



When day comes

Reframing the relationship between
Australian miners and Traditional Owners

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The exchange



The relationship between Australia's First Peoples and mining organisations can often be experienced as a clash of values, which plays out as an exchange of cultural rights for capital gains. Over time, the capital gains have expanded from direct financial gains alone, to offers of employment, healthcare, education, housing, and other measures of financial and social investments designed to 'uplift' the communities in which mining companies operate. While there have been many positive outcomes for the beneficiary communities, there are challenges to this approach. Who determines what is a reasonable social and financial investment in exchange for culture? Who decides what the standards are and the means by which investments into community should be made? And in any interpretation of value exchange, we cannot escape the fact that the 'economic calculation of value', the 'meaning of value' and even the 'language of value', are not necessarily shared concepts between First Nations and mining companies. As a result, we have to ask: if we can't share a common dialogue, can the two parties have true, equal standing in their negotiations, and is it possible to produce fair and equitable outcomes for both parties?

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There's a raft of legislation at both State and Federal levels in Australia that seeks to provide a level of governance around land use negotiations, in addition to frameworks designed by organisations such as the Internal Council on Mining and Metals (ICMM) that aim to define good practices. Many of these laws and frameworks were designed with good intent for both corporations and Australia's First Peoples. And when lawyers go in to negotiate on behalf of mining companies and on behalf of First Peoples, they're going in to achieve an outcome that is mutually beneficial. Yet in the lived experiences of those working through and living by these rules and guidelines, they often fall short of satisfying either First Nations People or mining companies. They are determined by a transactional rather than a transformative relationship. And beyond that, they fail to offer a cohesive vision of an inclusive future for all.

Mining companies are taking note that the legislative framework for negotiations should neither be the starting point or the end point, and have an increasing amount of awareness that simply more and greater of the same benefits of capital (financial, employment, education etc.) are not going to lead to better and more sustainable resolutions.

What would it take for mining companies to hold a fair and equitable negotiations process with Traditional Owners? While providing 'a seat at the table' for Traditional Owners could be seen as a positive step in the right direction, we need to consider that the seat they are going to be offered is chosen and owned by the mining company, at a table chosen and owned by the mining company, in a room in a building, designed and owned by the mining company, and all taking place on land for which sovereignty was never ceded by Australia's First Peoples. Can we be confident this seat will be able to deliver fair and equitable negotiations?

The favoured notion of empowering Traditional Owners by providing them with greater access to legal resources is important, if we consider that the only way to reach an agreement and negotiate is through the current Western legal system. An exchange of legal powers does not equate to 'equal standing' when the field of exchange excludes the 'natural customary laws' of Australia's First Peoples. This is not the only choice available – this is the choice mining companies make. The challenge here is not just at an industry level or an organisational level, but at a human level. Is every employee fully invested in caring for the land the way Australia's First Peoples have cared for the land, for tens of thousands of years? Are employees of mining companies confident that they understand and can respect the lore that guides Australia's First Peoples? Do employees of mining companies feel like their actions can align with intent?

Mining companies could achieve similar miracles of innovation by engaging with Traditional Owners around designing new ways of negotiations and agreements, taking the next step in the future of mining, and achieving something quite extraordinary in a world where progress towards Treaty with First Peoples is slow moving.

For mining companies to be able to engage in a truthful dialogue with Traditional Owners, they need to accept that they have a lot to learn from those who nurtured this land for 65,000 years. To engage in a truthful dialogue, mining companies need to be ready to acknowledge that harm has been caused, and commit to working together with Australia's First Peoples to co-design a new way of reaching agreements around mining – a way that is informed by the vast experiences of indigenous thinking, practices and negotiations of the oldest continuous culture in the world. True leadership requires respect of ancient wisdom; where we are now, listening is leadership.

The feats of thinking that have gone into the extraction of resources deeper and deeper into the earth by mining companies over generations, and into the imagination of what can be created with the earth's minerals, have been miracles of innovation. Mining companies could achieve similar miracles of innovation by engaging with Traditional Owners around designing new ways of negotiations and agreements, taking the next step in the future of mining, and achieving something quite extraordinary in a world where progress towards Treaty with First Peoples is slow moving.

