of five jobs as stockmen for about 16 weeks a year on its pastoral leases.¹³

Negotiations between the NLC and MIM resumed in mid-August, and after three days of discussions in Brisbane the NLC announced that agreement had been reached with the company and that negotiations would be sought with the Northern Territory Government and Federal Government to agree on an overall package of measures. However negotiations again broke down. In the end, the McArthur River Agreement involved only the Commonwealth, local Aboriginal groups, and the Gurdanji-Bingbingba Aboriginal Corporation (referred to in the Agreement as the Association); the NLC, MIM and the Northern Territory Government were not parties to it.

Under the Agreement the Commonwealth undertook to purchase on behalf of the Association the Bauhinia Downs pastoral station and, through the Department of Employment, Education and Training (DEET), to provide an employment package designed to benefit residents of the McArthur River district, including Borroloola and Aboriginal outstations in the area. It also agreed to support 'active consultation between [ATSICDC] and Members of Local Aboriginal Groups in commercial opportunities'.

The Members of Local Aboriginal Groups accepted this arrangement:

as full compensation in respect of any liability of the Commonwealth to any of the Members of Local Aboriginal Groups for any effect on any native title that might exist in the land the subject of the Mining Interests as a result of any act or omission of the Commonwealth relating to the granting or validation of the Mining Interest by the Northern Territory (Clause 4.1).

MIM subsequently awarded a contract to barge McArthur River mine concentrates, 'strictly on a commercially competitive basis', to a joint venture company established by Burns Philp Shipping and ATSICDC. Burns Philp owns 50 per cent of the joint venture and will manage the barging operation, and ATSICDC will progressively transfer its interest to local Aboriginal people.¹⁴

A number of points should be made in relation to this Agreement. First, MIM's non-participation means that all of the costs involved fall on the Commonwealth, not on the company as developer of the resource. Second and more specifically, since MIM is not a party to it, the Agreement itself does nothing to ensure that the company will endeavour to make employment and training opportunities available to local Aboriginal people. Yet the effectiveness of the DEET employment initiative will depend, in part, on MIM's attitude in this regard. Third, initiatives similar to those to be taken by the Commonwealth might have occurred under general policy initiatives in the absence of resource development. The Commonwealth is assisting Aboriginal groups to purchase pastoral properties elsewhere in north Australia, and DEET already operates a range of employment programs designed to assist Aboriginal people.

The Cape Flattery-Hope Vale Agreement

Under Queensland's *Mineral Resources Act 1989*, mining leases cannot be granted over Deed of Grant in Trust (DOGIT) land granted to Aboriginal residents of former mission and other reserves without the consent of either the Aboriginal Trustees of the land or the Governor-in-Council (effectively the Queensland Cabinet). If the Trustees do not reach agreement with the developer and thereby withhold their consent, the matter goes before the Mining Warden's Court. The Court hears the developer's lease application and objections to it and either recommends a rejection of the application or, through the Minister for Mines and Energy, makes a recommendation to the Governor-in-Council that the application be approved. In doing so, the Mining Warden also makes a recommendation in respect to compensation which should be paid to owners of the land.

Cape Flattery Silica Mines (CFSM), a fully-owned subsidiary of Mitsubishi Corporation, has operated a silica mine at Cape Flattery, within the Hope Vale DOGIT, since the late 1960s. By 1990 CFSM needed an additional mining lease to support its operations, requiring it to seek Hope Vale's consent; in addition, a number of its existing leases were due for renewal. In early 1991 the Hope Vale Community Council, as trustees for the DOGIT, set about accruing relevant information to prepare for discussions with CFSM/Mitsubishi regarding the terms of a new agreement. In particular, it commissioned archaeological and anthropological surveys of the Cape Flattery region and an Economic and Social Impact Assessment (ESIA) of the mine (Holden and O'Faircheallaigh 1991). The ESIA was intended to establish the nature of CFSM's impact on Hope Vale over the previous 20 years, and to express the aspirations and concerns of Hope Vale people regarding Cape Flattery.

