



The Argyle Participation Agreement

Introduction

The Indigenous Land Use Agreement (ILUA) and Argyle Management Plan Agreement (AMPA) together are arguably the most comprehensive arrangements ever made between a resource company and traditional owners negotiated in Australia. They are the result of one of the most comprehensive agreement processes undertaken with traditional owners. The unique structure of the agreements reflects the aspirations of both Argyle Diamond Mine and the traditional owners that the agreements provide a firm base for an enduring partnership and sustainable prosperity for traditional owners during the life of the Argyle mine and once mining is completed.¹

The Argyle Diamond Mine Participation Agreement (the Argyle Agreement) is a registered Indigenous Land Use Agreement (ILUA) between Traditional Owners of the East Kimberley region of Western Australia, the Kimberley Land Council and Argyle Diamond Mine (Argyle Diamonds).² The ILUA area covers 797.5 square kilometres and is located 100 kilometres south west of Kununurra. It is situated in the Shire of Wyndham-East Kimberley and the Wunan Regional Council.³ The Indigenous communities affected by the mining include those at Warmun; Doon Doon; Glen Hill; Bow River; and Crocodile Hole. The ILUA area contains a special lease for grazing purposes as well as the mining tenements.

The ILUA was registered with the National Native Title Tribunal on 8 April 2005. It was the result of 3 years of negotiation and replaced a 'Good Neighbour Agreement' that had existed since the 1980s. The ILUA will be relevant until the closure of the Argyle Diamond Mine in approximately 2018.

An ILUA is a voluntary agreement entered in good faith by all parties. ILUAs are the product of agreements between traditional owners and governments or commercial operators or both simultaneously. Participating parties have particular interests in an area of land and a desire to work together outside of the courts to achieve practical certainty about rights and future acts on land.⁴

1 Gelganyem Trust and Kilkayi Trust, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 17 November 2006, p3.

2 The Argyle Diamond Mine is owned by the Rio Tinto Group.

3 ATNS Argyle Agreements Database; available online at www.atns.net.au.

4 National Native Title Tribunal, *What is an Indigenous Land Use Agreement (ILUA)?*, Fact Sheet, September 2006.



This case study documents the commitment of the participants in the Argyle Agreement to understand differing cultures and systems of law. Ultimately, the Argyle Agreement achieved the required technical outcomes, but according to both Indigenous and non-Indigenous parties, it achieved more. It is a tangible embodiment of practical reconciliation between Indigenous land owners and non-Indigenous industry representatives. The Argyle Agreement provides a mechanism for recognising, accepting and incorporating two worlds.

Background

The Argyle Diamond Mine covers two significant story places for the traditional owners of this region; Barramundi Gap and Devil Devil Springs. The traditional owners have a responsibility to protect and maintain these sites of significance and ceremony. It is the responsibility of the Miriuwung and Gidja people, particularly the women, to protect their ancestor the Barramundi, who will in turn take care of them. The Ngarranggarni (sometimes referred to as the Dreaming) is a living belief system that establishes continuity between past, present and future. It continues to inform the day to day activity of the Miriuwung and Gidja peoples and their relationships to country.⁵ These are their Dreaming stories.

We grew them diamonds up⁶

Jaliwang Ngarranggarni

Barramundi Dreaming Story (Miriuwung)

A barramundi lives in the river at Tharram (Bandicoot Bar). One day a crane fishing for food sees the barramundi and spears it with her beak, but is unable to catch it as the barramundi swims quickly away.

The barramundi travels up the Dunham River, past where the Worrworum community is today, and on to Glen Hill where she scrapes off some of her scales as she passes through. Today, these scales can be seen near the Glen Hill community's first gate as white rock on the hillside, most clearly visible in the late afternoon.

Here the barramundi is spotted by some women who try to catch her using nets made of rolled Spinifex grass (a traditional Miriuwung fishing method known as Gelganyem). But the barramundi flicks her tail and jumps over the trap. She escapes between the two hills of Barramundi Gap and heads down to Bow River, where she comes to rest as a white rock. This rock, which can still be seen today, is quite different from all the others at Bow River.

Daiwul Ngarranggarni

Barramundi Dreaming Story (Gidja)

A barramundi is being chased by a group of old women and swims into a cave near the area now known as Barramundi Gap. As she enters the cave the women prepare to catch her with nets made from rolled Spinifex grass (a traditional fishing method known as Kilkayi).

