

## The Mineral Sector and Native Title—A Perspective

Australia has seen spectacular growth of its mineral sector over the last 150 years. The mineral sector now contributes some 45 per cent of merchandise exports and accounts for 8.4 per cent of Gross Domestic Product. Australia's mineral export income has grown from \$1.4 billion in 1970–71 to \$56.4 billion in 2000–01. In 2001, Australia was among the top three producers for 10 of the world's most important minerals.

However, until relatively recently, Indigenous Australians have been largely excluded from any direct benefits from mineral resource developments. In some cases, the growth of mining has even contributed to Indigenous dispossession, for example, in the Pine Creek area, NT, and Cape York, Qld.<sup>1</sup> Whilst mining has generally been perceived as a major driver of Australia's economic growth and vigorously supported by various governments especially during the 1960s through to the 1980s, Indigenous Australians are likely to have a very different perspective of the benefits derived

from mineral sector development.

### Mabo and the Native Title Act 1993

The fortunes—largely associated with changing land tenure arrangements—of Australia's Indigenous peoples changed with the *Mabo* High Court ruling and the establishment of the *Native Title Act 1993*. The historic 1992 *Mabo v Queensland (No 2)* decision recognised Australia's Indigenous peoples legal rights to land sourced in traditional laws and customs. The High Court held that 'the common law of this country recognises a form of Native Title which, in the cases where it has not been extinguished, reflects the entitlements of indigenous inhabitants, in accordance with their laws and customs, to their traditional lands'.

The recognition of Native Title had an impact on land tenure management in Australia. Land title and access to land are vital issues in the exploration for and development of mineral resources. Exploration companies have traditionally had access to very large areas of

Australia's landmass, much of which is considered highly prospective for minerals. Following the coming into force of the *Native Title Act 1993*, exploration and mining companies are now obligated to negotiate access arrangements—albeit, a complex and controversial process—on land on which Native Title has been granted or is subject to claim. As a result many Indigenous communities have become integral stakeholders in mineral resource evaluation and development.

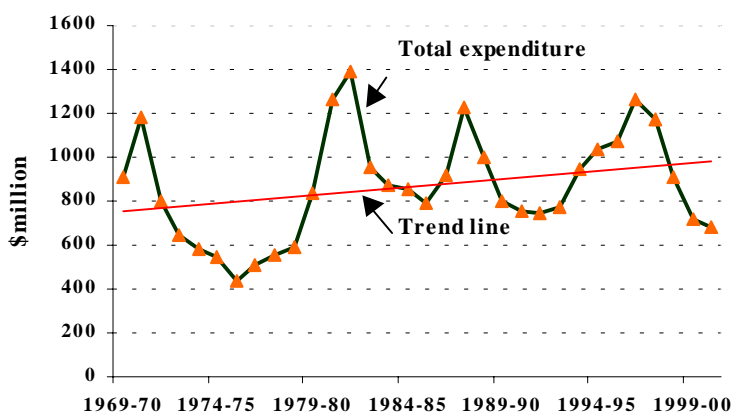
### Native Title and Access to land

It had been a commonly held belief (however not universal) that many of the land tenures that had been determined to exist (various grants of pastoral and other leases) over much of Australia from the time of settlement would extinguish Native Title. However, the High Court's *Wik* decision in December 1996 changed that notion. In broad terms, the High Court found that Native Title could coexist with pastoral leases. This decision had wide ramifications for the mineral sector. Vast tracts of land in Western Australia and Queensland (the two most important mineral producing States) and the Northern Territory are covered by existing or former pastoral leases. Where it was thought that all leasehold land covered by exploration and mining titles would be exempt from Native Title claim was no longer the case.