Negotiations with CFSM/Mitsubishi commenced in August 1991, and required eight negotiating sessions over a period of about nine months to achieve an agreement, during which both Hope Vale and CFSM initiated legal proceedings to try and strengthen their negotiating positions. The final agreement, signed in April 1992, addressed most of the demands expressed by Hope Vale people through the ESIA.

Under the previous compensation arrangement, Hope Vale had received a profit-based royalty which yielded little (and at times no) income. The new Agreement provides for a much higher level of payments, based on an ad valorem royalty of 3 per cent (the highest non-statutory ad valorem royalty applied to any mine currently operating on Aboriginal land in Australia).

The Cape Flattery mine is unusual in that Aboriginal people (not all of them from Hope Vale) had always accounted for a high proportion of its workforce, but they had been concentrated in mining and milling and have largely been excluded from skilled jobs in maintenance as well as from administration and management. In addition, no Hope Vale women had been employed at the mine. The Agreement contains extensive provisions in relation to employment and training, designed in particular to extend the range of opportunities available to Hope Vale people. It contains an employment preference for members of the Hope Vale community, and institutes procedures to ensure that CFSM recruits new employees from an 'employment list' maintained by the Hope Vale Community Council. It includes specific undertakings

about provision of apprenticeships (two a year until a total of eight are provided, with this level to be maintained thereafter), and about college or university bursaries. It also includes undertakings to establish training programs and promotion processes designed to ensure that Hope Vale employees have the opportunity to attain all positions at Cape Flattery, including senior management positions. The Agreement introduces an affirmative action policy, and includes specific provisions relating to the provision of employment opportunities for women from Hope Vale. It provides for the appointment of an Aboriginal Liaison Officer at the company's expense; this person will, among other things, implement the agreed recruitment procedures. The company also agreed to address workers' concerns about the impact of silica dust on their health, by implementing a system of X-ray checks.

During the ESIA numerous people complained about restrictions on their access to CFSM's lease areas, in particular when they wanted to go hunting or fishing. As part of the Agreement the company consents, under the relevant provision of the *Mineral Resources Act 1989*, to allow Hope Vale Community members access to all parts of the leases other than mining and related facilities, and agrees not to unreasonably withhold permission to visit these latter areas. CFSM surrendered a number of its existing leases, and agreed to limit the extent of its new mining lease in order to facilitate access to areas which Hope Vale people use for fishing, hunting and recreation. The company also undertook to construct and help maintain a road to further facilitate such access, and to make available part of the land it has rehabilitated to facilitate the establishment of a tea-tree plantation.

Another area of concern for Hope Vale people involved the impact of mining on the environment and on sites of significance. The Agreement provides for the application of an Aboriginal relations policy which requires protection of sites from mining and vandalism, partly through the promotion of cultural awareness and heritage protection among CFSM's non-Aboriginal employees. It also provides for the creation of a Coordinating Committee made up of equal numbers of representatives from Hope Vale and CFSM. This Committee is given control over 'environmental, historical and Aboriginal issues raised in association with mining and camp operations, including the protection of significant sites', and also has general responsibility for monitoring implementation of the Agreement. There is a provision for the appointment of a mediator where the Coordinating Committee cannot reach agreement on an issue.

Workers and their families had complained about the difficulty for family members to visit workers at Cape Flattery (as they live in single accommodation at the mine for extended periods of time), and that some Hope Vale workers in supervisory positions did not have their own houses at the mine, unlike non-Aboriginal supervisors. The Agreement explicitly agrees to visitation rights for families of employees, and provides that the company will make available one of the empty accommodation barracks in the town for use by visiting families. CFSM will ensure that Hope Vale workers in supervisory positions are provided with self-contained accommodation.