The barramundi realises she is trapped in the shallow, muddy water of the cave entrance and tries to escape by swimming to the other end, toward Nunbung

5 Argyle Diamonds, *The Argyle Participation Agreement: Breaking New Ground*, Information Brochure, p7.

6 Peggy Patrick, as cited by Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006.



(Wesley Spring). But she cannot find a way out and returns to the entrance of the cave, where the old women are waiting with their nets. She swims towards the women and jumps over them, shedding her scales as she jumps and leaving them behind in the shallow water. The scales become the diamonds of all colours that are found there today.

The barramundi then jumps through a gap in the rocks, landing in the deep, clean water of Kowinji, or Cattle Creek. As the barramundi dives she turns into a white stone. Three of the old women who have chased the fish to Cattle Creek peer into the water to look for her and they too turn into stone, forever becoming part of the landscape. Today there are three stone formations overlooking the creek.

According to Gidja people, barramundi are not found in the area today because of the presence of the Ngarranggarni barramundi in this place.

Strategic preparations for negotiations

Argyle Diamonds have been mining in the East Kimberley region of Western Australia for the past 20 years. The Argyle lease occupies the traditional country of the Mirriuwung and Gidja peoples as well the Malignin and Woolah peoples. Ethnographic studies confirm that those with particular rights and interests in the area are people with connections to areas known as Mandangala, Tiltuwam, Yunurr, Neminuwarlin, Balabur, Bilbidjing, and Dundun.⁷ There is a history of engagement between the traditional owners and the mining company. According to the anthropologist contracted by Argyle Diamonds, the history is as follows:

Aboriginal people had been involved in a process of negotiation with the mining company in ways that were mostly informal, mostly unrecognised, unarticulated negotiations and engagements.⁸

In 2001, Argyle Diamonds and the traditional owners came to the table to renegotiate and renew the relationship between the traditional owners and the mining company. Neighbouring traditional owner groups were included in negotiations for the first time. This process provided an opportunity for a new agreement, beyond the limits of the first 'good neighbour' arrangements.

The preparations for negotiation included a process for recognition and co-operation between two systems of law, Western law and Indigenous law. The mediation and negotiation processes guided by the *Native Title Act 1983* (Cth) and Indigenous Land Use Agreement regulations met the requirements of Western law, while the conduct of particular ceremonies at the mine site met the responsibilities of Indigenous traditional law.

In the early meetings the traditional owners made the point: 'we are not moving on with your system until you hear our grief, pain, distress and hurt from the past'. According to meeting participants, many of the early meetings had no formal

7 Groups of Indigenous people with very particular connections to the country of the Argyle lease area, through tradition, kin, and descent. Members of these groups belong to Gidja, Mirriuwung, Malignin, and Woolah peoples. Argyle Diamonds, *The Argyle Participation Agreement: Breaking New Ground*, Information Brochure, p15.

8 Doohan, K., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 17 October 2006.



agenda and Argyle Diamonds personnel made a point of listening to the traditional owners and apologising for the past.⁹

The parties to negotiations recognised that there were implicit power imbalances between the mining interests and the traditional owner interests. Argyle Diamonds endeavoured to redress the imbalance by ensuring that communication was tailored to the needs of the traditional owners. Traditional owners were taken on tours of the mine, including the underground mine. Different visual strategies were developed to assist with explanations of the impact of the mining activity on their country. Translators were used throughout to ensure that everyone could follow and participate in the negotiations. All key documents were prepared in a format that included plain English interpretations.

The traditional owners also recognised that representatives of Argyle Diamonds required interpretations of the traditional processes of agreement making and traditional law of the region. In a reciprocal process the traditional owners provide the mining company representatives with information about their laws and customs. They also performed ceremonies to ensure that the mining operation could be conducted free from danger and interruption by the local Dreaming beings and spirits of the 'old people'.¹⁰

Building relationships with the community

The first step towards developing the Argyle Agreement was to rebuild relationships and right the wrongs of the past 20 years. Initially there was a Memorandum of Understanding (MoU) that formalised the relationship between Argyle Diamonds and the Kimberley Land Council on behalf of the traditional owners. The MoU provided the foundation for the negotiation process and a significant component was about the development of trust with traditional owners. The MoU set out the substantive issues to be negotiated; a structure and timetable for the negotiation; principles and objectives; resources and funding; and the legal representation arrangements for a new formal and binding agreement with traditional owners.¹¹

The second step was a formal apology from Argyle Diamonds to the traditional owners for past wrongs. Soon after, in May 2003 the traditional owners gave their approval to the underground mine. At this point a Framework Agreement was developed. The Framework Agreement was an extension of the MoU. It outlined the agreement principles and traditional owner processes for decision making.¹²

Negotiating with the right people

The previous Good Neighbour Agreement was primarily with one family group and this effectively disenfranchised other traditional owners who had responsibilities over the mining region. Argyle Diamonds had no real relationship with the Kimberley Land Council and although they had a relationship with some of the

9 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006.

