



WMC: Olympic Dam Mine

The world's largest copper-uranium mine at Olympic Dam, South Australia was in many ways a success story for the mining industry. Owned by the Australian mining conglomerate WMC, it was a technological marvel, boasting an underground network of mining chambers that constituted a subterranean city. More than 3,000 people worked at the mine site and supported an entire town in the middle of the South Australian desert. Profitability was relatively high given the capricious nature of the market for copper and uranium, and the mine had an expected life of almost a century.

This ostensible prosperity partly eclipsed the contentions which had characterized the negotiation process leading up to the mine's establishment and its subsequent expansion. The land on which the mine stood appeared to be desolate and uninhabitable to many, but in fact it had been traversed for several millennia by Aboriginal people -- the primordial inhabitants of the Australian continent. These Aborigines were now greatly reduced in number by the travails of colonial history, and had largely relinquished their traditional hunter-gatherer lifestyles. However, they continued to maintain some vestigial association to the land and felt that the mine was an infringement on their rights to prior ownership. Within their communities, there was disagreement regarding how to interact with the mining company, but they all agreed that there must exist for them *a right to negotiate*.

The name of the mine was a serious misnomer -- implying the abundance of water when there was hardly any. Indeed, the original "Olympic Dam" had been a small irrigation pool which had been used by pastoralists. Water for the mining project was thus extracted from the Great Artesian Basin -- an ancient reservoir of groundwater whose nearest extractable location was about a hundred kilometers from the mine site. The extraction of this relatively non-renewable resource of water for industrial purposes had attracted the attention of numerous environmental groups from the urban centers of Australia. This concern was exacerbated by the fact that the mine was extracting uranium, which was anathema to the environmentalists, and in many ways a non-negotiable issue.

The position of the government of South Australia and the federal government of the Commonwealth had been vacillating -- they were obliged to balance economic criteria with growing consternation about environmental concerns and Aboriginal rights. The government thus aspired to be a mediating institution but like many of the other stakeholders in the process were perceived as part of a tenuous coalition, whose goals were ambivalent.

Research Associate Saleem H. Ali (MIT) prepared this case under the supervision of Professor James Sebenius and Research Associate Hannah Riley as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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WMC Limited

WMC began as a gold exploration company, originally chartered in the United Kingdom, but operating in Western Australia in 1933. The company emerged as an independent entity when Gold Mines of Australia (GMA) discovered three separate gold deposits in different parts of Australia -- Mount Coolon in Queensland, Morningstar in Victoria and Triton in Western Australia. The spread of operations was now so great that it was decided that GMA would concentrate on the eastern half of the continent and that a new company -- Western Mining would handle the West. The company grew dramatically within a few years. In the fifties, WMC began to prospect for other metals, most notably, nickel, copper, aluminum and uranium.

The headquarters of WMC are in Melbourne, though each division has a separate head office. With annual revenues in 1997 of A\$2.2 billion, WMC is modest in size compared to Australia's largest mining company BHP (1997 revenues of A\$ 21.1billion), but it has dominance in certain mining sectors, particularly copper and uranium. The company has six product operations: nickel, gold, alumina and aluminum, copper-uranium, petroleum and fertilizer and industrial minerals (See Exhibit 3.1). WMC employs nearly five thousand people in its operations worldwide.

Executive Management at WMC

The executive management at WMC during the inception of the Olympic Dam mine and through its development remained relatively constant. Sir Arvi Parbo, the formal Chairman of the company in 1998 joined WMC in 1956 and continued to be a part of the Board of Directors even after his retirement from management responsibilities in 1990.

The same year that Sir Arvi retired, Hugh Morgan became the Chief Executive Officer of WMC, rising from the rank of Directorship at various WMC operations which he had held since 1976. A lawyer by training Morgan had been the President of the Australian Mining Industry Council in the early eighties. Those were the days when he had acquired a "fundamentalist" reputation in the industry for political activism. Morgan's leadership had even been highlighted in academic discourse by an American professor named Ronald Libby who noted that: "Morgan in particular, was animated by the philosophy that times required corporate leaders to take public positions on a broad range of issues affecting them."¹

One of his own employees commented on how important his leadership was in determining the community relations policy of the company:

The most powerful force on the business unit was what Hugh Morgan believed / said about the relationship he thought the business should have with Aboriginals and with Non-Governmental Organizations. On the big issues Hugh would direct. Those advising in roles in the Group Geographers' Office (anthropologists and political geographers) and Corporate Development would not necessarily be told of those directions.²

Olympic Dam

In 1961, a team of geologists from WMC began to explore the vast expanse of the South Australian desert in search of minerals. Large-scale surveys ten years later indicated a number of coincident gravity and magnetic anomalies west of Lake Torrens, near a small irrigation pond known as Olympic Dam (named by pastorlists who built it in 1956 -- the same year as the Melbourne Olympic Games).

An exploration license was granted by the South Australian government in May, 1975 and by July drilling had begun. In 1979, WMC joined forces with the British Petroleum Group (BP) to sink an

¹ Libby, Ronald. *Hawke's law: the politics of mining and Aboriginal land rights in Australia*. University Park PA: Penn State Press (Also published by University of Western Australia Press, Perth), 1989, p. 59.

² Source would prefer to remain anonymous.

exploration shaft to a depth of 500m, near the pastoral station of Roxby Downs. The ownership at that time was divided between WMC's Roxby Mining Corporation (51%), BP Australia Ltd. (36.5%) and BP Petroleum Development Company UK (12.5%).

In May, 1980 the company sank another exploration shaft to a depth of 500m. During the same year, three additional diamond drills were put in operation and the small village of Roxby was expanded to include a caravan park. The results of this venture were indeed extraordinary by any standard -- mineral deposits of uranium, copper, gold and silver were collectively found.³ In anticipation of a formal Environmental Impact Statement, baseline studies on the ecology of the region commenced in late 1980.

The Indenture Agreement (Terms of Mining Concession)

Meanwhile the South Australian parliament began to discuss the ratification of the indenture agreement between the Joint Venture participants and the state government. Initially, the bill was defeated by one vote. Shortly thereafter the Labor Party member Norman Foster, a staunch supporter of mining, crossed the floor and voted with the government after the bill was re-submitted under a little used standing order by the Attorney General. He was subsequently forced to resign from the Labor party for his actions. The three main areas which this agreement covered were:

- the obligations of the company and conditions relating to development
- security of tenure for the company and access to public services
- the amount of royalties payable by the company to the government

The most economically significant aspect of this agreement was the projected royalty arrangement between the company and the state. Since natural resources in Australian law are technically owned by the state, there is an *ad valorem* royalty (AVR) on the ex-mine value of all the product, apart from a corporate income tax. The indenture agreement set out an AVR rate of 2.5% for the first five years of commercial production and at 3.5% for the remaining period through 2005.

There was additionally a surplus related royalty (SRR), which the company agreed to pay in years of significant returns that exceeded the average returns in the rest of the state's economy. The SRR rate was to be on a sliding scale from 0 to 15% for average returns in excess of 120% of the Bond rate. The measure of the returns in the economy was the ten-year Commonwealth Bond rate, with an additional 20% above that rate allowed as risk compensation to the mining company. Since the AVR process increases the unit cost of resource extraction and hence may potentially reduce the extent of the extraction, there was an additional concession. The extra 1% to be applied after the fifth year has been made fully rebateable against the SRR.

One potentially divisive (and perhaps decisive issue) the indenture agreement did not directly address was the claims which Aboriginal people may have to the land. The legislation and the legal precedent at that time only required consultation with Aboriginal communities. With the indenture agreement in place, full production of copper and uranium ore began in 1988 with 45,000 tons per annum of refined copper, and over 830 tons per annum of uranium oxide.⁴

A Brief History of Aboriginal Land Claims

³ For anecdotal accounts of uranium prospecting in Australia see Annabell, Ross. *The Uranium Hunters*. London UK: Robert Hale, 1971. Similar accounts of uranium mining in North America are narrated Ringholtz, Raye. *Uranium Frenzy: Boom and Bust on the Colorado Plateau*. New York NY: Norton, 1989. WMC has a very informative web site with information about the Olympic Dam mine's chronology: <http://www.wmc.com.au>

⁴ Data from WMC, Annual Report, 1996.

The Aborigines of Australia have the longest continuous history of any civilization in the world. Archeological evidence for habitation on Australia exists as far back as 40,000 years ago. It has been estimated that at the time of the first British settlement by Captain Arthur Phillip in 1788, the Aboriginal population of Australia was around 300,000. They spoke over 250 different languages (some as different from each other as Chinese and English) and lived hunter-gatherer lifestyles all across the continent. Within 100 years their population declined to about 160,000 because of lack of resistance to the diseases introduced by Europeans, disruption of the Aboriginal way of life, and, in the early period, government indifference to the Aborigines.

Only a few major confrontations took place between the colonists and the indigenous population in the first decade. With the settling of Van Diemen's Land (now known as Tasmania), however, Aboriginal communities began to be destroyed on a large scale. Unable to overcome colonial arms and fears, and despite the official British policy of protection, the 5000 Aborigines of the island were then reduced to a mere handful. On the mainland, where the grazers sought lands for their sheep runs, the Aboriginal communities of hunters were forced to retreat into the drier interior.

In principle, the official colonial policy throughout the 19th century was to treat the Aborigines as equals, with the intention of eventually converting them to Christianity and European civilization. Governor Macquarie even established a school for Aboriginal children. Such acts, however, stressing good intentions, were infrequently supported and always underfinanced. In fact, moving from a policy of protection to one of *laissez faire* or punishment by default was typical of the early colonial government.

The Commonwealth of Australia was officially approved as a federation in 1900 and became a reality in 1901. The early years of this century saw a new move towards "protection" of Aborigines through segregation.

After World War II the process of social change for Aboriginal people was largely accelerated. At first the government's stated policy was to assimilate Aborigines into mainstream Australian society. The government had control over where they lived, whom they married and how they educated their children. By the early 1950s their population began to inch back to its pre-European level (about 200,000) and the government began to review and correct past treatment. The Yolgnu people of Yirrkala in the Northern Territory's Arnhem land presented a eucalyptus bark petition to the federal government demanding that their right to the land be acknowledged. The petition was ignored and a formal case was lodged. In 1967, Aborigines and Torres Strait Islanders⁵ were finally accorded Australian citizenship after a national referendum. The federal government was asked to legislate for them in all states.

The assimilation policy was officially terminated in 1972 and replaced with a policy of self-determination. However, this did not mean that Aboriginal rights to prior land ownership were being acknowledged. In fact, the Yirrkala case was decided against the Aborigines in 1971, and concluded that the Aborigines did not have "a meaningful, economic, political or legal relationship to the land." The racial undertones of this decision were widely condemned both within and outside Australia and in 1976, the government passed the Aboriginal Land Rights Act (applicable to the Northern Territory). The act is a strong piece of legislation, which established three Aboriginal Land Councils, that are empowered to assist Traditional Owners to make claims under the Act. This act paved the way for several other pieces of legislation across Australia to deal with Aboriginal land rights.

The Land Rights debate was, however, only the precursor to the more divisive and fundamentally important debate over Native Title, which was not at issue when the Olympic Dam mine was first established.

⁵ The Torres Strait Islands are located just north of the Cape York Peninsula and the inhabitants of these islands are ethnically distinct from the mainland Aborigines. However, in terms of policy-making their concerns are collectively addressed in institutions such as the Aboriginal and Torres Straits Islands Commission (ATSIC).

Land Rights Consultation between WMC and Aboriginal Groups

In March, 1977 WMC consulted with the Curators of Relics and Archaeology at the South Australian Museum regarding Aboriginal settlement in the area of exploration for what was to become the Olympic Dam mine. The company was advised at that time that three Aboriginal groups had traditional links to the land:⁶ (See Exhibit 4).

- Kokotha - to the south-west
- Kuyani - to the north, east and south
- Arabanna - to the north and west

According to the environmental impact statement, WMC initially took the position that “the Kokotha had effectively been rendered a non-viable group by various events and that sites within their area were largely dead sites, of archeological interest only. It was also believed that the Kuyani were almost extinct.”⁷ The Arabanna territory was not on the actual mine lease but rather in the area where the water would be extracted.

When exploration activity commenced, geologists discovered a number of significant ethnographic sites and the Department of Environment decided that a full ethnographic survey should be carried out as part of the impact assessment process. As a result of this survey 437 archeological sites were recorded within the project area. Of these 287 sites were recorded within the current Olympic Dam Special Mining Lease and the Municipal Lease; 53 were recorded in the borefields area and 97 in other nearby areas.

First Signs of Conflict

The Aboriginal Heritage Act passed in 1979 but without its formal proclamation in the South Australian Parliament, it was not officially applicable to projects being considered in the State.

South Australia’s Premier Tonkin also wrote a letter to Hugh Morgan assuring him that further to a previous letter of December 18, 1979, the Government would not “permit security of tenure to be further jeopardized by any land rights or other claims.” This assurance was also “extended to include adjacent lands which might be required for further project development.” Some of the Aboriginal and environmental activist groups acquired these documents and other correspondence from WMC and passed them on to the Australian Broadcasting Corporation (ABC). The resulting ABC reports were challenged by WMC in court for libel, slander and defamation and ABC lost the case, and paid an undisclosed amount in damages to WMC.⁸

In 1980 WMC was also approached by an organization called the Kokotha People’s Committee (KPC) who asserted that they were certainly “viable” and that the sites which existed were by no means abandoned or dead sites.⁹ In May 1981, a meeting was held between the consultant anthropologists and the KPC but no agreement was reached as to how the company should proceed. In the company’s view, the KPC was basically an anti-development group and hence no agreement was possible with them. The KPC argued that they were not asked to negotiate but were rather asked to confirm ethnographic surveys which the company had carried out. As their representative Joan Wingfield explained:

⁶ Kinhill-Stearns Roger. *Olympic Dam Environmental Impact Statement*. Adelaide, 1982, p. 5-31

⁷ Ibid, p. 5-31

⁸ WMC’s case against the Campaign Against Nuclear Energy was withdrawn. Moody, Roger. *The Gulliver File*. London: Minewatch, 1992.

⁹ Another Kokotha group from Cooper Peddy, the Kokotha Mula Aboriginal Corporation, also opposed the mining development.

The KPC were against mining but realized that it was an impossibility to stop the venture so they decided that if mining was going to go ahead then it should as long as it did not harm sites of significance to the Kokotha. We have always been open to negotiate with WMC but WMC have always chosen to ignore what we have said and to consult with other people.¹⁰

Joan Wingfield, was a vocal opponent of mining and was particularly resentful of any incursion on traditional land because of her own childhood experiences. She was part of the generation of mixed lineage children who were adopted by European Australian families as part of the Government's assimilation policy in the fifties and sixties. However, this regrettable period had also provided her with an opportunity to gain a good education which most Aboriginal women did not have. An artist by training, she had graduated from the Australian National University in Canberra and had a government job with the Australian Heritage Commission. Thus, despite her relatively radical leanings on most issues, she commanded a certain degree of respect in the negotiation process and in her work with the KPC.