Problems had earlier arisen at Cape Flattery in relation to the company's role in enforcing camp rules and in township administration. The Agreement provides for the establishment of a 'Good Order Committee' made up of representatives from the Hope Vale workers, the trade union and management. This Committee's role is to develop and implement camp rules and a code of social behaviour for the community

at Cape Flattery, and to develop a consistent response to breaches of the rules which have been established.

The Mapoon-Skardon River Agreement

Venture Exploration NL, a Perth-based company, is developing an integrated kaolin mining and processing project some 85 kilometres north of Weipa, on land which forms part of the Mapoon DOGIT. The mine site is approximately 15 km north east of Old Mapoon (also known as Marpuna), but is separated from it by the sea. Venture will mine kaolin near the headwaters of Namaleta Creek. It will then transfer it, in slurry form, through a pipeline to a plant near the Skardon River, 16 km north of the mine site, which will produce processed products. These will be barged to ocean-going vessels moored offshore. Venture's will be a fly-in fly-out operation with only single accommodation being provided on-site.

The owners of the Mapoon DOGIT were dispersed in the early 1960s when the Queensland Government closed, and then destroyed, the mission at Old Mapoon. Most now live at New Mapoon, Napranum and at Old Mapoon, where a community is being reestablished under the administration of the Marpuna Corporation.

Venture applied for a mining lease (ML 6025) in May 1988. The Mapoon Trustees objected to the application, but the Mining Warden recommended to the Minister for Resource Industries that the lease be granted and subsequently ruled that, since the lease did not come under the *Mineral Resources Act 1989*, no compensation should be granted to the land owners. However, Venture later found that more land was required for processing and infrastructure facilities, and applied for additional leases. These leases would come under the 1989 Act, and the company agreed to undertake compensation negotiations with the Trustees in relation to them and to ML 6025 as part of a single negotiation exercise.

By mid 1994 the community was preparing for negotiations with the help of the Cape York Land Council. It established a Steering Committee of seven people representing traditional landowners, the Mapoon Trustees and Marpuna Corporation. The Steering Committee was determined to ensure that the environment would be protected and that the community would obtain an appropriate share of the benefits generated by Venture's project, but it was also keen to see the project proceed, particularly because of the employment opportunities it was expected to create.

In July 1994 the company made an offer of compensation, which involved the establishment of an Aboriginal employment and training program and financial compensation consisting of either a modest annual cash payment (adjusted for inflation) for 20 years or a (free) grant of shares equivalent to 2 per cent of the company's current shares on issue. The company, anxious to quickly develop the project to take advantage of expected market opportunities, also sought the Steering Committee's agreement to a timetable which would have seen compensation negotiations completed by August 1994. The Steering Committee rejected the offer of compensation as fundamentally inadequate, and also rejected the proposed timetable, on the grounds that it wished to have all relevant information (particularly an ESIA report) available before negotiations commenced.

In August 1994 negotiations began on financial aspects of compensation, and arrangements were made to undertake an ESIA. Once an Interim ESIA Report was available, the negotiations were extended to include other aspects of compensation. An Agreement was concluded in December 1994.

The Mapoon-Skardon River Agreement is similar to that between CFSM and Hope Vale in a number of respects, for example, regarding access to mining leases and measures to promote cultural awareness and environmental and heritage protection. However, it also includes undertakings by the company to address specific environmental issues and potential impacts which were of concern to the community. It provides for the creation of bodies with similar functions to the Cape Flattery Good Order and Coordinating committees.

Its general employment and training provisions are similar in scope to those in the Cape Flattery Agreement, but there are some significant differences. Venture undertook to 'recognise the specific needs and preferences of different Aboriginal people' in devising rotation schedules for its fly-in fly-out operations, and to upgrade infrastructure at Marpuna to facilitate transport of workers to the mine site. In addition, the company agreed to work towards employment targets for Aboriginal people (to be developed by the Coordinating Committee within 12 months of the start of operations). Venture's preferential employment policies will also apply to its contractors, an important consideration during the construction phase but also because mining operations will be handled by a contractor.