10 Doohan, K., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 17 October 2006.

11 Argyle Diamonds, *The Argyle Participation Agreement: Breaking New Ground*, Information Brochure, p17.

12 Freehills, *Argyle Diamond Mine Indigenous Land Use Agreement registered*, Article, 10 June 2005.



traditional owners through the Good Neighbour Agreement.¹³ The negotiation of the new agreement became a process of restoring these relationships, not only between the mining company and the original Good Neighbour signatories but with all traditional owners.

During the first 18 months of the negotiations, anthropological research was commenced for the preparation of a native title Connection Report. Comprehensive ethnographic and genealogical studies were conducted by two anthropologists commissioned by the Kimberley Land Council. The anthropologists recognised and worked within traditional Indigenous authority structures. The process defined traditional ownership in accordance with Indigenous law and culture, rather than proximity to the mine or prior involvement in claims.¹⁴

During the first eight months of fieldwork a number of cultural groups were identified. These groups were structured into *inside groups*, representing those who would be most affected by the mining operations, and *outside groups* representing less affected groups but those who still had a responsibility to the land within the boundary of the mine lease area.

Negotiation committees

The ILUA negotiations were conducted by two committees, that of the traditional owners and of Argyle Diamonds. The traditional owner Negotiation Committee was structured to include the various cultural groupings. It comprised 22 representatives from all family groups with traditional rights and interests as defined by the ethnographic studies. The Negotiating Committee attended meetings on behalf of the traditional owner groups and other senior men came to the meetings and observed.

My personal view is that this is a governance practice that you just can't buy in any other way...that group on traditional lines came together, exercised traditional decision-making power They demonstrated the power of traditional decision-making and they constructed that group so it was a blend of men and women, old people, young people, the right composition of family. It held, the composition held, everybody came to every meeting, everybody worked hard at every meeting, it was just phenomenal. The old people were just sagging in their seats, they were so exhausted, but none of them left.¹⁵

Securing adequate resources

Resources for negotiations were provided by Argyle Diamonds and the Australian Government through the National Native Title Tribunal (NNTT) and Aboriginal and Torres Strait Islander Services (ATSIS). The total cost of the Argyle Agreement was more than \$9M. The Kimberley Land Council received approximately \$3M from Argyle Diamonds, Aboriginal and Torres Strait Islander Services and the National Native Title Tribunal to represent the traditional owners. It cost Argyle Diamonds

13 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006.

14 Argyle Diamonds, *The Argyle Participation Agreement: Breaking New Ground*, Information Brochure, p15.

15 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006.



more than \$6M to run their negotiations.¹⁶ The general observation from both Argyle Diamonds and the Kimberley Land Council was that it was a very expensive process.

Economic and legal advice

A number of consultants were contracted to assist both parties on the Argyle Agreement negotiations. These included:

- interpreters;
- people with experience in the development of other Native Title Agreements;
- legal and financial experts who gave advice on technical aspects of the agreement and negotiated outcomes on behalf of the traditional owners;
- anthropologists;
- experts in business development; and
- those who could advise on the economic and social impacts of the Argyle Diamond mine on Aboriginal communities.

According to the CEO of the Kimberley Land Council, the interpreters and those advising on legal and financial matters played a major role in negotiations. 'The financial advisors provided advice on specific issues including whether or not this agreement was reasonable and reviewed and advised on what is happening in other areas.'¹⁷

The Argyle Agreement

The Argyle Diamond Mine Participation Agreement consists of two parts.

The first part is the Indigenous Land Use Agreement (ILUA). The ILUA is legally binding on the parties. It outlines and formalises the financial and other benefits that traditional owners receive. It specifies how the benefits are to be administered. It contains a process which ensures that the traditional owner's native title rights and interests are recognised to their fullest potential.

The second part is the Argyle Management Plan Agreement (AMPA).¹⁸ The AMPA contains eight Management Plans. They are:

1. Aboriginal site protection
2. Training and employment
3. Cross-cultural training
4. Land Access
5. Land Management
6. Decommissioning

16 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006, and Bergmann, W., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 6 October 2006.

