



*Department of Sustainability and Environment  
Discussion Paper:*

## **Indigenous Land Management Framework**

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**Submission by:  
Minerals Council of Australia, Victorian Division**

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## 1. Introduction

The Minerals Council of Australia, Victorian Division (MCAVic) welcomes the opportunity to comment on the discussion paper prepared by the Department of Sustainability and Environment (DSE) on the development of an *Indigenous Land Management Framework* (ILMF) for Victoria.

The Minerals Council of Australia (MCA) is the peak, national organisation representing the exploration, mining and minerals processing industry in Australia. The membership of the Council accounts for some 85 per cent of Australian minerals production and over 90 per cent of Australia's mineral exports. MCAVic is the Division of the MCA that represents the interests of members operating in Victoria. In June 2004 the Victorian Minerals & Energy Council merged with the MCA to become a Division of the MCA.

In reviewing the discussion paper we note that the Indigenous concept of belonging to 'Country' is used as the basis for exploring:

- Indigenous aspirations to be involved in protecting and managing Country;
- Indigenous aspirations to access land and use resources as a cultural right;
- Traditional and contemporary ideas of land and resource ownership and entitlements, and
- Aspirations of Indigenous people for training, employment and developing business projects in land and natural resource management.

In responding to the ILMF discussion paper we appreciate the basis of the paper and have attempted to answer the specific questions raised with that in mind. We have also made other specific comments that we believe are important to be considered when preparing the framework.

## 2. Indigenous-MCA Relations

The MCA and its member companies are committed to the sustainable development principles of the International Council for Mining and Metals (ICMM). See **Attachment 1**. For the minerals industry, sustainable development defines our licence to operate and means that investments in minerals projects should be financially profitable, technically appropriate, environmentally sound and socially responsible. Importantly it's about the interdependency of social, environmental and economic considerations. One of those principles is to "uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities" whilst another is to "contribute to the social, economic and institutional development of the communities in which we operate".

It is through the implementation of these two principles in an Australian context and in particular a Victorian context that we consider that the minerals industry has a positive contribution to make to the development of an Indigenous Land Management Framework in Victoria.

One of the significant instruments that members of MCA are using to implement the principles for sustainable development is the “Australian Minerals Industry Indigenous Relations Statement” which was released as a public statement of values held by members of MCA. See **Attachment 2**. Those values include the recognition and respect for Aboriginal connection to ‘Country’.

The members of MCA have been involved in several significant activities associated with agreement making with native title claimants in Victoria, some of which have national significance.

Firstly, in 2000 The Victorian Chamber of Mines (now MCAVic) in association with the Mirimbiak Nations Aboriginal Corporation (since replaced by Native Title Services Victoria) undertook an extensive cross cultural exercise over a 10 month period to produce a guide called “*Building Relationships – Working with the Indigenous People of Victoria – A Guide for Explorers and Miners, Nov 2000*” The author, Faith Irving, prepared the guide in close collaboration with Aboriginal elders across the State. It details the importance of building relationships with Aboriginal communities as an initial and integral part of any agreement making process between explorers and miners and Aboriginal communities.

Secondly, through the period 1999 to 2004 MCAVic, Native Title Services Victoria and the Department of Primary Industries (DPI) worked together to develop proforma ‘future act’ agreements between explorers and miners and native title claim groups in Victoria. The proforma were developed to simplify the ‘right to negotiate’ process and Indigenous Land Use Agreements (ILUAs) under the *Native Title Act*. These proforma agreements include a detailed cultural heritage management procedure which was reviewed by Aboriginal Affairs Victoria and the National Native Title Tribunal.

Thirdly, the proforma ILUA was used as the basis for two Regional ILUA’s recently negotiated by MCA with the Dja Dja Wurrung people and the Wadi Wadi Barapa Barapa Wamba Wamba people.

On an individual company basis there are also several examples of negotiated ILUAs for exploration and mining and “right to negotiate” agreements for exploration and for mining in Victoria.

### 3. Role of Government

The plan for a whole-of-government approach to Indigenous land management is admirable. However, the discussion paper fails to explain exactly what this means. It would assist greatly if there was a clear definition of whole-of-government. For it’s part the minerals industry would like to see a one-stop-shop for issues related to Aboriginal Affairs with that shop speaking for all of government and able to act on behalf of all of government. We would also like to see consistent advice from government.