The Agreement contains a number of provisions designed to facilitate local involvement in provision of goods and services to the project. Venture undertook, wherever possible and provided they are competitive, to engage the preferred tenderers of the parties to the Agreement, and to buy its goods and services from the local region, including from suppliers owned by Aboriginal people. It also agreed, in engaging contractors, to consider their willingness to enter into joint ventures with local Aboriginal interests. The Marpuna Corporation has recently initiated discussions with the ATSICDC regarding the possibility of creating a joint venture to operate the barging service at Skardon River.

One of the most distinctive features of the Marpuna-Venture Agreement involves its financial provisions. A number of factors, affecting both the company and the community, played a role in their design. First, Skardon was a new project which required Venture to raise substantial loan capital, a task rendered more difficult by the fact that Skardon was the first major development undertaken by the company. Second, the project involves mineral processing as well as extraction. Third, the Mapoon community is attempting, with very limited resources, to reestablish itself on its traditional lands, and was anxious to maximise the contribution of royalty income to community development. Finally, there was a strong feeling among community members that older people who had borne the brunt of the earlier dispossession, should have a chance to share in income from the project.

The fiscal regime consists of the following components:

- i. an 'up-front' sum payable on issue of the mining leases; this is meant to ensure that older people in the community obtain some immediate benefit;

- ii. a relatively low royalty which applies during years 1 to 5 of commercial production, based on a fixed amount per tonne of processed output, and linked to the consumer price index (CPI) to protect against inflation;
- iii. a higher royalty from year 6 onwards, linked to weighted average prices for processed products, but with a 'floor' royalty per tonne and a minimum total annual payment (the latter linked to CPI);
- iv. a free issue of equity in the project.

This regime is designed to facilitate development of the project by easing royalty payments during its early years. However it also seeks to ensure that the community will obtain substantial returns in later years. More specifically, it ensures that the benefit of any price increases for processed products are shared by the community (via the royalty formula), which will also share in any profits and capital gains enjoyed by shareholders (via its equity holding). Additionally and very importantly, it guarantees the community a specific minimum level of income as long as mining continues, providing it with some protection against depressed prices and facilitating the use of mining income in community planning and development.

It is difficult to compare this fiscal regime with others negotiated in Australia during recent years, partly because it is more complex, partly because it is explicitly meant to reflect the value added which occurs in processing. However, the higher royalty which applies from year six is many times larger than the statutory royalty applied by the Queensland government to mining of raw kaolin, indicating the substantial nature of the payments involved.

Two other features of the Marpuna-Venture Agreement warrant comment. First, local people were concerned that large numbers of tourists were coming onto DOGIT land without permission, and felt that creation of a company-assisted ranger program would facilitate control of tourist access, with benefits for Venture as well as the community. Thus the company will help to recruit and equip two Aboriginal rangers who, in addition to regulating tourist traffic, will play a major role in monitoring environmental impacts associated with Venture's operations.

The second feature relates to infrastructure development, a major concern for Mapoon people as they reestablish their community. Venture has agreed to upgrade an existing barge landing and to construct an all-weather surface for an airstrip, and will consider giving assistance to a range of other infrastructure projects over time.

The Placer Pacific-Kalkadoon Tribal Council Agreement

Placer Pacific Ltd is the developer of the Osborne copper/gold project, located 195 km to the south-east of Mt Isa. The project is, in the words of the Agreement, 'within Kalkadoon tribal lands', but on land which has been the subject of pastoral leases and other forms of title.