17 Bergmann, W., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 6 October 2006.

18 The Kimberley Land Council is a party to the ILUA but is not a party to the Argyle Management Plan Agreement.



7. Business development and contracting
8. Devil Devil Springs

The AMPA confirms the way in which Argyle Diamonds and traditional owners agree to work together to achieve numerous objectives. Some of these include preservation of the environment, the recruitment and retention of Indigenous mining employees and the development of Indigenous businesses that will be sustainable after the mine.¹⁹ Each aspect of the management plan is described here.

Aboriginal site protection

The Site Protection Management Plan aims to provide the strongest protection possible to the more than 50 identified Aboriginal heritage sites listed on the Argyle lease. The provisions under this plan protect the traditional owners' rights to make decisions about activity on their land that may affect cultural heritage. The Site Protection Management Plan provides a protocol for site management including:

- Protocol for ensuring traditional owner approval that site clearances have been conducted for past and current operations;
- Protocol for submitting work program plans to traditional owners before conducting any future ground disturbing activity; and
- Protocol to ensure that any work proposed by Argyle does not interfere with Aboriginal sites.²⁰

The Site Protection Management Plan is underpinned by a 'no means no' principle.

Training and employment

A significant focus of the Argyle Agreement is to achieve training and employment outcomes for local Aboriginal people. Argyle Diamonds has made a commitment to give support and preference to local Aboriginal people for jobs and training at the mine. The Training and Employment Management Plan includes business and employment principles that aim to achieve and maintain a 40 percent local Aboriginal employment quota on commencement of the underground mine in 2008, continuing until the mine closes.

Argyle Diamonds supports a number of education support programs to address impediments to Aboriginal people gaining employment. The Yachad Accelerated Learning Program, the Follow the Dream Program, and mentoring and various leadership camps are aimed to provide pre-employment entry points. Argyle also provides flexible apprenticeships, traineeships, career planning and alternative employment programs.

19 Freehills (consultant), *Argyle Diamond Participation Agreement: Argyle Management Plan Agreement*, AMPA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited and Traditional Owners.

20 Freehills (consultant), *Argyle Diamond Participation Agreement: Argyle Management Plan Agreement*, AMPA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited and Traditional Owners.



Cross-cultural training

The traditional owners were invited by Argyle Diamonds to develop a cross cultural program. This training will include traditional ceremony such as Manthe,²¹ the traditional welcome to country. Argyle has agreed to incorporate Manthe into their site safety induction procedures.²²

Argyle Diamonds has committed to ensuring that all employees and contractors who have worked with Argyle for more than 6 months will be given cross cultural training. The Argyle executives and management receive extra training that includes an 'on country' component with the traditional owners. Cross cultural training will be conducted for all staff as a refresher every 3 years. The content of the training is by agreement between Argyle Diamonds and the traditional owners.

Argyle Diamonds has made a commitment to employ and train 20 traditional owners to deliver Indigenous modules of the cross cultural training. This will fulfil an aspiration of the traditional owners to develop their own enterprise. This project is still underway.

Land access, land management, decommissioning and Devil Devil Springs

The Argyle Agreement recognises the traditional owners as landlords of the Argyle mining lease and acknowledges the traditional native title rights in the mining lease area. The traditional owners have agreed under the ILUA that the rights of the mining company prevail for the term of the mining operation.²³ This means that the traditional owners will not lodge a Native Title application over the lands and waters until after the mine is closed. Upon closure of the mine, Argyle Diamonds has made a commitment to support the traditional owners in an application for a consent determination of native title over the mine area.²⁴

The Management Plan defines rules regarding access to country and security clearance provisions. It also contains land management protocols. For example, Devil Devil Springs is a site of significance. It is a freshwater spring which is being impacted as a result of the mining operations. The Management Plan outlines Argyle Diamond's responsibilities regarding Devil Devil Springs and defines procedures for informing traditional owners about activities affecting the Springs.²⁵ A separate management plan deals specifically with the management of Devil Devil Springs.

21 A ceremonial Manthe of smoke and water is done to welcome people to Aboriginal country. Manthe is a traditional ritual of welcome where newcomers walk through the smoke of fires or are brushed with wet gum leaves. Argyle Diamonds, *The Argyle Participation Agreement: Breaking New Ground*, Information Brochure, p3.

22 Freehills (consultant), *Argyle Diamond Participation Agreement: Argyle Management Plan Agreement*, AMPA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited and Traditional Owners, p117.