The ILMF discussion paper is strongly identified with the aspirations of Indigenous Victorians as would be expected and this approach is endorsed. However, the document clearly identifies the State Government as the other party in the dialogue. Other parts of the community such as industry are not identified as having a role in the ILMF other than being invited to comment. This has led to a discussion paper that implies that the only solutions to redressing the effects of dispossession and disadvantage are with government. We believe that this is a one dimensional view of the issue and will lead to narrowly conceived outcomes. It is not clear from the discussion paper why the broader community and industry has not been made part of the solution.

The executive summary states “success of the ILMF will be decided by how relevant it is to Indigenous Victorians and to government.” It goes on to state it will have its greatest impact if it “promotes partnerships between the State and Indigenous communities”. As stated above we believe that it is a pity that there is no mention of the relevance of the ILMF to the broader regional and rural community and industry.

## 4. Caring for Country

The “Caring for Country” section of the discussion paper explores the Indigenous concept of Country, relationship to Country, and aspirations to be involved in protection and management of Country.

In considering the specific questions raised in the discussion paper we offer the following:

MCAVic is supportive of cooperative land management agreements and other similar instruments that offer an alternative solution to the litigious process of proving native title. They have the potential to be very successful and offer a valid solution to native title where it is difficult for traditional owners to meet the requirements of the *Native Title Act*. Such agreements formalise the involvement of Indigenous communities and provide obligations as well as benefits. They can also clarify and simplify the access arrangements for other parties, such as explorers and miners.

We can appreciate the frustration of Indigenous people who may only be involved in the management of public land through ad hoc consultation processes. The discussion paper clearly recognises that Aboriginal people have an affinity for the land. It is therefore very appropriate that they are actively involved in the management of the Crown estate. MCAVic believes that affirmative action is required to attract, train and retain Aboriginal people to manage the States public land. Through direct and hands-on involvement in the management of the Crown estate the influence of Indigenous culture will be infused.

Similarly, in those areas where culture is still relatively strong, thousands of years of Indigenous knowledge can be better utilised and applied in the more challenging responsibilities of managing our landscapes, such as in fire and vegetation management, pest control, and ecological assessment. In a number of projects in

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Australia and overseas, where western science has been brought into partnership with traditional Indigenous environmental knowledge, the outcomes have been outstanding. It is therefore our belief that trained and dedicated Aboriginal managers of public land are responsible managers able to ensure the appropriate balance between economic, social and environmental issues.

As stated above, MCAVic is supportive of the greater involvement of Indigenous people in the management of the Crown estate. However, any involvement should be to add value to existing management procedures. The minerals industry would not like to see alternative or additional management procedures or another layer of environmental regulations or guidelines being applied. In other words the active involvement of Aboriginal people in the management of public land should be integrated into the existing land management regimes, unless of course that involvement leads to positive significant changes to those regimes, such as in the use of fire in vegetation and landscape management.

In addition to government employment initiatives, strong government support through the application of adequate resources and culturally appropriate consultation is required to ensure the active ongoing involvement of Aboriginal communities in the management of their traditional lands. However, it is important that the confusion and duplication of effort that can exist between native title claimants and the cultural heritage cooperatives on matters related to Aboriginal cultural heritage is resolved.

Aboriginal cultural heritage is the subject of another initiative of government which seeks to update the legislative regime and provide greater involvement of Aboriginal people in the protection of their culture. In our submission to that review the minerals industry has sought to rationalise the cultural heritage laws and establish a coordinated management approach to cultural heritage that links the native title claimant aspirations and the Aboriginal cooperatives responsible for administering the cultural heritage laws. It is important that any solutions that may come from the ILMF do not further complicate management arrangements for Aboriginal cultural heritage.

## **5. Access to Country**

The “Access to Country” section of the discussion paper explores customary rights to access and use of land and resources.

Access to country by Indigenous Victorians for the pursuit of Aboriginal cultural pursuits is an issue that is generally beyond the realm of the minerals industry’s interests.

However, we do believe that where those cultural pursuits extend into the commercial exploitation of natural resources then access permits or licences and the application of laws and regulations should apply to Aboriginal people as they do to all Victorians.