Placer followed the normal practice of mining companies operating off Aboriginal land in Queensland and retained an archaeologist to identify any significant heritage sites and so comply with the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*. The responsible State government agency, the Department of Environment and Heritage (DEH), was dissatisfied with the work undertaken. At the same time, staff in the Social Impact Assessment Unit of Queensland's Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) wished to encourage mining companies operating off Aboriginal land to go beyond legislative requirements relating to cultural heritage and deal with contemporary social, cultural and economic issues of concern to Aboriginal people. In September 1993 staff from DEH and DFSAIA met with Kalkadoon elders to discuss the company's archaeological work. They decided to ask Placer to fund additional archaeological work (and anthropological research) under the direction of the Kalkadoon Tribal Council (KTC), which represents people who claim affiliation with Kalkadoon and Jalanga (or Yalanga) tribal lands.¹⁵

Placer agreed, signing a Work Area Clearance Agreement with the KTC. This provided for the conduct of anthropological and archaeological research required for site clearance and related work; the research was funded by Placer, but the consultants were chosen by the KTC and traditional owners and worked under the KTC's supervision. The KTC was also granted intellectual property rights over information collected through the research.

During meetings with DFSAIA staff, Kalkadoon people had raised a number of issues which were of concern or interest to them, in addition to the question of heritage protection. These included their desire to achieve wider recognition and knowledge of Aboriginal culture and history in the region; access to employment and training opportunities at the mine; and the possibility of royalty payments by Placer to traditional owners.¹⁶

DFSAIA staff suggested to Placer that it should enter into negotiations with the KTC regarding this wider range of issues. The company agreed, but immediately ruled out the possibility of royalty payments or of guaranteeing employment opportunities for local Aboriginal people. (The company planned a fly-in fly-out operation based in Townsville, which it may have seen as incompatible with such guarantees.) DFSAIA staff helped the KTC to develop a draft agreement to use as a basis for negotiations, which were then largely conducted by Placer and the KTC without external involvement. DFSAIA again played a facilitative role in organising the discussion of a draft final agreement by KTC members and traditional owners.¹⁷ The two parties negotiated what is referred to as a Final Agreement (to distinguish it from the Work Area Clearance Agreement). Under its terms, the KTC undertook to support Placer's development of the Osborne project and its ongoing exploration work in surrounding areas, and formally agreed to site clearance being obtained by Placer for construction and operation of the project. The KTC also acknowledged:

that the KTC and the people that it represents recognise that native title over the Osborne Project area has been extinguished and endorse their intention not to pursue or support any claims for title to any land affected by the Osborne Project.

Placer recognised ‘local Aboriginal people’s attachment to the land and traditional culture in the planning, development and decommissioning of the Osborne project’. The company committed \$15,000 to the production of a booklet and an education kit documenting Aboriginal cultural heritage and attachment to land, for distribution to project employees and to schools in the region. Representatives from the KTC will, at Placer’s expense, visit the Osborne mine on an annual basis to inform employees about these matters.

The company agreed to consult with the KTC regarding any major exploration drilling activities, and in particular regarding areas of significance, and to fund a trainee from the Aboriginal community as well as a traditional owner and a consultant to undertake any further site research required for exploration or mining. The *Agreement* contains details regarding the way in which the company will avoid disturbance at particular sites, in some cases by re-aligning or re-siting proposed infrastructure and mining facilities. For example, it agreed to realign its airstrip in order to avoid a quarry site.

Placer undertook to provide the KTC, prior to commencement of construction, with details of all positions which would be available during construction and mine operation and of the experience and qualifications required and with details of all positions to be advertised in the press. The company agreed to establish a scholarship fund of \$10,000 per annum ‘to enable Aboriginal people who aspire to work in the mining industry to complete the necessary training ...’, and to encourage and assist Aboriginal people who secure employment to undertake additional education and training.