The Initial EIS, published in 1982, acknowledged the presence of the KPC as an interested party but did not give details regarding the reasons for a breakdown in negotiations. In 1983, the government recognized that there had been some inadequacies in the ethnographic studies process and the KPC were given a grant from the government and the WMC/BP Joint Venture (Roxby Management Services) to prepare a study of their own. Disheartened by their independent dealings, the KPC decided to change its strategy and ally with environmental groups in taking on the South Australian government and WMC. The National Association of Aboriginal Land Councils issued a statement in July 1983, pledging their full support of the KPC. In August 1983, forty Aboriginal people set up an outstation at Cane Grass Swamp, a region through which a pipeline for the mine would pass, because they believed the area to be part of the sacred Karlta (lizard) dreaming.¹¹

John Copping, the project manager at the mine called the KPC's campaign "inconsistent and irrational," and went on to accuse the alliance between the environmental groups of inventing the sites for the KPC, which were in fact being claimed by other Aboriginal groups. The KPC demanded to have a meeting with Hugh Morgan to discuss the matter. According to the KPC, they received no response, whereas WMC insists that all correspondence was answered.¹²

Like all communities there was some difference of opinion among Aborigines regarding the way in which development should proceed in the region. The Southern Lands Council (SLC), a group which believed the proposed mining land to be part of the sleepy lizard dreamtime epic, called for a moratorium on further exploration. On the other hand there were many Aboriginal groups that felt mining would bring much-needed income to their impoverished communities through compensation agreements. The Andamooka Land Council was an example of the latter. Based in a small opal mining town, about fifteen kilometers from Olympic Dam, this group actively began to seek an agreement with WMC.

Legitimacy of representation was a key issue that faced the company: Who should be involved in any consultation process and with which groups was an agreement most important? WMC preferred the use of the term "consultation" to negotiation since the former implied more decision-making prerogative and the law in South Australia clearly was more akin to consultation. Indeed, the "right to negotiate" would become a major political debate in the years to come.

¹⁰ Wingfield, Joan. Aboriginal Heritage Officer, Australian Heritage Commission, Canberra, personal communication via email, August 3, 1998.

¹¹ Dreaming is an Aboriginal expression used to describe a mythological association with the land that also constitutes their belief in an original time of bliss (reminiscent of 'Eden') -- often referred to as *The Dreamtime*.

¹² Personal communication with WMC staff in Adelaide, January 19, 1998 and with Joan Wingfield via email, August 3, 1998.

The question of legitimacy was addressed by an elaborate deliberative process between various anthropologists and archaeologists.

The Role of Anthropologists and Archaeologists in Establishing Consultative Legitimacy

Given the itinerant lifestyles of hunter-gatherer societies, there was considerable disagreement among anthropologists regarding the delineation of Aboriginal land. The choice of consultant anthropologists was thus crucial in the consultative process. Since the 1970s, the most widely used of the Aboriginal maps was developed by anthropologist Norman Tindale.¹³ While the initial EIS referred to Tindale's map and numerous other studies, the consultative process depended on the services of consultant anthropologists and archeologists.

The Kokotha employed the services of a Melbourne-based anthropologist Rod Hagen, whose study warned that between forty and fifty sites were in the project region. The fact that they were having to hire an anthropologist to find their own sites reduced the credibility of the KPC. The results of Hagen's study were supported by another prominent anthropologist R.M. Berndt. However, they were disputed by some of the government anthropologists.¹⁴ According to Hagen, the reason for a growing rift between WMC and the KPC generally due to a differing perception of respect:

Apart from the problems of disclosure of confidential information (by WMC to the KPC), the company were also demanding some form of assessment of the Aboriginality of the people involved in the survey, the Kokotha themselves. The Kokotha, found this approach really quite insulting.¹⁵

In 1993 WMC chose to employ the services of political geographer Stephen Davis. Dr. Davis was initially based as a consultant for WMC's Group Geographer's office in Perth, Western Australia. He had previously been employed by the Northern Territory (NT) government to negotiate the Todd River Dam project in Alice Springs that threatened to flood Aboriginal women's dreaming sites. He had also put forward an opinion at the Coronation Hill dispute in the Northern Territory and the Resource Assessment Commission had not accepted his maps at that time.¹⁶

Another prominent anthropologist who was enlisted through the course of the negotiations was Professor L.A. Hercus. She was first hired by the consulting firm that prepared the EIS for WMC in 1987. Subsequently she was also involved in a highly controversial study on a proposed bridge to the Hindmarsh Island, which was being contested by a group of Ngarrindjeri Aboriginal women. She had made her philosophical stance on Aboriginal negotiations known to the government and the company in very clear terms:

I think that if in this country we are going to say that Aboriginal people can only have traditions and practices that we know about already, for it to have an impact in law or an impact in Australian public life, then my profession might as well go home.¹⁷

¹³ Tindale, Norman B. *Aboriginal Tribes of Australia*. Berkeley CA: University of California Press, 1974.

¹⁴ Within the government anthropologists, there was a lot of disagreement. A government anthropologist who had favored the Kokotha claimed that he lost his job and received threats on account of his work: Personal communication, N. Draeper, Consultant Anthropologist, Adelaide, January 18, 1998.

¹⁵ Quoted in Rosewarne, Clive. "Undermining Aboriginal Interests: A Case Study of the Western Mining Corporation." Melbourne: *Chain Reaction*, No. 73-74, 1995.

¹⁶ Resource Assessment Commission. *Kakadu Conservation Zone Inquiry Final Report*. Canberra: Australian Government Publishing Service, 1991.

¹⁷ Quoted in Mead, Greg. *A Royal Omission: A critical summary of the evidence given to the Hindmarsh Island Bridge Royal Commission*. Adelaide: 1995.

From 1981 to 1996, there were forty different anthropological and archaeological reports published and commissioned for this project from different sources. WMC tried to offer independent mediation by hiring an Aboriginal group from the Eastern States to resolve some disputes between the Andamooka Land Council and the KPC. The Aboriginal Legal Rights Movement was also involved in the process.¹⁸ However, no regulatory organization provided a forum for the various conflicting points of view to be deliberated.

Times of Transition: From Hawke to Mabo

In 1993, Robert Hawke was replaced by fellow partyman Paul Keating as the Prime Minister for Australia. In the same year, WMC acquired full ownership of Olympic Dam (by buying the remaining share from BP). During Mr. Keating's tenure Australia was embroiled in a major legal debate over the rights of Aborigines to claim title to land following a revolutionary supreme court decision. The case in point was *Mabo v. Queensland* (175CLR 1, 1992) in which the High Court of Australia for the first time recognized the prior land rights of Australian Aboriginal people, countering the earlier decision in *Milliripum v. Nabalco* (17 FLR 1, 1971). Australian law previously recognized the doctrine of *terra nullius*, which asserted that before colonization there was no system of ownership in Australia and hence there is no prior claim to land. This policy stood in stark contrast to American and Canadian law which is based on the concept of treaties between natives and the colonizers. Soon after the Mabo decision, the Native Title Act was passed in 1993 to ensure a systematic process for submitting land title claims. The act provided a regime for determining whether native title exists over a certain area of land or water. The act was administered by the National Native Title Tribunal, essentially a negotiating and mediating body whose decisions are not binding.¹⁹ Around the same time The Council for Aboriginal Reconciliation (a government appointed entity) published a report on *Aboriginal Reconciliation and the Mining Industry*. However, this committee decided not to address the implications of the Mabo decision despite its long-term implications:

A major issue put to one side during the meetings of the Mining Committee was the High Court's Mabo decision. The Committee felt that the issue was too unclear and divisive for all sides at the time of our meetings....The Council for Aboriginal Reconciliation has acted as a neutral intermediary to listen and record the views of representatives of the major stakeholders.²⁰

Provision was made in Native Title Act for contested claims to be determined by the federal court. The Mabo decision was, however, passed during the Labor party's rule and it may be argued that with the advent of Prime Minister Howard's government the chances of a court settlement to favor the Aboriginal groups were small. In fact most of the subsequent cases after Mabo did not favor Aboriginal groups.²¹ So negotiations seemed a reasonable place to start from their perspective.

The Environmental Groups

¹⁸ Stokes, David. Community Relations Officer for WMC, personal interview, Port Augusta, South Australia, January 22, 1998.

¹⁹ The role of government in "mandating cooperation" has been given a comparative exposition in: May, Peter J. "Can cooperation be mandated? Implementing intergovernmental environmental management in New South Wales and New Zealand." *Publius*, Vol. 25, 1995, pp.89-113.

²⁰ Statement of Robert J. Champion de Crespigny, Convenor, Mining Committee of the Council for Aboriginal Reconciliation in *Exploring Common Ground*. Canberra: Australian Government Publishing Office.

²¹ Some of the cases are: *Western Australia v. Commonwealth*, 1995; *Mason v. Tritton*, 1994; *Walker v. New South Wales*, 1994; *Coe v. Commonwealth*, 1993; *Pareroultja v. Tickner*, 1993

The anti-uranium movement in Australia has been active in various regions of the country but in South Australia, their most vehement protests began after the British government began to use the desert region west of Woomera as a missile testing site. The area was declared "prohibited" soon after the Second World War. An American military base was also established nearby which led to further resentment.

Soon after the first environmental impact statement for the Olympic Dam project was released for public comment in 1982, independent activists from Adelaide and Melbourne began to stage protests in the area. In 1982 a series of letters were exchanged between the activists who called themselves the Roxby Vigil and the government of South Australia. The government asked them to vacate the areas where they had set up camp to protest the mine and eventually the individuals were forced to vacate the mining lease.

In the late eighties, larger groups also got involved in this process, most notably The Australian Conservation Foundation (ACF) and The Friends of the Earth (FOE).

The Australian Conservation Foundation was founded in 1965 as a non-governmental organization "with a broad agenda encompassing all aspects of the natural environment."²² The Organization comprises a 37-member elected Council with representatives from all states and territories of Australia. Services are carried out by more than 45 staff with considerable support from student volunteers and ACF branches and campaign groups. ACF headquarters is in Melbourne and ACF also has a campaign office in Sydney, a branch office in Adelaide and political liaison office in Canberra, as well as branches around Australia.

The Friends of the Earth Office (FOE) in Melbourne was the most active group against the Olympic Dam Mine. FOE is an international organization based in 58 countries and was started originally by the American environmentalist David Brower in 1969. Brower envisioned FOE to be a highly decentralized anarchic organization with "an unabashed stance against nuclear power and nuclearism more generally."²³

The FOE collective in Melbourne conducted most of their uranium opposition through volunteers. Most notably, Ila Marks and her husband Eric had lived with Aboriginal communities in Marree, South Australia and who were able to bring their concerns about uranium proliferation directly to the Aboriginal tribes in the region from where the water was to be extracted. The FOE and ACF activists operated collectively and without any formal leadership roles -- hence they preferred to be thought of as a collective rather than as individual activists. The opposition took the form of protests and blockades at the mine site and at WMC's headquarters. Letters were written to company shareholders and to government officials, particularly in response to public documents such as environmental impact statements. However, no legal channels were pursued because of the expense involved and also due to a protracted process for citizen action lawsuits in Australia. Unlike American environmental groups, there were hardly any lawyers employed by these organizations. Most of the employees and volunteers were teachers, students and young professionals with limited resources.

The efforts of ACF and FOE were supplemented by the Conservation Council of South Australia (CCSA), based in Adelaide. The CCSA had the advantage of having a prominent university Professor as an active member of the group. Dr. Dennis Matthews, was a Professor of Chemistry at Flinders University in Adelaide and authored several articles against uranium mining in local newspapers.

Most of the material published by the environmental groups on mining included sections on Aboriginal issues. The key debate which was the focus of a lot of this discourse was how much prerogative Aborigines had to grant land access for development on what had been legally declared their land and what would be negotiable. For example, under the Northern Territories Land Rights Act, traditional Anangu

²² Australian Conservation Foundation web site: <http://peg.apc.org/~acfenv>, accessed September 18, 1998.

²³ Wapner, Paul. *Environmental Activism and World Civil Politics*. Albany NY: SUNY Press, 1996, p. 121. This book studies FOE, Greenpeace and the World Wildlife Fund and compares their operations in the context of global politics.

owners of Ayers Rock (known to Aborigines as Uluru) and The Olgas (known as Kata Tjuta) filed a claim of ownership. They were disallowed because the land was within a national park and thus alienated. The court struggle raged for several years and only after two acts of parliament was this region handed back to the traditional owners with the condition that it be immediately leased back to the Australian Nature Conservation Agency (formerly the Australian National Parks and Wildlife Service). They were thus forced to grant land access to a conservation agency and thus had no standing for further negotiations -- though monetary compensation was accorded by the lessee (the government). The ACF summed up the predicament as follows:

The issue of negotiations and land access is fundamental to many aspects of mining companies' dealings with Aborigines and has become a fundamental element of the mining debate in Australia with the Australian Mining Industry Council (AMIC) and the State and Commonwealth mining and development departments promoting, via calls for greater access, a de-facto breakdown in the negotiation process. Whilst many Aboriginal people have indicated their willingness to negotiate the use of their land, they have also strongly expressed the non-negotiability of access to sacred sites.²⁴

The environmental organizations had gone to great lengths to enlist Aboriginal support and also to internalize Aboriginal interest within their campaigns. ACF had a separate policy on Aboriginal land rights and the Friends of the Earth set up an Indigenous Solidarity Group. However, some of the Aboriginal groups felt very strongly that the environmentalists were simply using the Aboriginal cause as a means to an end.

World Uranium Hearings

In 1992 several international environmental and human rights groups gathered in Salzburg, Austria to discuss the effects of the uranium industry on indigenous peoples from around the world. It is important to note, however, that this event was not an international tribunal nor did it have any support from any international agencies such as the United Nations. Nevertheless, the "Hearings" were very well-publicized and brought together indigenous groups from around the world to share their perceived grievances with the uranium industry. They were also highlighted by the endorsement and participation of celebrities such as the Dalai Laama, Isabel Allende, Robert Redford and Julie Christie.

The cultural divide between different communities was made clear during this session. Recounting one encounter with the CEO of British Petroleum, an Aboriginal person from South Australia told the hearings that she had asked the gentleman, if he would knock down Stonehenge (an old Anglo-Saxon archeological site) to establish a mine. The CEO responded by saying "of course not," but that the Aboriginal sites were more akin to fairy tales and to protect them would be like trying to protect Pooh Corner (from the *Tales of Winnie the Pooh* by A. A. Milne). Some sites he stated just "have to be sacrificed in the name of civilization."²⁵

Even though Olympic Dam is predominantly a copper mine, it was profiled in the hearings, partly because of the significant role which its executives had played in lobbying against Aboriginal land rights legislation. The speakers also stated that the mine would not be economically viable without the high price revenue from uranium production.

Hugh Morgan, the CEO of WMC was quoted by Aboriginal leaders (perhaps out of context), at this meeting and in subsequent publications as categorizing the relationship between the mining industry and Aboriginal groups as follows:

²⁴ Burton, B. et al. *Mining and Ecologically Sustainable Development*. Melbourne: Australian Conservation Foundation, 1994, p. 32.