23 Argyle Diamonds, *Communities and Environment: Indigenous Land Use Argyle Agreement*, website of Argyle Diamonds, available online at www.argylediamonds.com.au, accessed 5 September 2006.

24 Freehills (consultant), *Argyle Diamond Mine Participation Agreement*, ILUA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Ltd, Traditional Owners and Kimberley Land Council Aboriginal Corporation, p16.

25 Freehills (consultant), *Argyle Diamond Participation Agreement: Argyle Management Plan Agreement*, AMPA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited and Traditional Owners, pp131-140.



The Management Plan also contains provisions for the decommissioning of the mine and the rehabilitation of the land. Argyle Diamonds has committed to provide training on land management and rehabilitation. The mine site includes significant infrastructure, including the airstrip and the Argyle Village. Traditional owners will have an opportunity to submit a business plan to maintain and utilise the infrastructure after the closure of the mine. The Argyle Diamond Mine currently has a life of approximately 20 years.

Business development and contracting

The Business Development Taskforce is (a sub-committee of the Relationship Committee) made up of five Argyle Diamonds representatives and five traditional owner representatives. The role of the Committee is to scope viable business opportunities for traditional owner businesses and to advise the traditional owners about business development. For the first three years the Taskforce will be supported by a Business Development Facilitator with responsibility to assist in developing business plans and business skills. The Facilitator also has a role to assist in the development of appropriate corporate governance measures. Current projects include earthmoving, transport, manufacturing, horticulture and tourism ventures. These projects are designed so that traditional owner businesses can compete for site-based contracts.²⁶

Argyle Diamonds has recently developed an 'inside-out' approach to traditional owner business development and contracting services. This approach is to assist Aboriginal mine employees to utilise their existing mining skills to develop commercial opportunities through private businesses. For example, Aboriginal people working as grader operators could start earthmoving businesses, and those working in waste management could start waste management businesses.²⁷

Argyle Diamonds has agreed to give preference to traditional owners and traditional owner businesses for contract work relating to the provision of services at the mine site worth more than \$250,000. If Argyle Diamonds thinks the traditional owner businesses can provide the services as well as any non-Indigenous contractor, they will win the tender. If they are unsuccessful, Argyle Diamonds has committed to provide feedback to the traditional owner enterprise. Argyle Diamonds has also agreed to give preference to non-traditional owner businesses that provide the greatest benefits to traditional owners.

Argyle will ensure that the Business Development Taskforce is informed of the measures that each tenderer is prepared to take to involve traditional owner businesses and promote employment, training and/or benefits to traditional owners.²⁸

26 Argyle Diamonds, *Communities and Environment: Aboriginal Partnerships*, website of Argyle Diamonds, available online at www.argylediamonds.com.au, accessed 5 September 2006.

27 Argyle Diamonds, *Communities and Environment: Aboriginal Partnerships*, website of Argyle Diamonds, available online at www.argylediamonds.com.au, accessed 5 September 2006.

28 Freehills (consultant), *Argyle Diamond Participation Agreement: Argyle Management Plan Agreement*, AMPA between Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited and Traditional Owners, pp145-152.



Executing the Argyle Agreement

The Relationship Committee is a key component in the implementation of the Argyle Agreement. This committee comprises 26 traditional owners (including senior traditional owners, younger people, men and women) and a small group of Argyle Diamonds representatives. The Relationship Committee has a role to meet every 3 months for the life of the Argyle Agreement to monitor its implementation. The Committee is closely linked to the Trusts which were also established under the Argyle Participation Agreement.²⁹

The ILUA established two trusts; the Gelganyem Trust and the Kilkayi Trust.³⁰ The names of the trusts are derived from the Mirriuwung and Gija peoples words that describe traditional fishing methods and are used by the women for stories associated with Barramundi Gap.

The **Gelganyem Trust** is made up of eleven trustees, nine representing the seven traditional owner estate groups that are party to the ILUA and two independent trustees. Training was provided to the trustees prior to assuming their roles and responsibilities.

The Gelganyem trust administers the Sustainability Fund, the Law and Culture Fund, and Education and Training Fund, and the Miriuwung and Gija Partnership Fund. For the first four years of operation, financial contributions will be split between the Sustainability Fund and the Partnership funds. After that time all funds will be paid into the Sustainability Fund. The Miriuwung and Gija Partnership Fund provides funds for community projects and community development. The Sustainability Fund provides future generations of Miriuwung and Gija people with a significant capital base which includes money for future generations, a law and culture fund, and an education and training fund.³¹ The Law and Culture Fund provides annual support for both men and women law and culture activities. This is an important way for the agreement outcomes to support the exercise and development of customary law and governance.