The Final Agreement has subsequently been the subject of some controversy. In particular, certain Aboriginal commentators have argued that the KTC and its advisers in the DFSAIA were too quick to acknowledge extinguishment of native title, given that a number of legal proceedings were then under way on the issue of whether granting of pastoral leases has the effect of destroying native title rights. They have also been critical of what they perceive as limited benefits obtained by Aboriginal people under the Agreement.¹⁸ DFSAIA officials argue that the Agreement has little effective impact on native title, both because the capacity of such an agreement to affect legal recognition of native title is questionable, and because the Agreement binds only the ‘KTC and the people it represents’, leaving traditional owners with the option of forming a different entity to represent them and using this to pursue a native title claim.

In relation to the benefits yielded by the Agreement, DFSAIA staff claim that they far exceed what Placer was required to provide under law, and point out that other mining projects in the region have recently proceeded, or are currently being developed, without providing any benefits to Aboriginal people. They also claim that the Agreement establishes an important precedent in that a mining company operating off Aboriginal land has agreed to negotiate with Aboriginal people regarding some important aspects of project development.¹⁹

It should be noted that Placer does not view the Agreement as representing a ‘final settlement’ in terms of its relationship with local Aboriginal people, but rather expects it to form a basis for further developing that relationship over time.²⁰

Conclusion

A number of general points emerge from this analysis. The agreements negotiated during recent years are highly varied in terms of the parties they involve (various combinations of Aboriginal communities and governments and mining companies); the range and type of provisions they include; and the relative importance of mining companies and governments in providing benefits to Aboriginal communities. Over coming years there is clearly a need to monitor the impact of the various approaches so as to gauge their implications for Aboriginal people and, in particular, their capacity to meet Aboriginal aspirations.

The wide variety of approaches being utilised by Aboriginal communities and organisations shows very clearly their willingness to find ways of facilitating mineral development, while at the same time seeking to benefit from it. Indeed they have, in some cases, been highly inventive in this regard. This should finally discredit the view, promoted by sections of the media and the mining industry, that recognition of Aboriginal rights automatically creates barriers to resource exploitation.²¹

The analysis also reveals a clear distinction between agreements which are negotiated in relation to Aboriginal land and within a legislative framework that requires developers to seek Aboriginal consent to mining, and those which are not. Where consent must be sought, agreements tend to incorporate substantial benefits for Aboriginal communities, especially in the key areas of royalty and other forms of economic benefit and of control over environmental and heritage issues. Most if not all of those benefits are funded by the developer, not by government. The Northern Land Councils ELA agreements and the Cape Flattery and Skardon River agreements fall into this category. Where Aboriginal consent need not be sought, benefits tend to be much less extensive (as in the Placer-KTC Agreement), and/or to be provided largely by government rather than by the developer (McArthur River).

The Mt Todd Agreement appears to straddle these two categories. It provides very substantial benefits for the Jawoyn, but these do not include royalty-type payments or provisions for environmental control, and the benefits are largely funded by government, not the developer. This outcome reflects the unusual circumstances associated with the project, including the uncertainty surrounding land tenure, the determination of the Northern Territory Government and the Federal Government to see the project succeed, the strong desire of Zapopan to achieve a negotiated outcome, and the obvious capacity of the Jawoyn Association to exploit its negotiating position to the fullest.

While the overall level of benefits they receive is of obvious importance to Aboriginal people, the question of who pays for those benefits is also significant. Reliance on government funding can create substantial problems because government policy may change very quickly and indeed from one project to another. As a result Aboriginal people may find themselves denied significant benefits. McArthur River, where the Northern Territory Government was not prepared to negotiate a package similar to that agreed for Mt Todd, provides a clear illustration of this problem. Of course legislation which mandates that companies negotiate benefits with Aboriginal

people can also be changed to the latter's disadvantage (as occurred with the Land Rights Act in 1987). However, major changes are rare and at any given time legislation, unlike government policy, will tend to affect all projects in similar ways.