²⁵ *Testimonies, Lectures and Conclusions of the World Uranium Hearings* (1992), pp. 195-197, accessed by Web: <http://yarra.vicnet.net.au/~seaus>.

The clash between the Christian orthodoxy of those who work including the miners, who, as St. Paul told us, are abiding in the same calling wherein we are called, and must perforce find the best ore bodies where ever they may be. We are confronted with the Manichean style commitments of those who regard rivers, or trees, or rocks, or Aboriginal sites as belonging to the spiritual world; who regard such sites as incommensurable, and seek to legislate incommensurability into the statute books.²⁶

The hearings coincided with the publication of an 800-page book on the mining industry entitled *The Gulliver File*.²⁷ The funding for this project primarily came from non-profit organizations, most significantly from The World Information Service on Energy.

The uranium mining industry, including WMC, decided to not respond as this event progressed. The international industry association known as The Uranium Institute, was responsible for coordinating responses, if any, to the charges being leveled against them from the activists. One industry executive from Siemens voiced his concerns regarding this strategy as follows:

To wait and see what happens as an internationally organized strategy does not seem to be very efficient in my eyes. Such an approach will always mean curing an ailment instead of preventing it. My personal experience with discussions with the public proved one perception: if industry is not willing to attack, there must be good reasons for this: 'misdeeds of industry.' In my opinion, the World Uranium Hearing will be a showcase for the ability of industry to cope with adverse events. Should it prove impossible to offset at least partially the influence of this hearing, I believe the future prospects for nuclear energy will be very dim indeed.²⁸

In response to this letter, the Institute decided to issue a statement to rebut the hearings. The Institute's statement included case examples of mining negotiations with indigenous communities in Australia, Namibia and Canada. However, the Australian examples were primarily derived from mines in the Northern Territory, where there is stronger Aboriginal legislation. The statement dismissed the *Gulliver File* as a "monumental collection of disinformation and factual inaccuracy." The statement also quoted the pro-mining words of Amazonian Chief Juruna at the Earth Summit to accentuate a paternalistic streak in the environmentalist rhetoric:

To the first world we are like the cinema, like clowns, a fantasy. But that has nothing to do with us. We don't want to live like creatures in the jungle. We want comfort, houses, salaries...if they want us to live like savages, civilized people should set an example. They should turn off the lights in all the cities. Then we're all in the dark.²⁹

While the Institutes statement was effective in dispelling the image of disinterested industry, it did not prevent protesters from continuing to stage acts of civil disobedience in cities throughout Europe. The protesters targeted the embassies of countries which they believed were receiving the uranium from Olympic Dam: Sweden, Finland, Britain, Japan and South Korea. However, none of these protests appeared to have an impact on uranium importation policy.

²⁶ Morgan, Hugh M. (1984). Aboriginal Land Rights -- A View." in *Minerals Outlook Seminar -- 1984*. Proceedings of the Australian Mining Industry Council.

²⁷ The title for the book was based on a quotation from Charles Barbour, vice-chair of the American Mining Congress in 1981, who referred to the opposition movement to mining as follows: "Like Gulliver, the mining industry is a robust giant held down by a million silk strings." Moody, Roger. *The Gulliver File: Mines, people and Land: A Global Battleground*. London: Minewatch, 1992.

²⁸ Letter from O. Wildbruber, Siemens Power Generation to David Kay, Secretary General, The Uranium Institute, London, Ref: PK13/Who/l-s, August 5, 1992.

²⁹ Quoted in The Uranium Institute's briefing on the World uranium hearings No. 92/6, 1992.

Aboriginal Land Claims in the Water Extraction Area: The Confluence of Indigenous and Environmental Interests?

The area where the borefields for the Olympic Dam Mine were located was contested by Arabanna and some segments of the Dieri community during the course of the mining negotiations.³⁰ Apart from being a perennial source of water for subsistence, the mound springs were of immense cultural and spiritual significance to the Aborigines. Particular associations with the topography of certain areas constitute their perennial mythology, known as “Dreamtime.” There were several Dreamtime stories associated with the springs. For example, the movement of water in the bubbler springs are described as convulsions of the ganmari snake, killed there by a Guyani ancestor.

This water source was also an important concern for the environmentalists since the Great Artesian basin was considered by them to be a nonrenewable resource whose water should not be used for industrial development. The mound springs supported a unique ecosystem with some rare and endangered species that were of concern to environmentalists. The protection of the water resource thus became an area of common interest for the environmentalists and the Arabanna. WMC felt that the environmentalists were simply using the issue of water as a means of leverage to garner Aboriginal support, and that their ulterior motives were clearly to oppose uranium mining regardless of any mitigation measures which the company may employ to reduce environmental impact.

Inevitably within Aboriginal communities there was a range of opinions regarding the protection of sacred and significant sites in this region as well. However, instead of following a consensus-building process in which various points of view can be voiced, negotiations over water usage at the mine ended up as a bilateral process.

This was partly due to the ambivalent stance of the Arabanna community. Initially, their leader Reg Dodd was closely associated with the environmental movement and voiced his opposition to mining at numerous occasions. Later he would also make statements such as the following:

We’ve never opposed mining in any way at all. We’ve never opposed what Western Mining is doing. What we were concerned about -- and I was deeply concerned about is -- a lack of consultation. Previously, there was good consultation, and all of a sudden that deteriorated and it doesn’t exist at all. We didn’t oppose what they were doing. We were happy to sit down and negotiate with them. We were happy to consult with them. It was Western Mining who was trying to discredit us.³¹

The alliance between the environmentalists and the Arabanna thus appeared to be opportunistic.

After the Mabo decision in 1993, Reg Dodd filed a Native Title Claim for the area surrounding the borefields for Olympic Dam. Though WMC had previously communicated with the Arabanna, the company was advised by lawyers to distance itself from the Arabanna after this land claim was submitted. A company memorandum to employees soon thereafter stated that “all company employees and contractors are directed that they have no authority to discuss the company’s business or any other matters relating to the project with Mr. Dodd or any other person.”³²

Hugh Morgan had met with members of the Dieri Association on May 22, 1993 to initiate a formal consultation process. This bilateral dealing with the Dieri infuriated the Arabanna community who released several Press Releases stating that WMC was taking sides in the dispute.³³

³⁰ The Dieri community opposing the Arabanna is called the Dieri Mitha Council, while a separate Dieri group, The Dieri Land Council (of Birdsville) supported the Arabanna claim.

³¹ Transcript of radio interview with the Australian Broadcasting Corporation, March 5, 1995.

³² WMC memorandum, August 4, 1993.

³³ *Adelaide Advertiser*. “Huge South Australian Land Claim.” July 9, 1993.

In stark contrast to his earlier opposition to Native Title, WMC's Hugh Morgan made the following statement, after reaching an agreement with the Dieri:

The Dieri people have shown that they are perfectly capable of managing their own interests in an efficient and reasonable way. Any law that stops Aboriginal people taking direct responsibilities for their own affairs quite improperly demeans those people and is a form of paternalism which has no place in Australian society.³⁴

WMC, felt that the Arabanna were stonewalling and were not prepared to come to an agreement and hence a consultative process would be futile. The relationship between the Marree Arabanna Peoples Committee (led by Reg Dodd) and the Dieri Mitha Council worsened in 1994.³⁵ The communities decided to call in an external arbitrator to decide who had more legitimacy to the land claim. On June 20, 1994 eighty Aboriginal elders from all over Central Australia met at Davenport to make a definitive ruling on the dispute between the Arabanna and the Dieri Mitha on claim to the WMC water extraction site. The ruling was in favor of the Arabanna. A month later, the Minister of Mines and Energy for South Australia, Dale Baker, recognized the Aboriginal community's decision in a formal letter to Reg Dodd, the Arabanna spokesperson.

"Government has used its best intentions in dealing with this matter and accept the Aboriginal Community's decision to appoint a committee to speak for the land. WMC will be advised of the outcomes of the meeting. Given this reasonable decision by Aboriginal people, it would be expected that all mining companies from now on consult through this new body."³⁶

However, once again the government did not provide a mechanism by which the company and the Aboriginal claimants could collectively negotiate.

The Violent Incident in Marree

On July 12, 1995, the tiny town of Marree, near the borefields for Olympic Dam, was bustling with activity. A group of Dieri men from Port Augusta were in Marree that day and got involved in an altercation with some of the local Arabanna men. The exact turn of events remains unclear but the result was that one person in the Dieri community got killed. Several people were arrested on both sides and subsequently given protracted jail sentences.

The Dieri men had come in utility vehicles and spent several hundred dollars on alcohol at the local hotel -- luxuries which the Arabanna claimed could not be independently afforded. While there was no tangible basis for casting aspersions on WMC as the source of the funds, it was true that the same day Dr. Steven Davis had met with the Dieri to perform certain traditional ceremonies around the borefield area. The Copper Uranium Division of WMC denied giving any funds to the Dieri at that time while the anthropology staff in Western Australia refused to comment on the incident.³⁷

WMC's community relations officer for the project, David Stokes stated that the dispute between the two communities predates any mining activity and revolves around a cattle station ranch called Finnis

³⁴ Morgan, Hugh. Statement published in the *Australian Mining Journal*, July, 1993.

³⁵ The Arabanna claimed that some of the contractors from the mine or the Dieri were involved in an incident where a sports utility vehicle was driven up to the Bubbler Mound Spring (a significant Aboriginal site), prompting a letter of complaint to Prime Minister Keating. *Chain Reaction*. Melbourne, No. 69.

³⁶ Letter from Dale Baker, Minister of Mines and Energy, South Australia to Reg Dodd, Arabanna spokesperson, July 25, 1994.

³⁷ Interviews with Pearce Bowman and WMC staff by Radio National's Background Briefing Program. Australian Broadcasting Corporation, March 5, 1995.

Springs.³⁸ The station was established in 1918 by a Scottish immigrant named Francis Dunbar-Warren who married an Aboriginal woman. According to WMC, the progeny of this union and some subsequent marriages are fighting over the family property. Finnis Springs, a leasehold property was resumed by the State because the current lessees were not complying with the lease requirements, and is currently held by the State on behalf of the Aboriginal Lands Trust.

In early 1995, the Dieri filed a formal land claim to the area with James Noonan Barristers and Solicitors -- a Darwin-based law firm which is also used by WMC. Under the Native Title Act, WMC became a n official party to the mediation, since their interests would potentially be affected by the land claim.

Soon after the Marree incident, anthropologist Dean Fergie, who was know for being rather outspoken commented:

In every sense, you must take account of the role of WMC in this context, and think their position has been incredibly naive -- their role in this position has been incredibly naive -- or it's been incredibly mischievous. There's not a lot of middle ground.

On the other hand WMC was adamant that they had no control over the turn of events in Marree but that the past few years had been "a steep learning curve for the company."³⁹

³⁸ Stokes, David. Community Relations Officer for WMC, personal interview, Port Augusta, South Australia, January 22, 1998

³⁹ Ibid.

WMC: Olympic Dam Mine (B)

It was March, and the late summer sun shone brightly through Hugh Morgan's office in Melbourne, while he reflected upon the decisions which lay ahead. Recently, WMC had also won the annual award from the Australian Minerals and Energy Environment Foundation (AMEEF) for their landmark Environmental Progress Report.⁴⁰ 1996 promised to be a good year for the mining industry in Australia. The Australian Labor party had lost the election to the Liberal party coalition, heralding a new era of industrial development under the leadership of Prime Minister John Howard. The Liberal coalition government had pledged in its campaign to relinquish the "Three Mines Policy" of the Labor Party and to allow for new uranium mining proposals to be presented. Olympic Dam was the largest of these three mines, and Mr. Morgan was planning to undertake a major expansion to strengthen his company's position in the copper and uranium sector.⁴¹ This expansion would make WMC among the top ten copper producers in the world and a much more important player in the uranium market as well. In 1996, WMC planned to give A\$150,000 to the Liberal Party and A\$75,000 to their coalition partners, The National Party of Australia.⁴²

Most people at WMC, however, did not believe that there would be any major change in tide with the new Liberal victory. After all, a week earlier, the Labor party's Environment Minister, John Faulkner had formally approved the expansion of the Olympic Dam mine to 150,000 tons per year, and also endorsed a water license for the project. It was clear that both major political parties appreciated that mining was considered the most direct and lucrative means of improving foreign exchange earnings and increasing employment at the national level.

The Expansion Project and Aboriginal Heritage Surveys

The Olympic Dam expansion project would provide Morgan, and his staff, with yet another challenge to negotiate with various constituencies in the public. What were some of the lessons from the past negotiations that could be applied to this newer context? How important was it to appease project opponents at the expense of corporate profits? Morgan knew that in the mining business it was impossible to please everyone but he clearly wanted to prevent some of the negative publicity given to the first round of the mining negotiations.

Keeping in mind all the events of the past fifteen years, Hugh Morgan and his staff were faced with several important decisions regarding Olympic Dam. The initial government approval was in hand but the environmental impact statement was yet to be published and the comments which would inevitably come from the various special interest groups had to be dealt with. Morgan and his staff had tried in earnest to assuage the concerns of environmental groups by giving tours of the mine site and publishing informational material. WMC officials had spent several hours with some Aboriginal claimants trying to survey significant sites in the blistering desert heat. Generous compensation packages had also been offered and yet there was still an air of discontent on all sides.

WMC officials had stated several times that their conscience was clear and that they had done all they could to accommodate various interests in the negotiation process. They had sponsored Aboriginal athletes to prepare for the Sydney Olympics in 2000. As far as employment opportunities were concerned,

⁴⁰ AMEEF is a non-profit organization which aims to improve environmental performance in the mining industry. However, it is not an environmental activist group, and does receive funds from corporate sponsors.

⁴¹ The other two mines under this policy were, Ranger Mine (owned and operated by Energy Resources of Australia:ERA) and the Nabarlek Mine (owned and operated by Queensland Mines). Both these mines are in the Northern territory. Nabarlek was decommissioned in 1996.

⁴² WMC Ltd. *Annual Report to Shareholders, 1996*, p. 15

they felt that the skill levels were too low in the Aboriginal communities to offer any preferential hiring. The prospect of instituting training programs would be too costly and could present security risks. But was there something they could now do differently as the expansion phase commenced?

Preparations for the expansion of Olympic Dam continued throughout 1996. Four Aboriginal heritage surveys were carried out for WMC on the municipal Lease and the Special Mining Lease by new consulting firm Anthrpos Australis and Archae-Aus. Three ethnographic sites and eighty nine archaeological sites were recorded in addition to those already identified in earlier surveys.

An excavation project to recover Aboriginal artifacts was conducted by WMC and The Royal Geographical Society of South Australia in April, 1996. The Andamooka Land Council was also involved in this project and a twenty minute educational video was prepared.