Indigenous sovereignty and self-determination

To achieve improved social and economic outcomes for Australia's First Peoples, research from across Australia, New Zealand and Canada shows one of the most critical factors is self-determination. Self-determination ascribes that all peoples can freely determine their political status and freely pursue their economic, social and cultural development. The right to self-determination is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Australia is a signatory to this Declaration.

We can look across the Tasman Sea to see a model for what our future may look like. In New Zealand, there is an embracing of Maori ways by 'Pakeha' (the New Zealanders of primarily European descent). In Australia, we similarly could embrace the ways of our Australian First Peoples. An important step to self-determination is respect, to realise there is much to learn from Australia's First Peoples.

For millennia, Australia's First Peoples have perfected systems, structures and solutions that can assist every aspect of modern Australia. Codified in rules, story and lore, Indigenous knowledge informed economic systems of exchange and wealth, guided roles and relationships within family and community systems, governance and resource management, relationship with the land and the wholeness of the environment. This way of being was led by spirituality and intergenerational concepts of care and responsibility. Indigenous ways offer practical, pragmatic solutions to real world problems.

For mining companies to engage in meaningful and truthful conversations with Traditional Owners, it's also important there is an acknowledgment that sovereignty was never ceded.

While the Native Title Act was partly born from a movement that sought to enshrine self-determination, its consequence was to shift the focus from empowering culture, to a specific set of meanings tied to place. The process of engaging in a Native Title claim is incredibly onerous for both mining companies and Traditional Owners. The outcomes are often deeply problematic, further marginalising the rights and responsibilities of Australia's First Peoples in relation to their own lands. There's a pathway to putting self-determination back at the centre of land use agreements, but it's not necessarily through Native Title.

Is there an alternative, non-bureaucratic way? What if Australian mining companies took a step back from the Native Title Act and related state-based legislations, and took the lead, choosing to set themselves free of the legal boundaries and engage with Traditional Owners to come to an understanding of what it would mean for Australia's First Peoples to freely pursue their economic, social and cultural development. If there is true respect on each side, this has the potential to provide significantly better outcomes for both parties over time. This could mean, on occasion, a site earmarked for exploration or even excavation, is by agreement, left untouched. This could also mean that a different project goes ahead, realises its return on investment and also empowers the Traditional Owners to make decisions about the mining project that deliver positive economic, social and cultural outcomes to their communities.

For mining companies to engage in meaningful and truthful conversations with Traditional Owners, it's also important there is an acknowledgment that sovereignty was never ceded. While Native Title seeks to have Traditional Owners prove an intergenerational relationship to the land to 'make a 'claim,' this in itself is based on a falsehood. The right to lands cannot be 'claimed' by Indigenous peoples, they can only be claimed by the coloniser. This isn't about mining companies having to pay retribution for events dating back to occupation, or to 'right past wrongs' from more recent times (although that might be appropriate), but it's about acknowledging a truth which to this day is unsettling to many Australians, and understanding that without this acknowledgment, the best outcomes for both mining companies and Traditional Owners will never be realised.

Solving the unsolvable

The issues seem so large and so complex as to be unsolvable. Everyone is looking for answers. Everyone is looking for a way forward, a different way, a better way. But also, a safe way, a known way, a way that has been tried and tested. However, at least as of today, mining companies can search the world over, and over again, and they aren't going to find the right way. The reality is, the right way hasn't been fully imagined yet, let alone enacted, and it's going to take courage, conviction and leadership to start laying the tracks. Mining companies cannot solve this alone. The onus might be on the corporations to start the journey, but it is a pathway that needs to be established by the coming together of mining companies and First Nations Peoples.

One of the greatest challenges for mining companies that we see playing out again and again, is the issue of representation amongst Traditional Owners. When mining companies negotiate with Traditional Owners, how do they know they are negotiating with parties who represent the interests of all the local Traditional Owners? And how do they know that whatever agreements they are negotiating today, are going to produce the right outcomes for the children of Traditional Owners for generations to come? The difficult answer is that there isn't a one-size fits-all solution. The more comforting answer may be that reframing the way mining companies build relationships with Traditional Owners has the potential to shift the nature of the challenge.

First Nations cultural elders will share critical information only when they feel it is appropriate to do so. They will only ever share with those who they trust, and with whom they build long-lasting relationships over time.