The **Kilkayi Trust** has only two independent trustees. This trust has two roles:

1. To administer the annual payments from Argyle to the individual families party to the ILUA and;
2. To assist each family to develop an annual expenditure plan outlining specific community projects and initiatives.

The independent trustees are appointed by agreement of the ILUA parties and bring high level management, financial and community development skills to the trusts.³² Traditional owners agreed that they not be representatives on trusts that manage other families business.³³

29 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006, pp13-14.

30 Information used in this section is provided by the Gelganyem Trust and the Kilkayi Trusts.

31 Gelganyem Trust and Kilkayi Trust, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 17 November 2006, p2.

32 Gelganyem Trust and Kilkayi Trust, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 17 November 2006, p3.

33 Nish, S., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 19 October 2006.



The Gelganyem Trust has developed a number of projects. These include:

- Indigenous business development facility
- Renal health
- Law and Culture grounds infrastructure upgrade
- Holiday programs for youth at risk
- Adult literacy
- Cultural Curriculum
- Scholarship Fund
- Parents as Learners (PAL)³⁴

The Trust is able to use the royalty payments to leverage funding from federal, state and private funding partners to support these projects. The Gelganyem *Education and Training Shared Responsibility Agreement* is an example of this when in August 2005 the Australian Government committed \$300,000 to match funds committed by the Trust. to expand education and training opportunities through tertiary education scholarships for Indigenous people in the communities.³⁵

Conclusion

The legacy of the Argyle Agreement is that it has provided the traditional owners with a range of social, economic and development opportunities. These opportunities are managed and decided by the traditional owners on their own terms.

When they (traditional owners) were engaging with the mine they did so on their own terms. By performing ceremonies and reinforcing their relationships to the land and the Dreaming in the land, they were actually using very critical ways of engaging with the mining company that reinforced their difference, that ensured that they were not lost in a blended amorphous relationship. They really wanted the mining company to know that we are different from you, we have a very different way of being in the world, but we can be in this world with you. What I think is so exciting about Argyle is that those Aboriginal people who were engaging at that level, within their own cultural framework were never compromised in their relationship with the mine.³⁶

Research conducted by the Harvard Project on American Indian Economic Development indicates that although royalty payments, employment, training, and education scholarships are all important outcomes, the key to sustainable communities and economic development is due to other factors.³⁷ They are:

- Indigenous self-government;
- capable governing institutions capable of meeting all of the corporate and legislative requirements; and
- governing institutions that are generated by Indigenous people

34 Gelganyem Trust and Kilkayi Trust, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 17 November 2006, p4.

35 Vanstone, A., (Senator), *Vanstone to Sign Shared Responsibility Agreements with Kimberley Indigenous Communities*, Media Release, 3 August 2005, p1.

36 Doohan, K., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 17 October 2006.

37 Cornell, S., *Starting and Sustaining Strong Indigenous Governance*, Presentation at the 'Building Effective Indigenous Governance Conference, Jabiru, Northern Territory, 5 November 2003.



and have legitimacy with the people they govern, reflecting Indigenous conceptions of how authority should be organised and exercised.³⁸

The experience of negotiating the Argyle Participation Agreement reinforces the importance of Indigenous models of governance. Indigenous governance is not *consultation*, it is *jurisdiction*, and includes genuine decision making power.

Good governance means having good rules for deciding how people work together to do the things they need to get done, how decisions are made, who has the authority to act for the group, how are disputes resolved and how to get community business done.³⁹

Ted Hall, the Chairperson of the Gelganyem Trust sums up the legacy of this agreement for the traditional owners:

It's been empowering, it has empowered us to make decisions on our own terms. We determine what happens in our area. We set the terms and goals and we are achieving them also. As an Aboriginal man I can finally walk around with my head held high. This process has bought unity between the elders and the young. The young bring the education and the elders bring the knowledge. People like RPM, ADM and the independent trustees give us direction.⁴⁰

38 Cornell, S., *Starting and Sustaining Strong Indigenous Governance*, Presentation at the 'Building Effective Indigenous Governance Conference, Jabiru, Northern Territory, 5 November 2003, pp2-3.

39 Cornell, S., *Starting and Sustaining Strong Indigenous Governance*, Presentation at the 'Building Effective Indigenous Governance Conference, Jabiru, Northern Territory, 5 November 2003, p.3.

40 Hall, T., *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Interview, 20 December 2006.