In addition, Aboriginal people who may access Crown land for cultural pursuits should always be required to respect the rights of other people that may be operating

under a valid permit or licence such as exploration or mining and that any safety requirements that may exist at that site must be observed.

## 6. Ownership of Country

The “Ownership of Country” section of the discussion paper explores traditional and contemporary concepts of land and resource ownership and entitlements.

In considering the specific questions raised in the discussion paper we offer the following:

MCAVic is supportive of opportunities to transfer private land to the ownership of Indigenous bodies. This is seen as a market driven issue and it can be expected that the land will be managed successfully and the normal rights and obligations that go with the ownership of freehold land shall prevail.

With respect to the transfer of Crown land to Indigenous bodies we see this as an issue for government. The Crown estate currently belongs to all Victorians. Viable cooperative land management agreements have been made in Victoria as discussed earlier. However, it would be difficult to justify exclusive possession of Crown land by an Indigenous body unless that right was granted through the *Native Title Act*.

MCAVic is concerned about the aspiration to allocate natural resources to Indigenous Victorians. We believe that the important fundamental principle of Crown ownership of all minerals should remain. We do not have any issue with Aboriginal people accessing and using traditional mineral resources such as ochre, flint etc for traditional purposes and would seek to encourage those practices. However, the commercial exploitation of the States mineral resources should remain subject to the *Mineral Resources Development Act*.

We also note the aspiration for the allocation of revenues raised for the commercial use of the State’s natural resources such as mineral resources. Any redirection of mineral royalties or mining licence fees etc. to Indigenous Victorians is of course a matter for government. MCAVic believes that the minerals industry already pays more than enough for access to the State’s mineral resources and that any redirection of the revenue raised by government should be cost neutral to the industry. In addition to royalties and licence fees, mining companies are also required to reach agreement with claimants for access to Crown land that is subject to a native title claim where such agreements include provisions for compensation for access to the land. Companies are also required to pay for cultural heritage clearances. That is, if the Government considers access to mineral royalties by Aboriginal people is desirable then it should be on the basis of redirecting some or all of the present royalties or fees to Aboriginal people but not imposing any new royalties or fees on industry.

## 7. Learning and Working for Country

The “Learning and Working for Country” section of the discussion paper explores aspirations for training, employment and business enterprise development in land and natural resource management.

In some ways this is possibly the most important section of the discussion paper and the only section that recognises that opportunities exist in the private sector for Aboriginal people to participate in the mainstream economy.

Industry, especially the minerals industry, can make a positive contribution to the well-being of Aboriginal people. In partnership with Aboriginal communities and government it is possible to create sustainable communities able to prosper without a dependence on welfare. In this regard, and for other reasons, industry has an important role to play in the ILMF.

Education and training in business development skills offers significant leverage in the social capacity building of Aboriginal communities. The stated aspiration of “gaining employment in all areas of land and natural resources management, including operational and field-based, administrative, policy and management roles” is unnecessarily limiting. Much broader opportunities exist in the private sector and work is clearly required by all sectors to promote these opportunities, provide the training opportunities, and make the jobs available.

The discussion paper does recognise the important role that the Koori Business network plays in the development of small scale Indigenous business enterprises. The paper also identifies opportunities in tourism and the provision of land management services to DSE. These are important opportunities that require far more than a cursory mention.

MCAVic would welcome the opportunity of formal dialogue with government and Aboriginal leaders on how we might increase the participation of the private sector in “Learning and Working for Country”.

## 8. Conclusion

MCAVic is very supportive of the intentions of the ILMF. We believe that affirmative action is required to redress the dispossession and disadvantage of Indigenous Victorians. Indigenous communities need access to their traditional land where possible and to fulfil their aspirations some form of direct or co-management of that land is needed. We support solutions that can be delivered without lengthy and costly litigation. However, in presenting this view we also recognise, and expect, that all stakeholders that currently enjoy rights to access and use of public land retain those rights. Any Crown land that may be managed by Aboriginal communities should be managed for and on behalf of all Victorians. Similarly, the owners of private land should continue to enjoy control of their land.