In 1996 WMC also funded and provided logistical support for carrying out a traditional ceremony for Aboriginal women called Inma. The confidentiality of Aboriginal women was respected and WMC staff did not keep in any records of the ceremonial details. An initiative was also launched to prepare a detailed geographic information system database for all the Aboriginal sites recorded through the various surveys. While no affirmative action program for employment within WMC was initiated, there was a move to encourage contractors and sub-contractors to hire Aboriginal people (in 1997 there were 15 Aboriginal employees out of a total of over 5,000 employees at WMC).

1996 had indeed proved to be a good year for WMC both in terms of its relations with the community and its profitability. After tax profits increased 31.5%, including a record increase in the production of copper and uranium.

The same year the company did a major organizational reshuffle within the departments which dealt with Aboriginal issues.

Organizational Changes

Several changes were made in the organizational hierarchy for community relations at WMC in 1996 and followed through in 1997 and 1998 (Exhibit 5). A Community Relations Officer was specifically appointed for the Olympic Dam Project. David Stokes assumed this role with considerable experience in dealing with Aboriginal people in the Northern Territory. Stokes had been a Lutheran minister in Arnhem Land and had also done independent research on Aboriginal anthropology.

Initially only the Copper Uranium division had a separate public affairs function. However, after 1997, the Nickel and Gold division also instituted a community relations officer and corporate communications officer. The Group Geographers office was greatly reduced in size and placed under a cultural affairs umbrella, headed by the former General Manager for Gold, Deming Whitman. The Corporate Development office was also shuffled and ultimately subsumed within the Human Resources function. Ultimately, the Cultural Affairs section was placed under the Human Resources function as well under the management of Greg Travers. Dr. Stephen Davis was reappointed to oversee the WMC community consultations in the Philippines and other regions outside Australia. Throughout this change the positions of the Executive Directors of Copper Uranium, Pearce Bowman and the Executive Director for Gold and Nickel, Peter Johnston, remained intact.

The Wik Decision

Despite all the auspicious occurrences that year, 1996 did not end on a pleasant note for the mining industry. In December, the High Court of Australia ruled against a mining company (this time on a mainland case⁴³) that native title was not necessarily extinguished by a pastoral lease. After this decision,

⁴³The previous Mabo decision was based on Native Title claims of Torres Strait Islanders.

commonly referred to as The Wik verdict (after the Aboriginal tribe in question), Mr. Howard's government launched a vociferous campaign to limit Aboriginal people from claiming land tenure.

The Parliamentary Reports on Uranium Mining

In response to widespread concern over radioactive wastes, the Australian senate established a 9-member committee to study uranium mining and milling within the country. After a complete year of research and public hearings, the committee published its report in May, 1997. The committee reviewed 100 comments submitted from various sectors of society. Among them were four submissions from Aboriginal organizations and 30 from community and environmental groups. In addition the Committee also heard oral evidence from 50 organizations, including 10 Aboriginal groups, four mining companies and fourteen environmental organizations.

However, there was considerable disagreement among committee members regarding the interpretation of the testimony and the conclusions which should be drawn. Therefore, the report had to be divided into two parts: the majority opinion and the minority opinion. The majority opinion of the report was led by Senator Grant Chapman (Liberal, South Australia), while the minority opinion was authored by Senator Dee Margetts (Greens, Western Australia) and Senator Meg Lees (Australian democrats, South Australia). In their opening statement to the minority report, the senators stated:

The majority report of the Committee is fundamentally flawed because it is based, not on the evidence but on the premise that Australia's uranium mining industry should be expanded in line with the current government's policy...For these reasons we have felt compelled to prepare a lengthy minority report.

There were separate sections in the report which addressed the issues pertaining to the Olympic Dam mine. A lot of the environmental testimony focused on a seepage incident from the mining water retention facility at the mine.⁴⁴ The Friends of the Earth and the Conservation Council of South Australia offered some comments pertaining to a lack of consultation with Aboriginal communities. the majority report dismissed these comments by stating:

The Committee has had only limited opportunity to assess the accuracy of matters raised by the Conservation Council and the Friends of the Earth but it notes that only a limited amount of supporting evidence has been tendered.⁴⁵

The report went on to quote an editorial in the *Adelaide Advertiser* which had applauded WMC's role:

WMC, a sophisticated corporate citizen, has previously demonstrated that, while [it is] not afraid of a confrontation, it prefers to accommodate potentially critical constituencies. It specifically addresses itself to the concerns of environmentalists, Aboriginal interests and others.⁴⁶

The Environmental Impact Statement for the Expansion

The environmental impact statement for the expansion project was published in May, 1997, soon after the senate report on mining. The same consultants which had prepared the initial EIS were used for

⁴⁴ This incident had led to a separate government inquiry, whose report was published in 1996 and largely exonerated WMC of any charge but did state that the "the Olympic Dam tailings retention system did not receive a degree of informed supervision." Environment, Resources and Development Committee of the South Australian Parliament. *Report of a Leakage at Roxby Downs*, April 10, 1996.

⁴⁵ Parliament of the Commonwealth of Australia. *Report of the Senate Select Committee on Uranium Mining and Milling*. Canberra: Australian Government Publishing service, 1997, p. 132.

⁴⁶ *The Adelaide Advertiser*, July 16, 1996. Quoted in *Ibid*, p. 71.

this project. The advances in technology were, however, quite visible in the newer publication, which was replete with colored diagrams and satellite images of the site.

David Stokes, the community relations officer for WMC stated in a personal interview that the EIS is primarily a means of fulfilling government regulations and that educating the community about the project is a separate endeavor:

The public response period in my view was very short (1 month), but that was not our idea, that was the government timetable and we did grant extensions to people, for up to eight weeks. The comments were made to the government and it was then the government's job, not ours, to distill the comments and to make a series of questions to us which we duly answered. We got no response specifically from the Aboriginal people. We got questions from NGOs about Aboriginal heritage sites, which upon reflection and investigation proved to have not come from the Aboriginal people. So it was the NGOs who were creating these questions. We made it a point to mention in our supplement that the Aboriginal people did not directly approach us with questions. Which says either of two things, either they were not aware of it or that they were happy.⁴⁷

The environmental movement, in the meantime, was gathering steam for a major protest event in September 1997. Friends of the Earth in Melbourne and numerous other environmental groups from all across Australia. The festival was termed "RoxStop" and attracted a lot of urban students. Since most of the protesters were not in fact from the surrounding communities, WMC felt that their credibility was greatly reduced. There were only a few Aboriginal protesters at this event. WMC cooperated with the protesters insofar as giving them tours of the mine and allowing them to speak to most of the senior human resources staff at Olympic Dam.

There were a lot of kids there who were on holiday from uni, who had not been to South Australia before. These were kids from the garden suburbs of Melbourne. Children of doctors of nuclear medicine. One in particular I was talking to, I asked what does your Dad feel about you being here protesting. She said what do you mean, and I said well you just said that your Dad is a doctor of nuclear medicine, he uses radiation to cure people and here you are trying to shut down a uranium mine. And she said, well I hadn't thought of it that way.⁴⁸

A national documentary was, however, made surrounding this event and broadcast across Australia. The documentary highlighted the Aboriginal claims to the land and included interviews with representatives from several stakeholders.

On November 6, 1997, the supplement to the EIS was released with a listing of all the different comments submitted and responses from the company to many of those comments. The Australian Conservation Foundation and the Conservation Council of South Australia collectively submitted 185 comments to the environmental impact statement for the expansion of the Olympic Dam mine, whereas no formal comments were registered from the Aboriginal groups. Out of the 185 comments which the environmental NGOs registered 5 were specifically aimed at addressing Aboriginal concerns. The comments reiterated the concerns voiced earlier regarding the consultation process and the division which the alleged "selective negotiations" may have created. The company refuted all these allegations.

WMC has not set up Aboriginal groups. The claim that WMC consults only with Aboriginal groups that support the project is refuted...WMC's consultation processes are

⁴⁷ Stokes, David. Community Relations Officer for WMC, personal interview, Port Augusta, South Australia, January 22, 1998

⁴⁸ Ibid.

extensive. This has proven to be time consuming, and may in itself attract negative responses and accusations of bias.⁴⁹

On November 30, 1997 there was a union strike at Olympic Dam over an ammonia exposure incident. However, this did not have any effect on the government's decision to approve a major portion of the expansion project on December 3, 1997. Senator Robert Hill, Federal Environment Minister, approved the expansion to 200,000 tpa of copper and 4,000 tpa of uranium.

The government's confidence in WMC's community relations was further exemplified by the passage of the heritage amendments to the Roxby Indenture Act on January 4, 1998. These amendments effectively gave WMC management jurisdiction over 1.5 million hectares of South Australia which were previously administered by the state government.

European Parliament Resolution

Meanwhile on the international front, the lobbying efforts of the environmental movement achieved some limited success. On January 15, 1998, the European Parliament adopted a resolution which called on all Member states to "ban imports of uranium from mines where the land rights of Indigenous Peoples are being compromised." The resolution was passed with 115 votes in favor, 85 against and 13 abstentions.⁵⁰

The Impact of this resolution on the Olympic Dam operation was projected to be limited since a significant percentage of WMC's uranium exports were to Asian countries.

The Right to Negotiate

In the fall of 1998, the Australian Parliament was preparing for a showdown pertaining to the Native Title Bill which the Howard Government was proposing in order to limit claims following the Wik decision. There was panic in many government circles as 79% of Australia's land could potentially be claimed by Aborigines if the act was not amended. Since the 1993 Act over 700 claims had been filed (though only 2 decisions had been made).

Several slogans were being used to lobby for the native title legislation. Among the placards observed on the streets were the following: "the shortest distance between two points is an Aboriginal site." Another placard said that the Mabo decision stood for "Money Available Blacks Only." or "Money Available Barristers Only." Such rhetoric, exacerbated the pitch of the political posturing around Native Title.

Over A\$210 million had been spent on the native title process by the government. In one of its briefing papers the government claimed that over 7,000 mining titles had been held up by Aboriginal title claims, resulting in lost investment of over \$10 billion. Furthermore the government was vociferous opposed to the existing nature of the "Right to Negotiate" (RTN) provision in the original act which had slowed 1900 title claims for up to three years.⁵¹

Even Labor leaders had voiced their concerns regarding this clause. Former Labor leader Bill Hayden voiced his opinion as follows:

⁴⁹ Kinhill Engineers. *Olympic Dam Expansion Project Environmental Impact Statement Supplement*. November, 1997, Chapter 6.

⁵⁰ European Parliament Resolution, Brussels Belgium, January 15, 1998.

⁵¹ Parliament of Australia. *Native Title Made Easy*. Canberra: Australia Government Printing Service, January 1998.

It is a glaring defect of the Native Title Act's Right to Negotiate process that one self-appointed claimant, no matter how little status that person has in his or her Aboriginal community, could frustrate a successful outcome to these processes.⁵²

A ten-point plan was proposed by the coalition government. The seventh point of this plan specifically addressed the concerns of the mining companies:

There would be a higher registration test that satisfies Commonwealth conditions for claimants seeking the right to negotiate, so that mining companies would only need to negotiate with claimants whose cases are strong. there would only be one "right to negotiate" per project and the procedures would be streamlined. For mining on other non-exclusive tenures (such as current or former leasehold land and national parks), the right to negotiate would continue to apply unless and until a state-based regime acceptable to the Commonwealth is put in place.⁵³

Business as Usual

Aboriginal consultation at Olympic Dam continued tenuously on both sides but with very little room for further deliberative action. Many of the environmental groups and the dissenting Aboriginal groups moved their campaigns to the Northern Territory, where the Jabiluka mine project was being resurrected. The proximity of the mine to a National Park offered more chances of lobbying success.

For the communities surrounding Olympic Dam it was time to just wait and see. As construction progressed, most of the sand and stones at significant sites were being physically lifted with bulldozers and being stockpiled for reinstatement after the closure of the mine several decades in the future. Relations with WMC had improved somewhat but there was still much room for disagreement. The negotiations, in effect were concerned were being played out on the government's stage. The expansion project proceeded right on target, with an opening date in December 1998.

⁵² Ibid, p. 4.

⁵³ Ibid, p. 2-3.

WMC: Olympic Dam Mine (C)

On July 15, 1998, after six months of vigorous debate the Australian parliament passed the amendments to the Native Title Act which the Howard government had proposed as “The Ten-Point Plan.”

The national industry association for mining, The Mineral Council of Australia commented on the bill as follows:⁵⁴

The minerals industry supports the Government’s Amendment Bill. The Bill incorporates a wide range of amendments developed since 1995 to improve the workability of the Native Title Act and address questions raised by the Wik decision. While the Bill does not reflect all the industry’s concerns the industry believes it is fair to all and provides the best opportunity for all the stakeholders to move forward together.

The Senate significantly amended the Government’s 1997 Bill in the recent Parliamentary debate, particularly the provisions affecting the minerals industry. In passing the amendments Senator Brian Harradine (Independent, Tasmania), whose vote was crucial, voted with the Government to overturn many of the more radical proposals put forward by the Opposition and other non-Government Senators, including conditional validation of leases. But Opposition amendments, supported by Senator Harradine and passed by the Senate, on provisions such as the Right to Negotiate reversed many of the Government’s proposals. The Senate substantially retained the following Government proposals of direct relevance to the minerals industry:

- Validation of recent administrative acts by governments, such as the issue of leases and land titles, which might be invalid as a result of court interpretations of native title;
- Indigenous land use agreements that encourage and protect agreements negotiated between minerals companies and indigenous communities about mining;
- Provisions to enable governments to continue to provide for the planning and development of public infrastructure facilities.

The Senate deleted or amended some important Government proposals. The proposed registration test for the Right to Negotiate was significantly weakened, permitting assertion of a traditional connection as sufficient to register a claim. In addition, when registering a claim the Registrar could be prevented from taking into account factual evidence provided by governments or third parties that might be adverse to the claim. The Right to Negotiate was re-applied to renewals of all minerals leases. The mining industry contended that this would create major doubts for some investors looking at new mining projects, and add new uncertainties for existing projects facing lease renewals.

For States and Territories, provisions for equivalent procedures on pastoral leasehold land were deleted. The Senate also deleted the proposed exemption of approved exploration activity from the Right to Negotiate. Exploration activity with minimal or no impact on native title (activity such as prospecting) should not be constrained by the Right to Negotiate. The proposed exemption required notification and provided for Aboriginal heritage and access conditions to be taken into account.

⁵⁴ The quotation and the description of the Amendment bill are taken from: The Mineral Council of Australia. *Native Title and The Australian Mineral Industry*. Canberra: Mineral Council of Australia, July 31, 1998.

Meanwhile, WMC and the South Australian Chamber of Mines proclaimed three principles for all future Aboriginal negotiations:

- Native Title Exists. Companies will Continue to be parties to native title claims
- Companies will consult with all Native Title claimants only in relation to Native Title issues which have been proved through the legal process. Heritage issues are a different matter dealt with under different legislation.
- Mining companies will continue to consult/negotiate with all those Aboriginal people indicating an interest in relation to Heritage issues.