If mining companies see it as their responsibility to build relationships with the Traditional Owners of the lands, to learn about the management of the land, to learn, where appropriate about the law of the First Peoples, this will fundamentally change the nature of the relationship. And if mining companies do this at the earliest point when setting their sights over yet-to-be-explored lands, potentially years or even decades before any 'negotiation' might take place in the framework of Western Laws, this will encourage the cultural elders to come forward and allow mining companies to enter a shared dialogue with the Traditional Owners with an awareness of how the country has been cared for tens of thousands of years prior.

While First Nations cultures in Australia have thrived, and vast knowledge has passed through generations upon generations, the impact of 200+ years of colonisation has at times disrupted the continuity of practice and place. Traditional Owner knowledge of certain sites (what mining companies might term 'heritage') is still being re-acknowledged within communities off the back of cultural displacement and dispossession. While mining companies can endeavour to get a view, at a fixed point in time, to understand sites of exclusion in a mine plan, the reality is this knowledge may never be fully complete at any fixed point in time. The only mine plan that can go forward that will respect the sacredness of the land is one that is agile. The only contract that can preserve this 'heritage' must have the flexibility to evolve and change.

Much of this article is predicated on the notion of developing a shared dialogue. It's equally important for mining companies to understand that in this dialogue they will often be met with silence. First Nations cultural elders will share critical information only when they feel it is appropriate to do so. They will only ever share with those who they trust, and with whom they build long-lasting relationships over time. And even in a truly trusting, long lasting relationship, there may still be information the cultural elders choose not to share. Mining companies need to be able to recognise and respect this silence. And most importantly, they need to be able to recognise that silence, or the absence of shared knowledge and information, is not a proxy for consent. Consent can only ever be given, it can never be assumed.

Where to start

In 2017, at the foot of Uluru in Central Australia, 250 Aboriginal and Torres Strait Islander peoples came together to develop a national consensus on Indigenous constitutional recognition, born of 13 regional dialogues that had been held throughout the country.

The outcome of this convention was the Uluru Statement from the Heart. This statement seeks assurances that First Nations voices will be heard when political decisions impacting their rights and interests are made. It also seeks to establish that negotiations between First Nations Peoples and State and Federal governments will be collaborative, fair, and honest.

The Uluru Statement of the Heart set three priorities to achieve its ambition: **Truth, Treaty and Voice**.

While there isn't yet a clearly defined pathway to a new way of relations between mining companies and Australia's First Peoples, there are several questions mining companies can start asking themselves now to help re-set the vision for how they as industry representatives, organisations and on an individual, human level, engage with the Traditional Owners and the land. These questions are embedded in the priorities of the Uluru Statement: *In Truth, Treaty and Voice*.

Voice

There can be no true dialogue without two voices speaking a shared language.

- Is our organisation ready to hear the voices of Australia's First Nations Peoples?
- Are they ready to learn from the voices of Australia's First Nations People?
- Are they ready to change to respond to the voices of Australia's First Nations People?
- Are you personally ready to learn from Australia's First Nations Peoples?

Truth

We must start with truth, as no change can come without it.

- Do we accept that a great injustice was done and continues to be done?
- We must ask ourselves, how do we feel, personally, about our own relationships with Australia's First Nations Peoples?
- How are our personal beliefs reflected in the organisations in which we work?
- Do we accept dual sovereignty?
- Do we have the knowledge, the understanding, of the past and present experiences of our First Nations Peoples, to make honest and fair choices on matters that impact their rights, responsibilities and interests?
- Is our organisation one that learns from and is enhanced by the knowledge of Australia's First Nations peoples?

Treaty

We cannot move forward without finding agreement about how we work together.

- Is our organisation ready to invest in building mutually respectful relationships that will endure over years and decades?
- Does our organisation have the right policies, practices, and agreements in place to empower their employees to make decisions inclusive of Australia's First Nations Peoples?
- Does our value chain allow for the views of our First Nations Peoples to be prioritised?
- Do our employees, from the boardroom to front line, understand when and how to access the Indigenous Knowledge and First Nations Peoples to engage in making decisions that will impact our organisation and Australia's future?

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Deen, Rick and Alice are committed to helping corporations and governments build better relationships with Australia's First Peoples and to creating a more inclusive and prosperous Australia for all.

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