Another major point to emerge from the analysis is that where developers have been required to seek Aboriginal consent to mining, Aboriginal people have demanded and obtained both substantial royalty payments and direct involvement in economic activities associated with mining such as employment and training on site, provision of goods and services, taking of equity in mining and related projects. Thus Hope Vale negotiated substantial royalties and provisions which would further extend its already extensive representation in the Cape Flattery workforce, Mapoon achieved substantial royalties as well as equity and extensive provisions regarding employment and contracting, and the NLC's ELAs achieved a similar outcome.

Altman has argued that the absence of royalty equivalent payments from the Mt Todd and McArthur River agreements:

suggests that active Aboriginal participation in resource development projects (as joint venturers, employees or contractors) might supersede a more passive "rentier" role evident in all mining agreements signed since passage of the [Land Rights Act] (Altman 1994: 15).

The more broadly-based review undertaken in this paper indicates that, where Aboriginal people fail to achieve substantial royalty payments, this does not reflect a preference on their part for more direct forms of involvement. Rather it reflects their relatively weak bargaining position. Thus Aboriginal people affected by Mt Todd, McArthur River and the Osborne project all wished to achieve royalty payments, but were unable to do so. Contrary to some recent press comments,²² 'rentier income' and 'direct involvement' are not seen as alternatives; if they can, Aboriginal people will achieve both.

These conclusions raise a more general and fundamental point. Legislative recognition of indigenous land rights in a form which provides indigenous Australians with some form of statutory control over mineral development is crucial in allowing them to achieve substantial benefits from mining. Reliance on the cooperation and goodwill of companies, or governments, does not offer an adequate alternative. This is not to argue for a confrontationist, non-cooperative approach which would militate against resource development on Aboriginal land. The Mapoon-Venture Agreement, for example, shows very clearly that Aboriginal people can hammer out deals which facilitate project development. However, with a solid legislative base they can do so in a context which distributes bargaining power somewhat more evenly.

A final issue involves criteria for evaluating mineral development agreements involving Aboriginal people. What constitutes a 'good' or a 'bad' agreement? Clearly a simple comparison of the benefits which agreements offer to Aboriginal people is not helpful, since the political, legal and social contexts within which agreements are negotiated vary, as do the size and potential profitability of the projects involved. There are three criteria which can usefully be employed in evaluating agreements,

each of which might yield somewhat different conclusions in regard to a single agreement.

The first involves the extent to which an agreement reflects an effective mobilisation of whatever bargaining power is available to Aboriginal people. According to this criteria, agreements which conferred limited benefits might still be evaluated favourably if Aboriginal bargaining positions were weak. The Placer/KTC Agreement, for instance, might fall into this category. Agreements which achieved substantial benefits despite constraints on the community's bargaining position would rate very highly; the Mt Todd Agreement might be a case in point.

If employed alone, however, this first criterion could create a conservative bias, since it might lead to endorsement of what are fundamentally inequitable distributions of bargaining power. A second criterion which avoids this problem involves judging the extent to which an agreement meets community aspirations. On this criterion an evaluation of the Placer/KTC and McArthur River agreements, for instance, would clearly be negative, since they failed to meet many of the aspirations expressed by traditional owners. The Cape Flattery Agreement would be evaluated much more favourably, since it offers substantial progress in relation to most of the demands expressed by Hope Vale people through the ESIA process.

A third and final criterion involves the extent to which agreements serve to establish precedents which influence the broader negotiating environment and so the capacity of other indigenous groups to subsequently achieve their objectives. An agreement could be rated favourably on both the first and second criteria, but less favourably on the third if it established precedents regarded as negative by other indigenous groups. The Mt Todd Agreement might be a case in point. It does not contain a royalty component or provide for Aboriginal input on environmental management, and relieves the developer of most of the onus for funding benefits which flow to Aboriginal people, while its very high public profile and obvious advantages from a developer's perspective mean that it is likely to be used as a precedent by the mining industry.