Outside the modern Australian Parliament building in Canberra, Aboriginal groups from all across the country gathered to show their vehement disapproval of the Native Title Bill. It was a relatively quiet protest. The grassy hill south of the parliament building was emblazoned with flowers and placards in the form of a large “shame” slogan, that could be seen for miles. *Time* magazine used a photograph of the event in their weekly images section. However, most of the Australian public seemed quite satisfied with the outcome.

There were still several legal challenges to the bill pending in the Courts. Nevertheless, for the time being the Aborigines would have to come to terms with the political verdict. The future of the Olympic Dam mine was tentatively secure.

Exhibit 1: The Mining Process at Olympic Dam

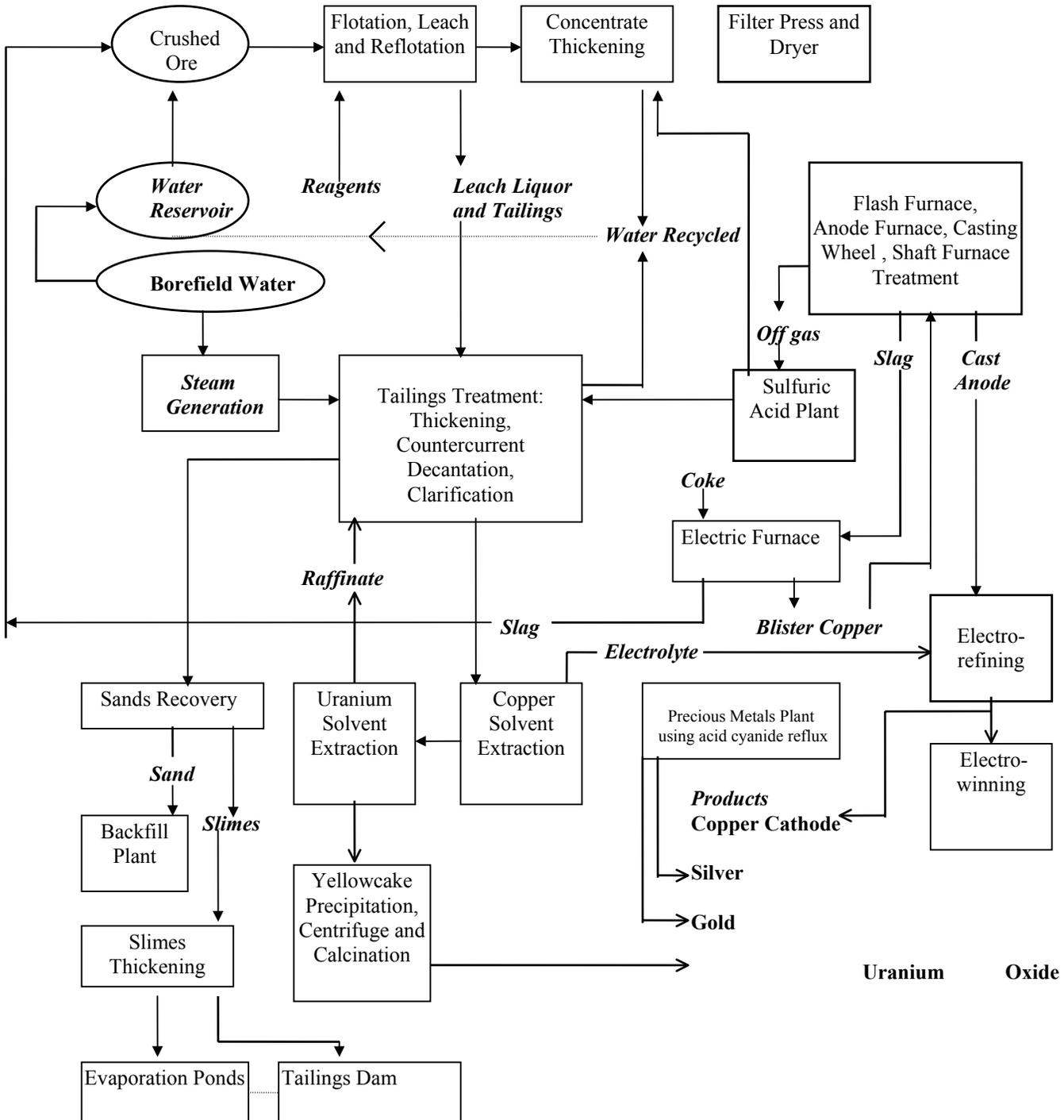


Exhibit 2: Brief Overview of Australian Demographics and Political Structure**(2. 1) Demographics**Source: Australian Bureau of Statistics web site: <http://www.abs.gov.au>

| | |
|---|------------------------------------|
| Total Population | 18,311,000 |
| Population of S. Australia | 1,474,000 (8% of total population) |
| Total Population of Aborigines in Australia | 372,052 (2% of total population) |
| Population of Aborigines in South Australia | 17,239 (1.2% of State population) |

(2.2) Gross Product Data (1996) in millions of A\$ and Employment in thousands:Source: Australian Bureau of Statistics web site: <http://www.abs.gov.au>

| | Gross Product (mil A\$) | Employment (mil) |
|---------------------------------------|--------------------------------|---|
| <i>Gross Domestic Product</i> | 423,392 (100%) | <i>Total industrial employment</i> 5,632 |
| Agriculture, forestry and fishing | 15,873 (3.7) | 348 |
| Mining | 18,668 (4.4) | 81 |
| Manufacturing | 59,184 (14.0) | 960 |
| Electricity, gas and water | 13,707 (3.2) | 73 |
| Construction | 27,147 (6.4) | 289 |
| Wholesale trade | 43,890 (10.4) | 413 |
| Retail trade | 30,657 (7.2) | 908 |
| Accommodation, cafes and restaurants | 8,240 (1.9) | 380 |
| Transport and storage | 25,462 (6.0) | 311 |
| Communication | 15,180 (3.6) | 124 |
| Finance and insurance | 17,572 (4.1) | 284 |
| Property and business services | 34,306 (8.1) | 618 |
| Government administration and defense | 15,393 (3.6) | NA |
| Education | 19,509 (4.6) | private ed., health and comm |
| Health and community services | 23,303 (5.5) | 534 |
| Cultural and recreational services | 8,683 (2.0) | 158 |
| Personal and other services | 7,533 (1.8) | 152 |
| Ownership of dwellings | 41,905 (9.9) | NA |
| Import duties | 5,439 (1.3) | NA |
| Less imputed bank service charge | 8,259 (2.0) | NA |

(2.3) Employment Statistics at the State Level (Percentages)

Source: Australian Bureau of Statistics web site: <http://www.abs.gov.au>

| Industry Sector | Roxby Downs Statistical Division | Northern Statistical Division | South Australia |
|--|---|--|------------------------|
| Agriculture, forestry, fishing | 0.0 | 9.0 | 5.9 |
| Mining | 46.9 | 5.1 | 0.7 |
| Manufacturing | 9.2 | 17.6 | 16.0 |
| Electricity, gas water | 0.0 | 2.8 | 1.3 |
| Construction | 5.9 | 4.9 | 5.4 |
| Wholesale and retail trade | 9.8 | 15.0 | 20.0 |
| Transport and storage | 2.9 | 7.0 | 4.1 |
| Communication | 1.1 | 1.3 | 1.6 |
| Finance, property and business services | 5.9 | 5.7 | 10.6 |
| Public administration and defense | 1.1. | 3.8 | 5.3 |
| Community services | 9.1 | 21.0 | 21.7 |
| Recreation, personal and other services | 8.0 | 6.9 | 7.3 |

(2.4) Increases in GDP and consumption for a typical year of Olympic Dam operation (Millions A\$).

Source: *Olympic Dam Expansion Environmental Impact Statement*, 1997, p. 13-14

| | First phase of expansion | Second phase of expansion |
|------------------------------------|--------------------------|---------------------------|
| SA Increase in GDP | 115 | 138 |
| SA Increase in Consumption | 50 | 48 |
| Australia: Increase in GDP | 340 | 468 |
| Australia: Increase in consumption | 163 | 218 |

(2.5) Mineral Royalty Receipts by Governments (1996)

Source: Australian Bureau of Statistics web site: <http://www.abs.gov.au>

| | |
|-------------------------|----------------------|
| Total | 1,397,660,000 |
| New South Wales | 268,164,000 |
| Victoria | 47,430,000 |
| Queensland | 339,531,000 |
| South Australia | 57,273,000 |
| Western Australia | 383,605,000 |
| Tasmania | 51,639,000 |
| Northern Territory | 22,909,000 |
| Commonwealth Government | 227,109,000 |

(2.6) Australian Political Structure

Political Structure

The constitution of Australia, which became effective in 1901, is based on British parliamentary traditions, and includes elements of the U.S. system. The head of state is the British sovereign, and the head of government is the Australian prime minister, who is responsible to the Australian Parliament. All powers not delegated to the federal government are reserved to the states.

Executive

Formally, executive authority in Australia is vested in the governor-general, who is appointed by the British monarch in consultation with the Australian prime minister. The British monarch is also the royal head of Australia, but has no real power in the government and serves as a symbolic head of state. The governor-general acts only on the advice of the Executive Council, or cabinet, comprising all ministers of state (elected members). Federal policy in practice is determined by the cabinet, which is chaired by the prime minister, who is the head of the majority party in parliament. The ministers are responsible for the individual departments of the federal government, and these departments are administered by permanent civil servants.

Legislature

National legislative power in Australia is vested in a bicameral parliament, made up of a Senate and a House of Representatives. The Senate consists of 76 members (12 from each state and 2 from each territory), popularly elected to six-year terms under a form of proportional representation. According to the Australian constitution, the House should have about twice as many members as the Senate. The number of members from a state is proportional to its population, but must be at least five. In the late 1980s the House had 148 members, popularly elected to a term of up to three years. The prime minister can ask the governor-general to dissolve the House and call new elections at any time. Australia has universal suffrage for all citizens over the age of 18.

Political Parties

There are three major political parties in Australia: the Australian Labor party, the National Party of Australia, and the Liberal Party of Australia. The Labor party, representing the interests of the worker, advocates a broad program of moderate socialization. The trade unions are a controlling factor, for the Labor party is the political wing of the trade union movement. The NCP reflects the outlook of the nonurban population. The Liberal party pursues a liberal national policy and advocates a free enterprise society. The aims of the Liberal party and the NCP ordinarily have much in common, and the two parties usually work in coalition. For practical purposes, Australian politics operates on a two-party system, which results in relative stability of government. However, since 1996, a strong right-wing party, called the One Nation party has gained considerable clout under the leadership of Pauline Hanson.

State / Local Government

A bicameral system of government exists in each state except Queensland, which has only one house. The British sovereign is represented in each state by a governor. Governmental affairs are handled by a cabinet, the head of which is known as the premier. In each Australian state, local government authorities are responsible for traffic and building regulation; maintenance of streets, bridges, local roads, water and sewerage, parks, libraries, and hospitals; and similar functions. Among these authorities are shire councils, borough councils, and town and city councils. Legislation granting power to local authorities exists in each state.

Political Divisions

The Commonwealth of Australia comprises six states and two territories. The states and their capitals are New South Wales (Sydney), Victoria (Melbourne), Queensland (Brisbane), South Australia (Adelaide), Western Australia (Perth), and Tasmania (Hobart). The territories and their chief cities are the Australian Capital Territory (Canberra) and the Northern Territory (Darwin).

(2.7) Details Pertaining to Aboriginal Land Rights Legislation in Australia

In addition to the Land Rights Act of 1973 (as mentioned in the case text), The Northern Territory also has an Aboriginal Sacred Sites Act (originally 1978, revised in 1989).⁵⁵ However, under this act the only land claimable is inalienable Northern Territory land outside town boundaries -- land that no-one else owns or leases, usually semi-arid desert regions. In 1997 almost half of the Northern Territory had either been claimed or is being claimed by its traditional Aboriginal owners. The process is highly tedious and may take decades. However, once a claim is successful, the landowners have the leverage to negotiate with mining companies and ultimately accept or reject mining proposals.

The Pitjantjatjara Land Rights Act was passed by the South Australian parliament in 1981 and gave the Anangu Pitjantjatjara people and provided the Yankunytjatjara people with freehold title to 10% of South Australia. Just South of this region are the Maralinga Lands which were largely contaminated by British nuclear tests in the 1950s. This area was also handed back to the traditional owners in 1984 under the Maralinga Tjaritja Act (accounting for a further 8% of South Australian land). Though 18% may at first seem to be a large number for unequivocal allotment to a relatively small group of people (numbering around 10,000), the quality of the land leaves much to be desired. Under these laws the Aboriginal owners can control access to land (permits for entry are required unlike Native American reservations which have no restrictive entry) and also control liquor consumption. However, if Anangu landowners cannot reach an agreement with mining companies seeking to explore or mine on their land, they cannot veto the mining as their Northern territories cousins can.⁵⁶ Instead an arbitrator is asked to bind the mining company with terms and conditions and ensure that reasonable monetary payments are made.

Outside of the Northern Territory and South Australian, Aboriginal land claims are extremely limited. In Queensland, less than 2% of the state land is Aboriginal land, and the only land that can be claimed under the Aboriginal Land Act of 1991 is land which has been gazetted by the government as eligible for claim (only 5% of the land is claimable). Since the passage of Queensland's Nature Conservation Act (1992), Aboriginal people in the state have very limited claim to state parks.⁵⁷ If they do win a claim they must immediately lease the land back to the government. This is similar to the case with the Federal law on National Parks. However, in this case the Aboriginals are not guaranteed a review of the lease arrangement or a majority on the management board.⁵⁸

In Western Australia, Aboriginal reserves comprise 13% of the state. Of this land about one-third is granted to Aboriginal people under 99-year leases; the other two thirds is controlled by the Aboriginal Planning Authority. Control of mining and payments to communities are a matter of ministerial discretion.

New South Wales passed a Land Rights Act in 1983, transferred freehold title of existing Aboriginal reserves to Aboriginal people and gave them the right to claim a small amount of other land. Aboriginal people also have limited rights over state parks but these rights fall short of genuine control and don't permit Aboriginal people to live inside parks. Land rights in Victoria and Tasmania are extremely limited as is the Aboriginal population.

⁵⁵ This Act established the Aboriginal sacred Sites Protection Authority, which was later replaced by the Aboriginal Areas Protection Authority (AAPA).