### Impact of Native Title on the Mineral Sector

It has been a widely stated claim of mineral sector stakeholders that the *Native Title Act 1993*, especially as initially established, was obstructing the processing and granting of

**Figure 1: Exploration Expenditure (1969–70 to 2001–02 in 2001–02 dollars)**



Source: ABS Mineral and Petroleum Exploration and Consumer Price Index, Catalogue Nos. 8412.0 and 6401.0

applications for exploration and mining tenements. Advocates of this claim pointed to the fact that the granting of exploration and mining titles in the dominant mineral States had slowed considerably—a backlog of 11 500 exploration and mining title applications had developed in the major mineral producing States in the period to early 2001.

However, the Native Title Act was introduced to give explicit recognition of Indigenous laws and customs that pre-dated the acquisition of sovereignty in Australia. Hence there was a difficulty in accommodating the objectives of the Native Title Act and the processing of mineral tenements. The passing of the Native Title Amendment Bill 1998, following extensive and protracted Parliamentary debate, was an attempt by the Government to accommodate the divergent objectives of maintaining the orderly continuance of processing exploration and mining titles whilst also protecting Indigenous rights.

### **Exploration Expenditure Trends**

Total exploration expenditure over the period 1969–70 to 2000–01 is shown in Figure 1. It is evident that such expenditure has been cyclical over this period and, despite the steep downward trend since 1996–97, the long-term trend is slightly upwards.

It is hardly reasonable to predict the demise of the exploration industry and subsequent mineral development solely on the recognition of Native Title. Whilst exploration has declined since 1996–97, there are several reasons other than Native Title issues that have contributed to the decline. These include the trend in the falling real price of mineral commodities, the Asian economic crises, globalisation and the opening up of other mineral frontiers in other countries, and the fact that major companies are now acquiring mineral resources through acquisition rather than exploration.

### **Some Issues**

A major difficulty from a mineral sector stakeholder's viewpoint in relation to the *Native Title Act 1993* has been the accommodation of the 'right to negotiate' process prior to the grant of mineral tenements.

Industry peak body groups claim this process is a major obstacle to the processing of exploration and mining title—a prerequisite for a successful and sustainable mineral sector. Native titleholders and claimants, however, maintain the need to be part of the process when activities such as mineral exploration and development are conducted on their land as such development may impact on their 'Native Title' rights. Native titleholders and claimants also maintain their need for incentives (managerial and economic) to agree to activity on their land. Industry maintains that the precursory exploratory stage is often of very low impact and only results in the delineation of an economic discovery in very few instances. Additional costs and delay in the early exploratory stage are regarded as a marked disincentive to the mineral industry and has had negative impact on the viability of the sector overall.

### **Indigenous Land Use Agreements**

The amended Native Title Act 1993, contains alternative provisions to the 'right to negotiate' process, most notably the use of Indigenous land-use agreements (ILUAs). These are now being used extensively and, in many cases, as an alternative to stricter provisions of the more complex and lengthy 'right to negotiate' process in the *Native Title Act 1993*. There are three different types of ILUAs that can be negotiated.

A number of successful agreements have been concluded enabling new and continuing successful resource developments and these are likely to set precedents. An example is the agreement between Indigenous

peoples, Comalco and the Queensland Government covering the Western Cape York Peninsula that was finalised at the end of 2001 following five years of negotiation. Key aspects of the agreement include annual payments, the creation of employment opportunities for Indigenous persons and the relinquishment of parts of the mining lease.

### **Concluding Comment**

Whilst it is evident that Native Title issues have affected exploration and mineral sector development, it remains imperative that lasting agreement be reached by Indigenous bodies and the mineral sector. Agreement will help create more certainty for future investment in a long established and vitally important industry. Indigenous people stand to benefit to a broader range of employment and business opportunities in an industry almost exclusively centred in rural and regional Australia.

1. J. A. Kit, 'The impact of mining on Aboriginal and Torres Strait Islander populations', Paper presented to the Third National Immigration and Population Outlook Conference, Adelaide, 1995.

**Mike Roarty**  
**Science Technology**  
**Environment and Resources**  
**Information and Research**  
**Services**

**19 February 2002**

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