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Some of the other conclusions we have reached from our review of the ILMF discussion paper are as follows:

- i) We recognise the need for a comprehensive whole-of-government strategy for Indigenous land management. However, it is important that what is meant by “whole-of-government” is clarified.
- ii) We have concerns that the discussion paper appears to exclude industry and the broader regional and rural community from being active partners in the ILMF.
- iii) We believe that affirmative action is required to attract, train and retain Aboriginal people to manage the States public land.
- iv) We would not like to see alternative or additional management procedures or another layer of environmental regulations or guidelines being applied.
- v) We recognise that government support with adequate resources and culturally appropriate processes is required to ensure the active ongoing involvement of Aboriginal communities in the management of their traditional lands.
- vi) We wish to ensure that the confusion and duplication of effort that can exist between native title claimants and the cultural heritage cooperatives on matters related to Aboriginal cultural heritage is resolved.
- vii) We believe that rights of access to country for cultural pursuits should not extend to the commercial exploitation of natural resources
- viii) We believe that the important fundamental principle of Crown ownership of all minerals should remain.
- ix) We consider that Government should be not impose any new royalties or fees on industry should it wish to redirect mineral royalties and fees to Aboriginal people.

Finally, and possibly, most importantly, MCAVic would welcome the opportunity of formal dialogue with government and Aboriginal leaders on how we might increase the participation of the private sector in “learning and working for country”.

## **Attachment 1**

### **ICMM Sustainable Development Framework:**

On May 29th 2003, the International Council on Mining & Metals (ICMM) approved ICMM's Principles and resolved that ICMM corporate membership includes a commitment to measure corporate performance against these principles.

The Principles are central to ICMM's sustainable development framework. They are based on the objectives set by the minerals industry in Toronto in 2002 and draw on the landmark MMSD report. They reflect the values and the policy directions that will help ensure that the industry continually improves the sustainability of its operations. They will also guide the design of the industry's performance measurement processes.

### **ICMM Principles**

As members of ICMM or as companies that have otherwise agreed to take on the same performance obligations as ICMM members, we seek continual improvement in our performance and contribution to sustainable development so as to enhance shareholder value. In striving to achieve this, we will:

1. Implement and maintain ethical business practices and sound systems of corporate governance.
2. Integrate sustainable development considerations within the corporate decision-making process.
3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.
4. Implement risk management strategies based on valid data and sound science.
5. Seek continual improvement of our health and safety performance.
6. Seek continual improvement of our environmental performance.
7. Contribute to conservation of biodiversity and integrated approaches to land use planning.
8. Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.
9. Contribute to the social, economic and institutional development of the communities in which we operate.
10. Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.

ICMM corporate membership includes a commitment to measure corporate performance against these principles.

## Attachment 2

### MINERALS COUNCIL OF AUSTRALIA

## Australian Minerals Industry Indigenous Relations Statement

### Vision

A thriving minerals industry working in partnership with Indigenous communities for the present and future development of mineral resources and establishment of vibrant, diversified and sustainable regional economies and Indigenous communities.

### Values

Recognising that the present and future operations of minerals companies are inextricably linked to building and enhancing our strong relationships with Indigenous communities, we commit to carrying out our operations and activities in ways that embody the following values:

- Acknowledge, respect and support the recognition and protection of Indigenous Australians' rights in law, interests and special connections to land and waters in Australia.
- Acknowledge, respect and support the desire and rights of Indigenous Australians to practice their many and varied cultures and customs.
- Recognise that for effective engagement to occur between minerals companies and Indigenous communities, the communities require adequate and culturally appropriate information with enough time to consider proposals and make decisions.
- Promote, support and facilitate the development and implementation of cross cultural understanding that provides minerals industry representatives with greater awareness of Indigenous cultures and customs, and Indigenous representatives with greater awareness and understanding of the minerals industry, including the international, national and local business environment in which minerals companies operate.
- Recognise, support and facilitate the capacity of Indigenous Australians to more effectively engage in the broader economy, including through wealth creation and the establishment of vibrant, diversified and sustainable regional economies.
- Promote, support and facilitate Indigenous communities engagement with minerals companies operations, including the promotion of education, training, employment, contracting, joint ventures and local business diversification including post mining options.
- Promote the negotiation of mutually beneficial and sustainable agreements as an effective mechanism through which to achieve the intended outcomes of sustainable relationships and partnerships between minerals companies and Indigenous communities.