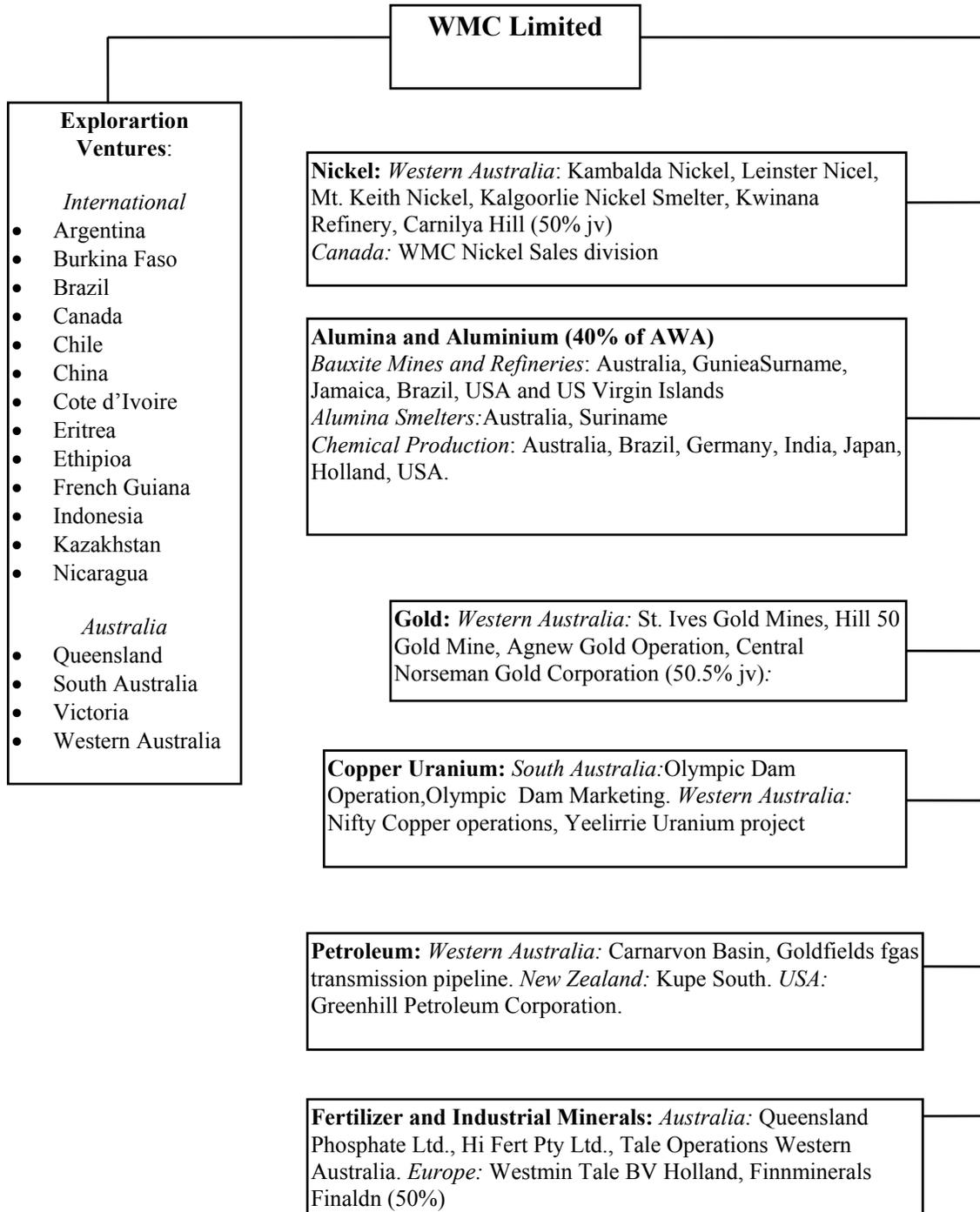
⁵⁶ The veto power has been used by Aboriginal groups in the Northern Territory on a few occasions. The mine at Coronation Hill and one of the ore bodies of the Ranger mine were not mined because of Aboriginal opposition. Keen, Ian. "Aboriginal Beliefs vs. Mining at Coronation Hill: The Containing Force of Traditionalism." *Human Organization*, Vol. 52, No. 4, 1993.

⁵⁷ Queensland is Australia's most conservative state. It is also home to the politician and Member of Parliament Pauline Hansen

⁵⁸ The owners of Uluru -- Kata Tjuta National Park (Ayers Rock and the Olgas) have a majority on the management board and a 99 year lease that is renegotiated every 5 years.

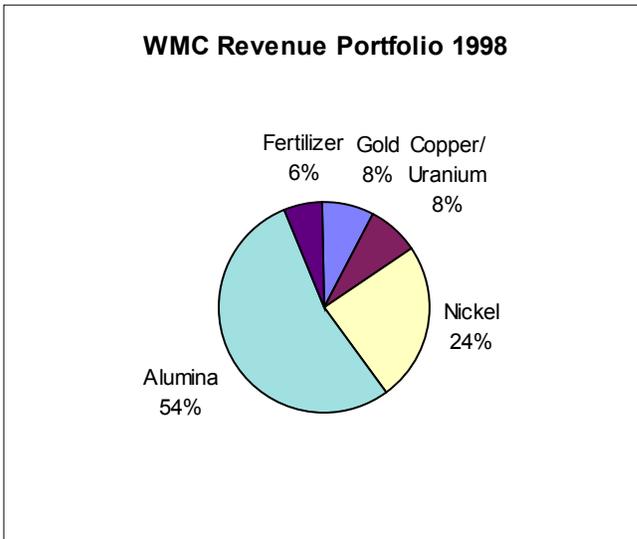
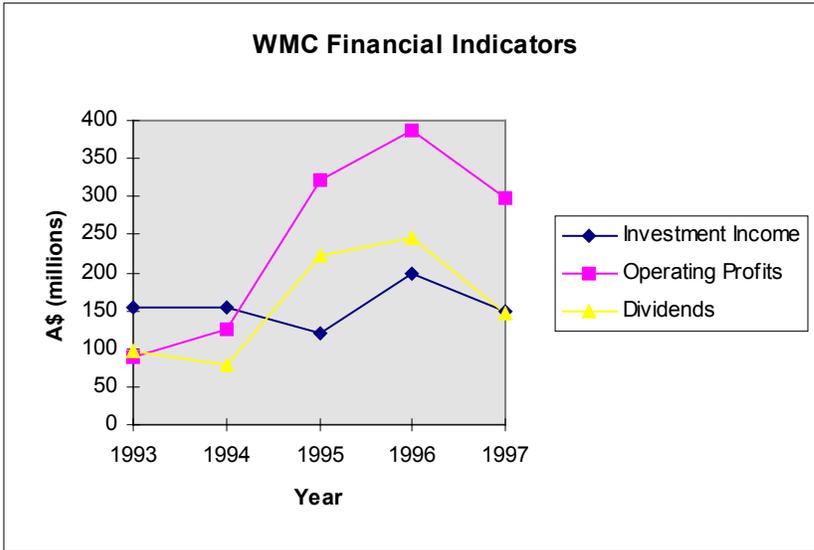
Exhibit 3: WMC Financial Data and Business Structure
 (Source: WMC Annual Reports and Web Site: <http://www.wmc.com.au>)

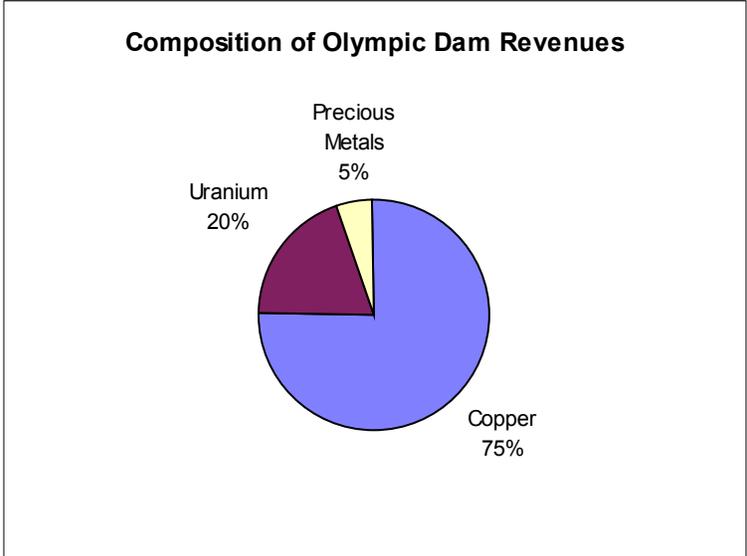
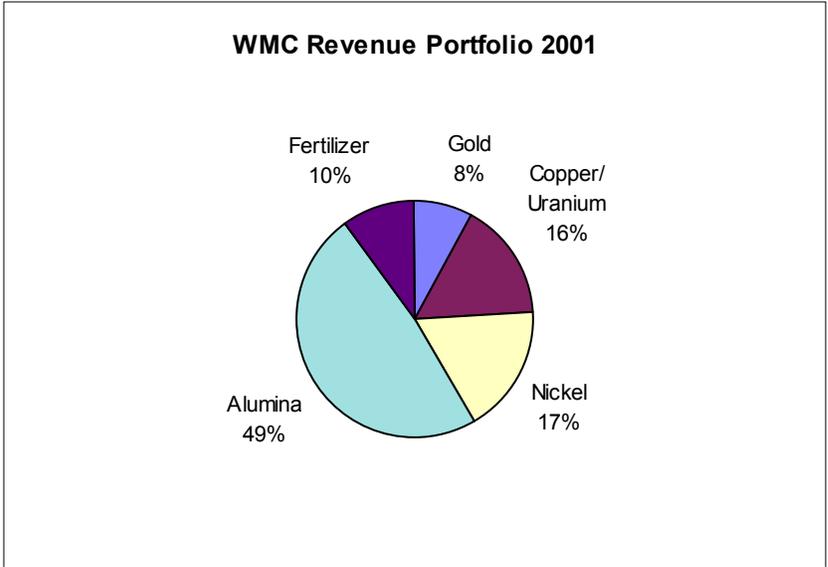
(3.1) WMC Product Divisions and Operations



(3.2) WMC 5-year Sales Revenue (millions A\$)

| 1993 | 1994 | 1995 | 1996 | 1997 |
|--------|--------|--------|--------|--------|
| 1328.7 | 1500.5 | 2052.8 | 2349.6 | 2173.1 |



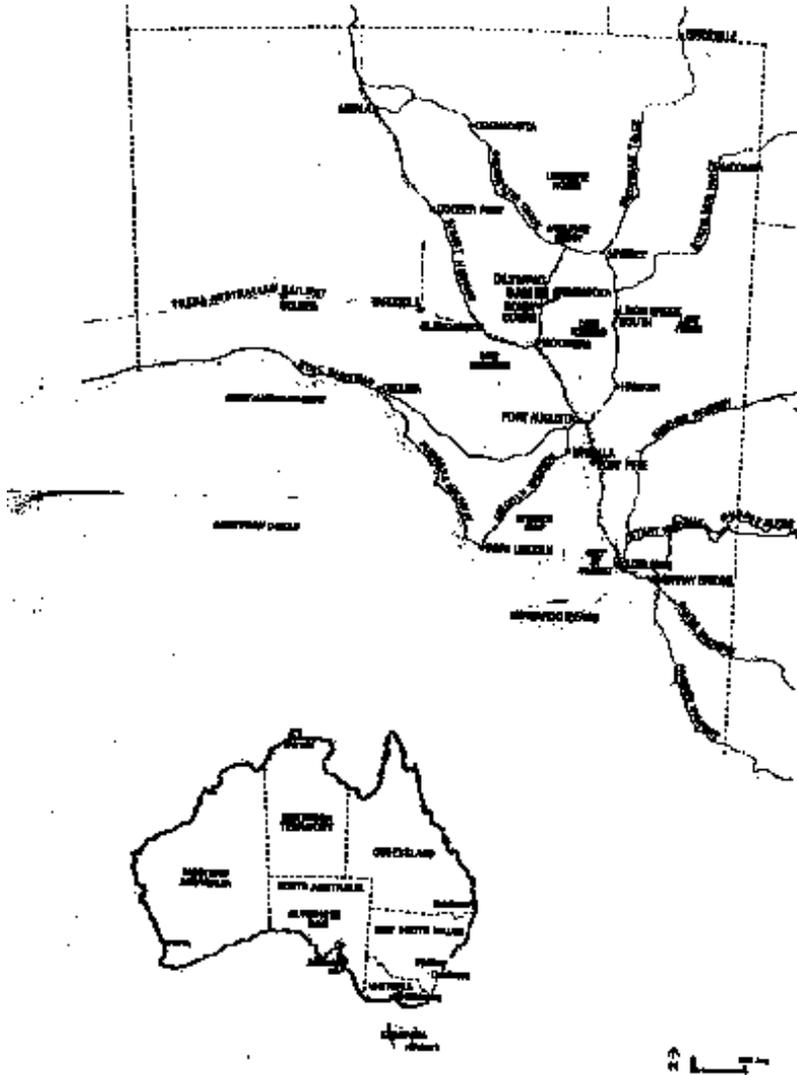


(3.3) WMC's Uranium Sales Plan

| | 1997 | 2000 |
|---------------|------|------|
| Japan | 16% | 31% |
| Europe | 47% | 35% |
| North America | 24% | 29% |
| Korea | 14% | 4% |

Exhibit 4: Regional Map of Olympic Dam Mine Site and Aboriginal Territorial Claims