Notes

1. Mineral development agreements are defined here as contractual arrangements entered into by Aboriginal organisations or communities under which they agree to support, or not to oppose, exploration or mining activity on land they own or claim, and in return are offered defined benefits which would not accrue to them as a result of standard commercial transactions or of general government policy.
2. This outline simplifies the relevant provisions of the Land Rights Act. For details see O'Faircheallaigh (1988: 81-2).
3. The discussion of the NLC's approach, and of the content of ELAs, draws on information provided by the Council's Engineering and Environmental Officer (pers. comm., 30 March and 13 April 1995).

4. 'Desert deal-makers' (*Sydney Morning Herald* 14 March 1995). The discussion of the Mt Todd Agreement also draws on information provided by the Jawoyn Association's (then) legal adviser (pers. comm., 17 May 1995).
5. 'Mabo - how two miners dealt with land claims' (*Age* 3 July 1993); 'Desert deal-makers' (*Sydney Morning Herald* 14 March 1995); 'Gold mining news' (*Sydney Morning Herald* 16 April 1994). The granting of the 'Australian community of the year' award to the Jawoyn in 1995 resulted in part from its negotiation of the Mt Todd Agreement, and in April 1995, Zapopan was awarded the Council for Aboriginal Reconciliation's 'Common ground award' for its work in reconciliation between the mining industry and Aboriginal people.
6. 'Bipartisanship should survive Mabo joust' (*Age* 16 January 1993).
7. 'Zapopan's model deal' (*Australian Financial Review* 20 January 1993); 'Jawoyn people get down to business' (*Business Review Weekly* 16 July 1993), 'Aborigines sign exploration deal' (*Age* 15 April 1994).
8. Thus Mr Tickner, for example, stated that the Agreement 'above all else ... shows that the Mabo decision can be a powerful force for constructive change in Australia' ('Bipartisanship should survive Mabo joust', *Age* 16 January 1993).
9. In the end these benefits were not taken up by the Jawoyn Association, partly because it concluded that sufficient educational opportunities were available to its members from other channels. It appears they were subsequently 'traded off' with Zapopan in return for additional expenditure on its employment and training activities, including the recruitment of an additional Aboriginal employment and training officer.
10. 'Mining company in joint venture with Aborigines - Henry Walker Group Ltd' (*Australian Financial Review* 13 July 1993); 'Henry Walker - Territorian broadens its horizons' (*Sydney Morning Herald* 18 April 1994).
11. 'Mabo - how two miners dealt with land claims' (*Age* 3 July 1993). However some expenditure will now be directed towards Aboriginal rather than non-Aboriginal people, in part because of the company's Aboriginal employment and training program.
12. 'PM under fire over mine move' (*Age* 29 May 1993); 'Aborigines accuse Keating on mine deal' (*Age* 28 May 1993).
13. 'Blacks balk at deal on huge NT mine' (*Age* 26 June 1993).
14. 'Aborigines share in MIM barge contract' (*Australian Financial Review* 10 December 1993).

15. Information on the involvement of the DFSAIA and the DEH was provided by staff of the former's Social Impact Assessment Unit (SIAU), through provision of relevant documentation and via personal communications (19 May 1995).
16. Personal communications, SIAU staff (19 May 1995). According to DFSAIA staff, traditional owners realised that the likelihood of achieving royalty payments was remote, given that the project was not on Aboriginal land.
17. Personal communications, SIAU staff (19 May 1995).
18. This view was expressed, for example, by a number of Aboriginal people who participated in a joint Gulf - Peninsula Mining Workshop held at Kuranda on 8-9 May 1995.
19. Personal Communication, SIAU staff (19 May 1995).
20. Personal Communications, SIAU staff (19 May 1995); Waluwarra land council staff (9 May 1995).
21. See, for example, 'Mining, a wounded Goliath, takes to its heels' (*Australian Financial Review* 17 February 1995).
22. See, for instance, 'A Lesson in mutual benefits - Mabo' (*Australian Financial Review* 5 August 1993).

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