(4.1): Regional Map



(4.2): Aboriginal Territory and Migration Patterns

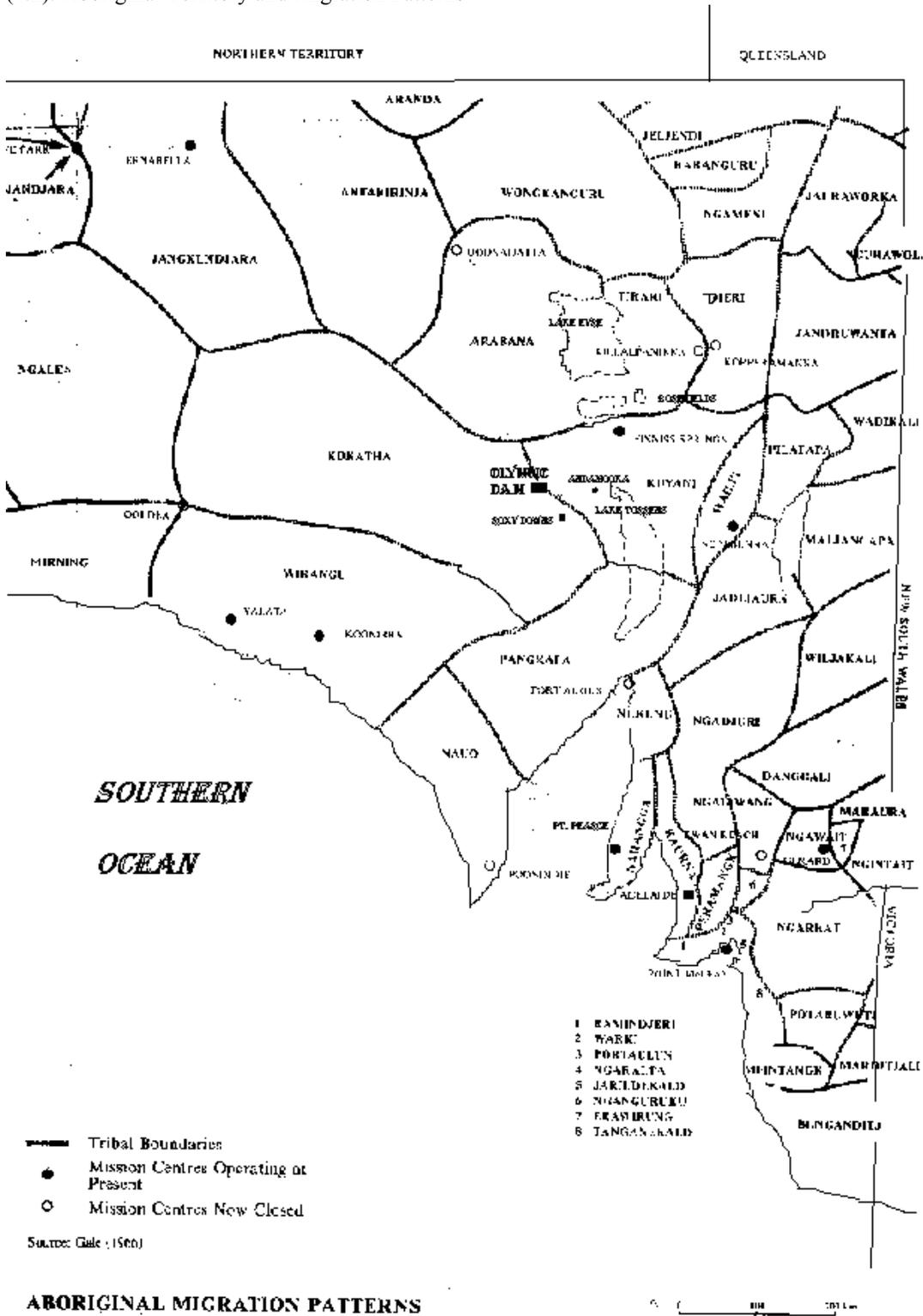
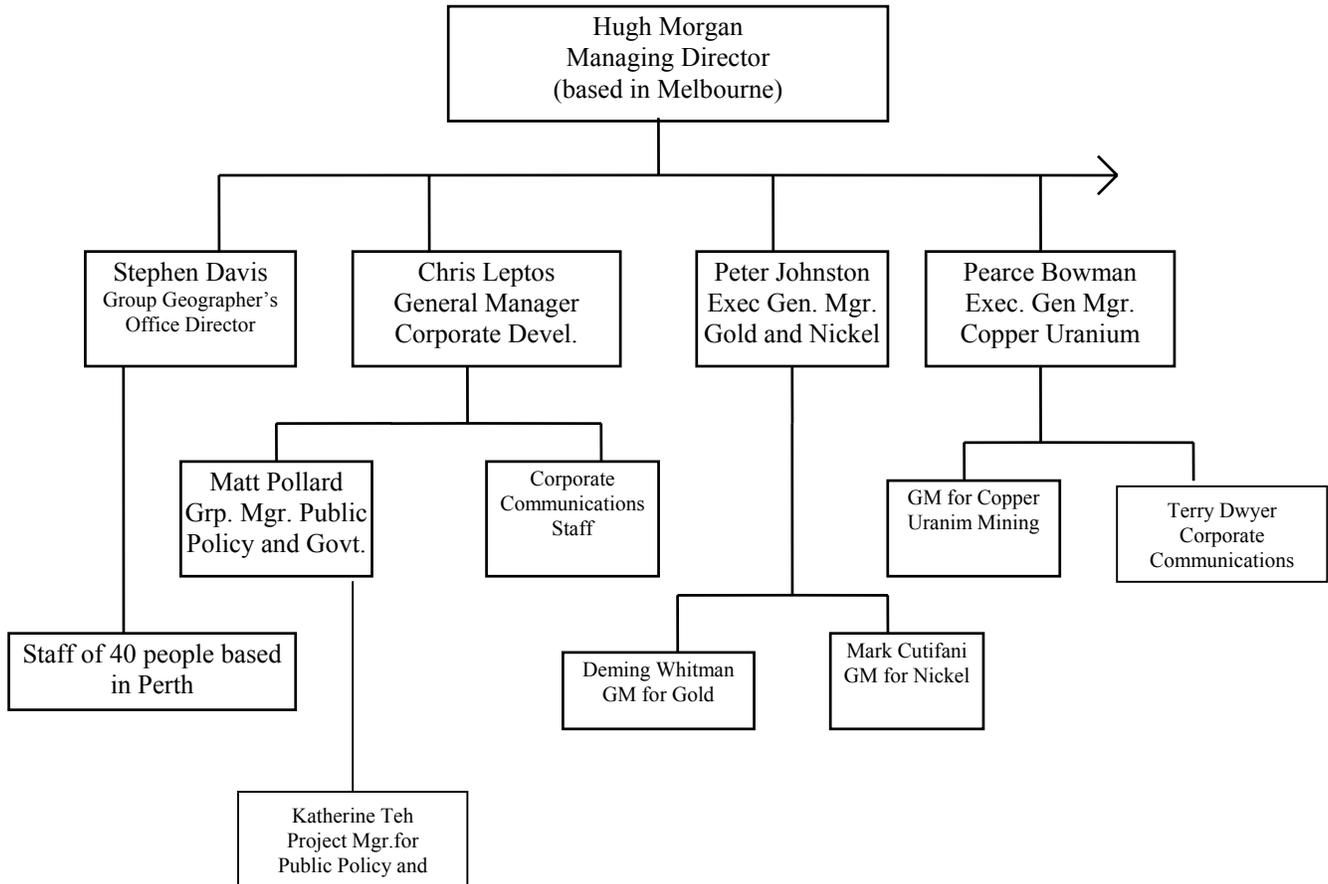
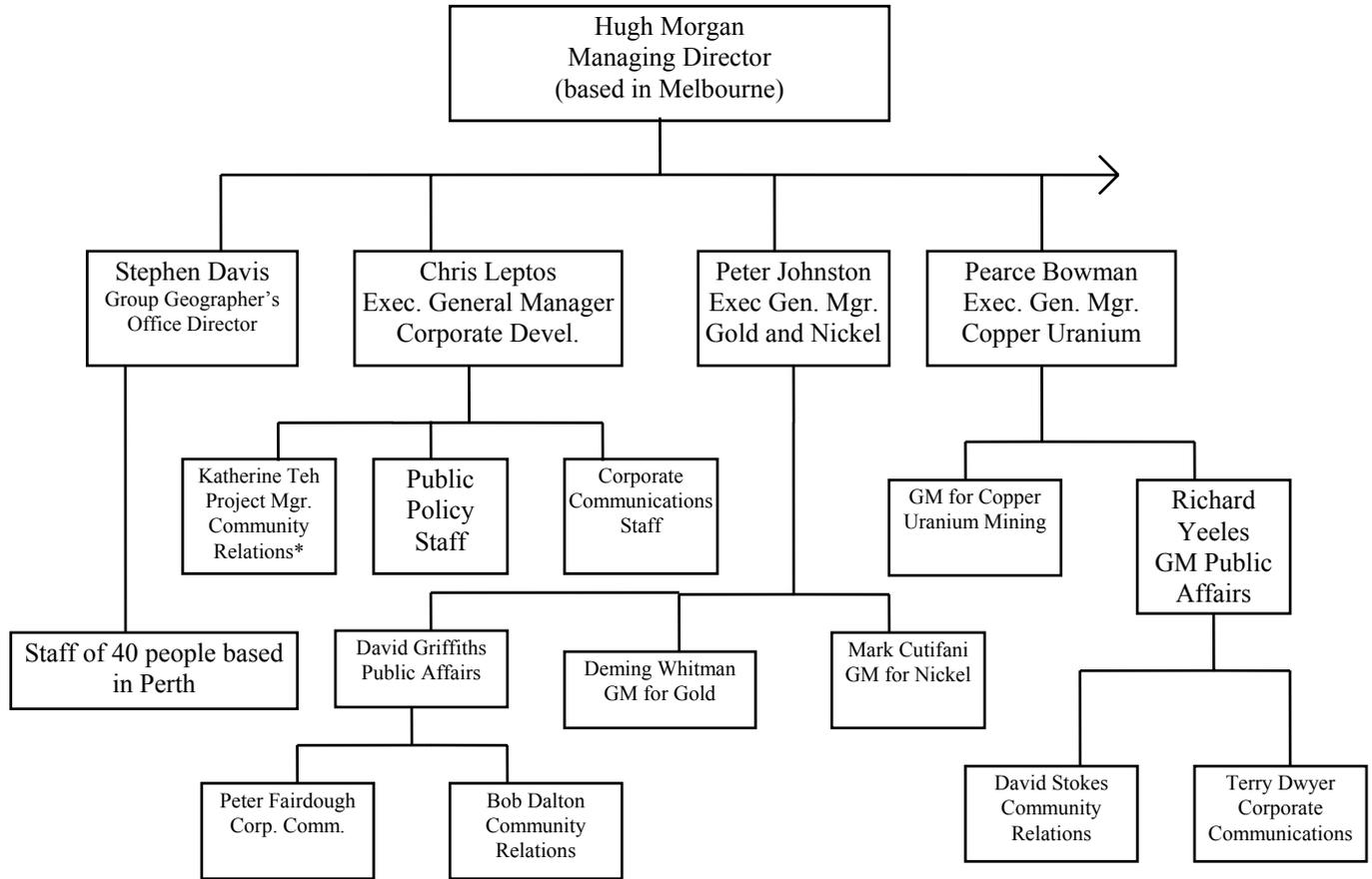


Exhibit 5: Organizational Charts for WMC Community Relations Staff

(5.1) Organizational Chart for Community Relations Hierarchy before 1996 changes

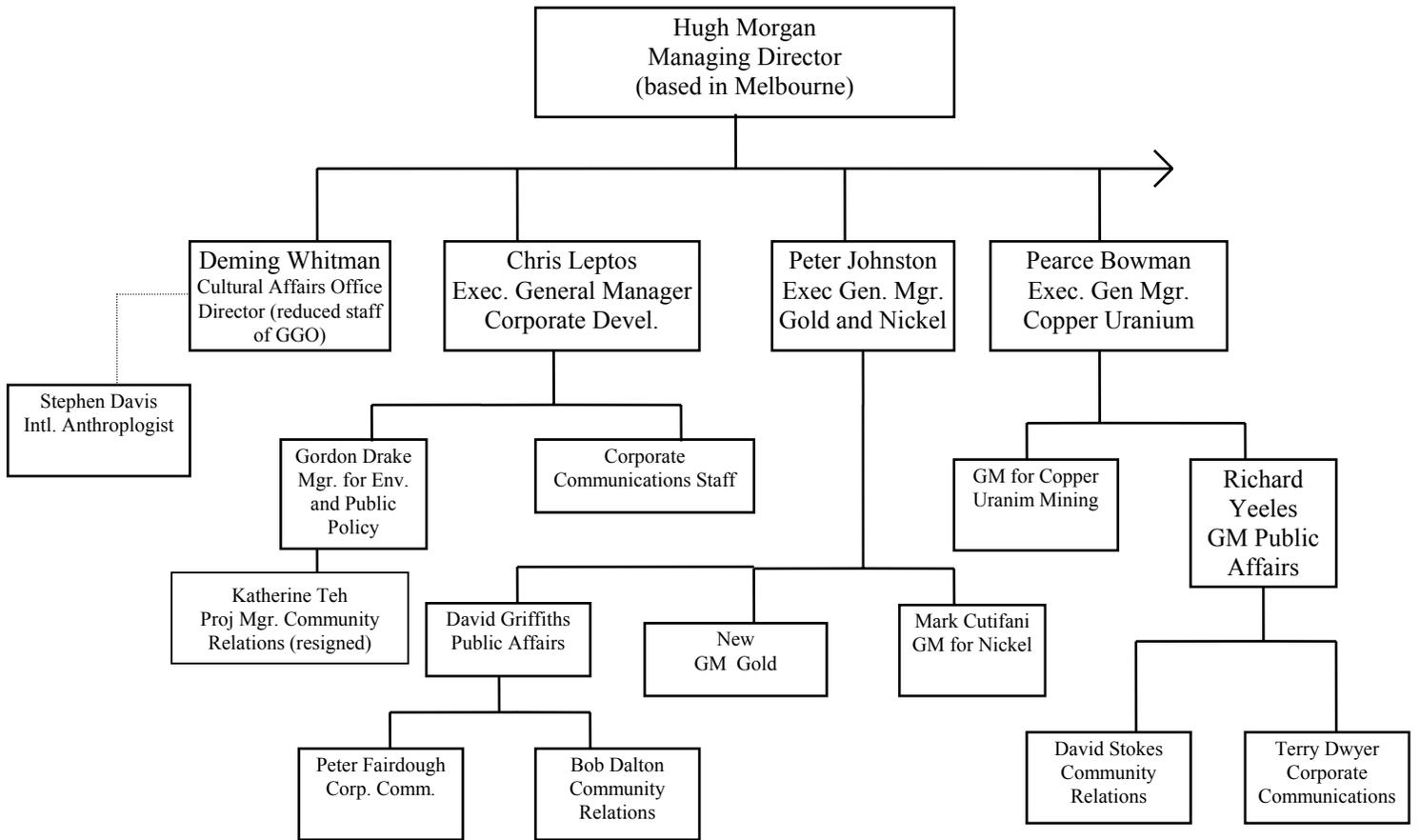


(5.2) Organizational Chart for Community Relations Hierarchy for WMC-operated Mining Divisions after 1996 changes



*Also reported to Communications Group Manager

(5.3) Organizational Chart for Community Relations Hierarchy in WMC-operated Mining Divisions after 1997 changes



(5.4) Organizational Chart for Community Relations Hierarchy in WMC-operated Mining Divisions after 1998 changes

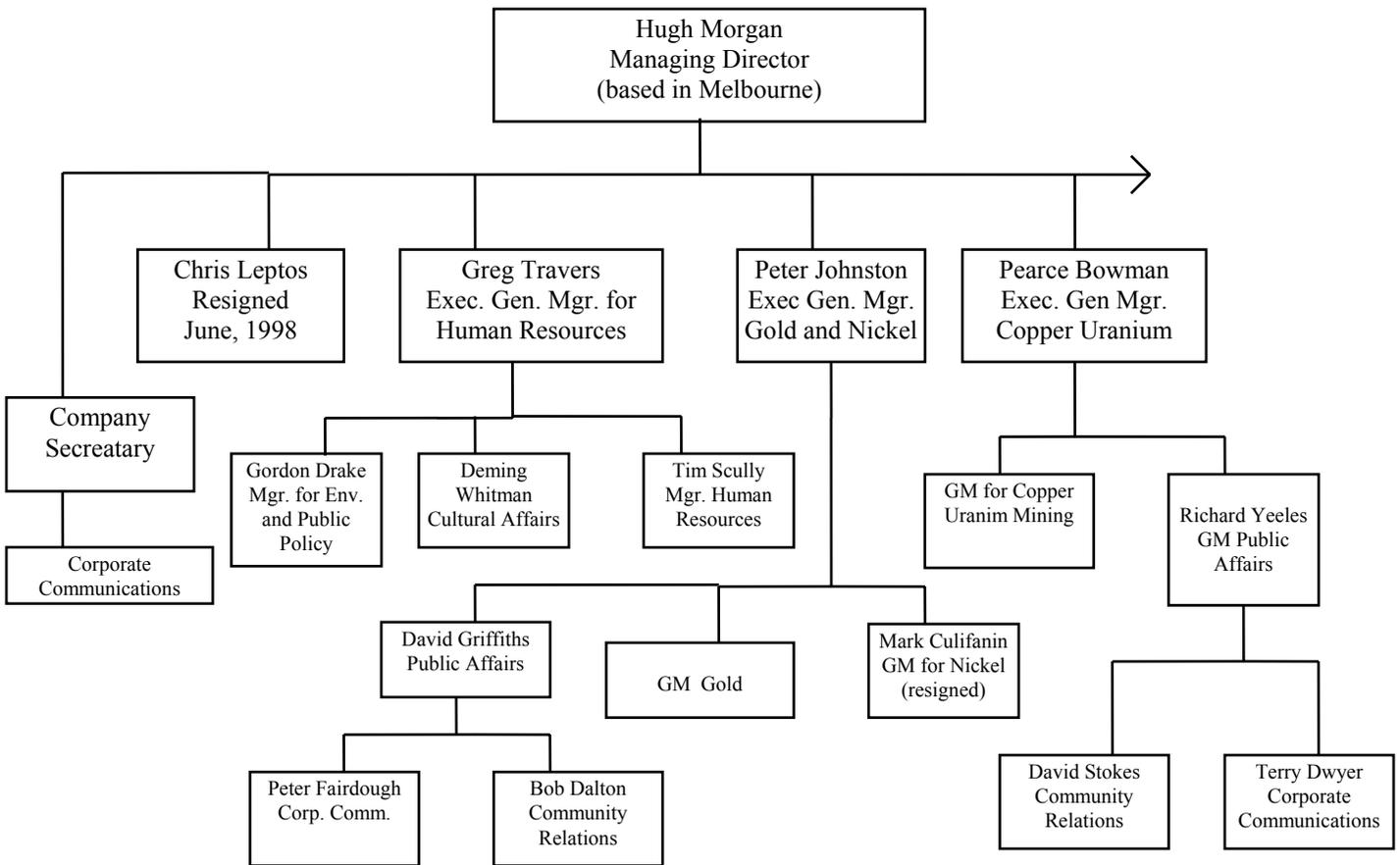


Exhibit 6: WMC Policies on Health & Safety, Environment and Indigenous Peoples

(6.1) Health and Safety Policy (1996)

The prime objective of WMC is to develop the culture and processes to ensure the safety and health of all employees, contractors, customers and the communities associated with our worldwide operations.

BELIEFS

- No business objective will take priority over safety and health.
- All incidents and injuries are preventable on and off the job.
- Accountability for providing a safe work environment rests with every individual.
- All individuals have the responsibility, and accountability, to identify and eliminate or manage risks associated with their workplace.
- Legal obligations will be the minimum requirements for our safety and health standards.
- Individuals will be trained and equipped to have the skills and facilities to ensure an incident free workplace.

(6.2) Environment Policy (1996)

The Company is committed to achieving compatibility between economic development and the maintenance of the environment.

It therefore seeks to ensure that, throughout all phases of its activities, WMC personnel and contractors give proper consideration to the care of the flora, fauna, air, land and water, and to the community health and heritage which may be affected by those activities.

To fulfill this commitment, the Company will observe all environmental laws and, consistent with the principles of sustainable development, will:

- Progressively establish and maintain company-wide environmental standards for our operations throughout the world.
- Integrate environmental factors into planning and operational decisions and processes.
- Assess the potential environmental effects of our activities, and regularly monitor and audit our environmental performance.
- Continually improve our environmental performance, including reducing the effect of emissions, developing opportunities for recycling, and more efficiently using energy, water and other resources.
- Rehabilitate the environment affected by our activities.
- Conserve important populations of flora and fauna that may be affected by our activities.
- Promote environmental awareness among Company personnel and contractors to increase understanding of environmental matters.

(6.3) Indigenous Peoples Policy (1996)

WMC is committed to developing relationships of mutual understanding and respect with the indigenous peoples of the areas in which we operate or propose to operate.

To fulfill this commitment, the Company will:

- Establish and maintain effective, positive and frequent communication with indigenous groups.
- Recognize the desire of indigenous peoples to fulfill their responsibilities within their traditional culture.
- Seek to identify all indigenous interests in the area within which the Company is or intends to operate, define the basis for those interests whether derived from cultural traditions, historical association, occupation, social or economic need, and deal with those interests in accordance with the relevant government policy.
- Recognize and observe all state, provincial, and federal laws relevant to indigenous and cultural matters.
- Formulate and implement for appropriate Company personnel, an indigenous awareness program, pertinent to the local situation, which will engender the appropriate understanding, sensitivity and respect towards the local indigenous peoples.
- Wherever reasonable and appropriate, provide local indigenous groups with the opportunity to participate directly or indirectly in employment opportunities.
- Taking into account local conditions, provide the opportunity for qualified local indigenous businesses to tender for the supply of goods and services necessary for the Company's local activities.

Exhibit 7: Australian Conservation Foundation Aboriginal Policy

Policy Statement No.48: ABORIGINAL & TORRES STRAIT ISLANDER LAND AND RIGHTS POLICY

1. Introduction

The Australian Conservation Foundation (ACF) recognizes:

- (a) that Aboriginal peoples, mentioned in this policy, refers to Aboriginal and Torres Strait Islander people in Australia today;
- (b) that Aboriginal people are the original inhabitants of Australia and therefore, the doctrine of Terra Nullius is a legal fiction;
- (c) that Aboriginal people never voluntarily relinquished their sovereignty over Australia;
- (d) that, as a result of (c), the non-Aboriginal occupation of Australia amounts to an illegal dispossession of Aboriginal people for which they should be compensated on fair and just terms and available lands returned;
- (e) that despite the 1967 Referendum, and the mandate given to the Commonwealth Government by the Australian people to legislate on the behalf of Aboriginal people, Aboriginal people remain the most economically, socially and politically disadvantaged people in Australia;
- (f) that this policy is not restricted to Aboriginal people who live in remote areas and are covered by Land Rights legislation. It includes Aboriginal people who live in rural and urban situations;
- (g) that Aboriginal people have the right of self-determination.

2. Policy

2.1 Land Ownership

ACF supports Aboriginal ownership, occupation and management of areas of major cultural significance. This may include unalienated crown land, national parks, marine parks, wilderness and other areas managed as reserves throughout Australia.

ACF supports the conversion to Aboriginal title via a land claim or other appropriate process, of lands acquired by Aboriginal interests.

That with respect to Aboriginal ownership of national parks, marine parks, wilderness and other areas managed as conservation reserves, the ACF supports the use of management arrangements similar to those in place for Commonwealth managed national parks in the Northern Territory, including the provision for broad community input into plans of management and the inclusion of conservation interests on Boards of Management which will have as its members a majority of Aboriginal people.

ACF believes that such lands should be held under inalienable freehold title. Other Aboriginal lands should similarly be held under inalienable freehold title wherever possible.

ACF would support fair and just compensation by the return of land to Aboriginal people. Accordingly, ACF supports the enactment of National Land Rights legislation that uses the Northern Territory Act as its baseline.

2.2 Hunting, Fishing and Gathering Rights

ACF supports the continued right of Aboriginal and Torres Strait Islander peoples to hunt, fish and gather food for subsistence or cultural purposes, and that where these activities take place in national parks or to other areas designated for conservation purposes these be in accordance with appropriate management strategies. ACF does not support the traditional use of endangered species in the exceptional circumstances where it is proven that such use is contributing to the decline of the species.

2.3 Consultation Regarding Lands for Conservation Purposes

ACF supports the on-going process of consultation with Aboriginal people about the identification, declaration and management of land for nature conservation purposes.

Such a consultation process should involve dialogue between Aboriginal and non-Aboriginal people to promote a clearer understanding of each other's perspective on land management issues and notes the need for urgent consultation given the rapid alienation of Crown Land for inappropriate for inappropriate development.

2.4 Funding

ACF supports the provision of Commonwealth and State Government funding where necessary to allow Aboriginal people to own, occupy and manage their land in a culturally appropriate and ecologically sustainable manner.

2.5 Aboriginal Autonomy

ACF supports the establishment of management structures for Aboriginal land that meet Aboriginal wishes and which provide self-determination for Aboriginal land-holders.

2.6 Environmental Protection

ACF believes that all land, whether in public or private ownership, should be managed according to ecologically sustainable principles.

With regard to land use practices or development on Aboriginal land, ACF supports Aboriginal owners/managers adopting principles of ecological sustainability without unreasonably restraining Aboriginal owners/managers use of their land.

ACF believes that Aboriginal people should be encouraged to take a major role in the research, monitoring and protection of indigenous species, particularly those which are rare or endangered or in rapid decline. Aboriginal people have a role to play in the control and management of feral animal species and exotic flora, and in industries based on use of such species.

2.7 Environmental Impact

In common with practices elsewhere in Australia, major developments on Aboriginal land, including applications for mineral exploration and mining should be subject to a public environmental impact process.

2.8 Education, Training and Information

ACF recognizes that Aboriginal people have land management skills, knowledge and technologies that are of use to all land managers. Dialogue needs to be facilitated between Aboriginal and non-Aboriginal people to assist in the two way exchange of land management skills. ACF supports a substantial expansion

of funding for the training of Aboriginal people in land management and environmental skills and for the provision of information on environmental problems to Aboriginal communities.

In addition, ACF supports the establishment of an Aboriginal land management service to provide employment to Aboriginal people with such skills and to provide on ground support services to Aboriginal people in identifying and solving environmental problems. These initiatives should be developed in a manner suitable to Aboriginal groups and communities.

2.9 Developments on Aboriginal Land

ACF supports the right of Aboriginal people to control development on their land, however ACF reaffirms that all development should be ecologically sustainable, and also reaffirms its opposition to exploration and mining in national parks and other areas of high conservation value.

ACF supports the right of governments to disallow any development on Aboriginal land if it believes it is contrary to the national interest for such development to proceed, because of its impact on the environment.

ACF will endeavour to negotiate with Aboriginal people in cases where development decision are considered environmentally inappropriate and supports the right of Aboriginal people to be provided with full and comprehensive information about the environmental consequences of activities relating to their land.

2.10 Degraded Land

ACF recognizes that land degradation problems on Aboriginal land are mainly the result of past non-Aboriginal actions, such as pastoralism and the introduction of exotic species. Wherever this is the case, the cost of rectifying these problems should be borne by the Australian community as a whole, or where appropriate funding should be sought from past occupiers.

ACF believes that selection criteria used for general land management funding schemes such as Landcare, should recognize the cultural context and special needs of Aboriginal people.

2.11 Promotion of the Policy

ACF will actively promote the participation of Aboriginal people in all ACF and environment forums, consultancies and all relevant national and international forums.

Adopted December 1991

Supplement (USE FOR TEACHING PURPOSES)

- Qualitative Stakeholder Analysis for Aboriginal/Mining Negotiations performed by the Commonwealth Scientific Industrial Research Organization.

Table 1: Understanding the Mining Industry / Aboriginal Context

| | Aboriginal Perspectives | Mining Industry Perspectives |
|----------------------------|---|--|
| General | <ul style="list-style-type: none"> • Some acknowledged positive changes, and expressed optimism. Other less confident, continue to hold negative views. • The majority not opposed to mining. General desire to establish positive relations. Perception in established mining areas that few benefits have flowed to Aboriginal people. • Company size not really important -- company philosophy determines whether or not consultation occurs. • Communities want greater consultation with mining companies | <ul style="list-style-type: none"> • Acknowledgment of past issues. Range of current approaches with mixed successes. Some optimism; other less confident due to increasing political complexity • Criticism that attempts are sometimes made to cast industry in the role of social welfare providers. • Personal relationships with a few people preferred. |
| Land issues / Sacred Sites | <ul style="list-style-type: none"> • Want to be recognized as legitimate stakeholders with legitimate rights. • In reality, few mining applications refused due to sacred sites. • Perception that the mining industry does not genuinely accept the legitimacy of land rights. | <ul style="list-style-type: none"> • Suspicion that sacred sites are “created” to thwart mining. May be associated with inequality of negotiating power. |
| Timing / decision-making | <ul style="list-style-type: none"> • Increasing pressure on Aboriginal groups to understand and respond to multiple external demands. • Language difficulties make it hard to respond in a short time (this problem is less significant in South Australia) | <ul style="list-style-type: none"> • Concern over increasing uncertainty exacerbated by increasing involvement of third parties. Triangular consultation increases prospect of miscommunication • Aboriginal politics, group rivalry and changing social structure impeding communications and decision-making. |

Table 2: Perceptions and Requirements of the Negotiation Process

| | |
|---------------------|--|
| General Impressions | <ul style="list-style-type: none"> • The disparate beliefs and cultures of the mining industry and Aboriginal people is at the root of communication failures. • Inconsistencies in attitude and action perceived between management, field operatives and contractors. • Positive references made to the oil industry’s successful “quiet and genuine” site avoidance approach” during the 1970’s and 1980s • Both parties attributed blame to the other regarding time delays and lack of feedback. • Some said mining companies should apply the same rigor to their |
|---------------------|--|

| | |
|----------------------|--|
| | social investigations as they do to their technical investigations. |
| Preferred Approaches | <ul style="list-style-type: none"> • Mining company communicators held in high regard showed “respect” for Aboriginal law and culture • Successful communication requires patient and thorough consultation by mining companies. Agreements should not be made with one group at the expense of others’ during ownership disputes. • Mining companies should talk to traditional owners of the land, while being careful not to exacerbate any Aboriginal conflicts over boundaries. • At some point, the whole community should be consulted to achieve proper consensus for lasting decisions. |
| Future outlook | <ul style="list-style-type: none"> • While it may simplify communication for the mining industry and high profile Aboriginal bodies, presently there is mixed confidence in the notion of a “peak body” representing the community’s interests. • |

Table 3: Key Principles Emerging from the Analysis

| | |
|---------------------------|---|
| General Principles | <ul style="list-style-type: none"> • Apply the same principles as would occur for a non-Aboriginal community. eg. do not assume one person could speak for the entire community. • Involve all affected communities. “Solutions” should be equitable. i.e. not have gains for one group traded against another. • Needs, history, resources and experiences vary for both mining companies and communities. There is no checklist available but a number of generic principles to observe. • Mining industry activities can have substantial cumulative impacts. Must be prepared to discuss and negotiate these impacts. |
| Justice and communication | <ul style="list-style-type: none"> • Trust, respect, listening and communication • Do not exacerbate power struggles within communities • Extensive and open community consultation essential as widespread rights exist • Mining industry expressed frustration at pace, but acknowledged good consultation provided longer term certainty. |
| Applying the principles | <ul style="list-style-type: none"> • Industry must use people with appropriate cultural and communication skills • Dialogue with the community should be ongoing to both give and receive feedback. • A communication framework is outlined which should apply to exploration and mining activities |