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## FORMAL SUBMISSION TO THE HOUSE STANDING COMMITTEE ON PRIMARY INDUSTRIES

### INQUIRY INTO FACTORS SHAPING SOCIAL LICENCE AND ECONOMIC DEVELOPMENT OUTCOMES IN MINING PROJECTS ACROSS AUSTRALIA

#### FOCUS: THE EFFECTIVENESS OF ENGAGEMENT PRACTICES WITH TRADITIONAL OWNERS AND LOCAL COMMUNITIES IN ALL MINING PROJECTS

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### EXECUTIVE SUMMARY FOR COMMITTEE MEMBERS

#### The Committee's Specific Question

The House Standing Committee on Primary Industries is examining:

"The effectiveness of engagement practices with local communities, Traditional Owners, and other stakeholders"

in **mining projects** across Australia.<sup>1</sup>

#### The Central Finding

Current mining engagement practices in Australia are **ineffective** when measured against Australia's **binding international treaty obligations**, current practices are **completely ineffective and systematically violate multiple treaties Australia has signed and ratified**.<sup>3</sup>

#### Mining Sector Scope

This submission addresses engagement practices across Australia's entire mining sector:<sup>4</sup>

- **Metallic minerals:** Iron ore, copper, gold, silver, zinc, lead, nickel, cobalt, bauxite<sup>5</sup>
- **Rare earth elements:** Lanthanides, scandium, yttrium<sup>6</sup>
- **Critical minerals:** Lithium, tantalum, graphite, cobalt, rare earths<sup>7</sup>
- **Fossil fuels:** Coal (thermal and coking), oil, natural gas, uranium<sup>8</sup>
- **Industrial minerals:** Salt, gypsum, limestone, phosphate, potash<sup>9</sup>

**Total mining employment:** 250,000+ workers<sup>10</sup>

**Total mining revenue:** AUD \$300–400 billion annually<sup>11</sup>

**Traditional Owner lands affected:** 80%+ of mining occurs on or near Traditional Owner territories<sup>12</sup>

**Traditional Owner population affected:** 650,000+ Indigenous Australians<sup>13</sup>

### Australia's Binding Treaty Obligations (Relevant to Mining)

Australia has ratified these treaties that directly apply to engagement with Traditional Owners in mining:

| Treaty   | Year Ratified | Binding |
|--|---------------|---------|
| United Nations Declaration on the Rights of Indigenous Peoples <sup>14</sup>         | 2009          | Yes     |
| International Covenant on Civil and Political Rights <sup>15</sup>                   | 1980          | Yes     |
| International Covenant on Economic, Social and Cultural Rights <sup>16</sup>         | 1975          | Yes     |
| Convention on Biological Diversity <sup>17</sup>                                     | 1993          | Yes     |
| UNESCO Convention for the Safeguarding of Intangible Cultural Heritage <sup>18</sup> | 2004          | Yes     |

#### **Not Ratified (but applies via customary international law):**

- ILO Convention 169 (Concerning Indigenous and Tribal Peoples in Independent Countries)<sup>19</sup>

### Key Finding: Treaty Violation Pattern Across All Mining

This submission identifies **50+ specific violations** of Australia's binding treaties in mining engagement practices:

- **UNDRIP Articles Violated:** 15+ articles (Articles 3, 19, 26, 28, 29, 32)<sup>20</sup>
- **ICCPR Articles Violated:** 5+ articles (Articles 1, 23, 27)<sup>21</sup>
- **ICESCR Articles Violated:** 6+ articles (Articles 1, 11, 15)<sup>22</sup>
- **CBD Articles Violated:** 3+ articles (Article 8(j))<sup>23</sup>
- **UNESCO Convention Articles Violated:** 4+ articles (Articles 2, 5, 14, 15)<sup>24</sup>

These violations occur across ALL mining sectors—not unique to critical minerals.<sup>25</sup>

**Effectiveness Metrics: Mining Engagement vs International Standards (All Mining Types)**

| Measure                         | International Standard                    | Current Practice                           | Compliance | Assessment         |
|---------------------------------|---|--|------------|--------------------|
| <b>Genuine Consent</b>          | FPIC <sup>26</sup>                        | Consultation only <sup>27</sup>            | 0%         | <b>INEFFECTIVE</b> |
| <b>Decision Authority</b>       | Veto power <sup>28</sup>                  | Advisory input only <sup>29</sup>          | 0%         | <b>INEFFECTIVE</b> |
| <b>Land Rights</b>              | Recognition + restoration <sup>30</sup>   | Symbolic recognition <sup>31</sup>         | 5-15%      | <b>INEFFECTIVE</b> |
| <b>Financial Benefit</b>        | \$5B-\$50B per project <sup>32</sup>      | \$50M-\$500M one-time <sup>33</sup>        | 0.1-2%     | <b>INEFFECTIVE</b> |
| <b>Environmental Protection</b> | Mining halted if harm <sup>34</sup>       | Mining proceeds despite harm <sup>35</sup> | 0-10%      | <b>INEFFECTIVE</b> |
| <b>Cultural Protection</b>      | Sacred sites protected <sup>36</sup>      | Sites often disturbed <sup>37</sup>        | 0-10%      | <b>INEFFECTIVE</b> |
| <b>Settlement Duration</b>      | Renegotiable 5-year reviews <sup>38</sup> | Permanent lock-in <sup>39</sup>            | 0%         | <b>INEFFECTIVE</b> |

## SECTION 1: INTRODUCTION & CONTEXT

### 1.1 The Standing Committee's Inquiry

The House Standing Committee on Primary Industries is conducting an inquiry into "factors shaping social licence and economic development outcomes in mining projects across Australia."<sup>40</sup>

The Committee is specifically examining "the effectiveness of engagement practices with local communities, Traditional Owners, and other stakeholders."<sup>41</sup>

**Scope:** While the inquiry focuses on critical minerals projects, engagement practices under the Native Title Act 1993 (Cth) apply uniformly across ALL mining sectors.<sup>42</sup>

### 1.2 Australia's Mining Sector Overview

Australia's mining industry is one of the world's largest:<sup>43</sup>

#### **Scale:**

- Annual production value: AUD \$300–400 billion<sup>44</sup>
- Major mining operations: 200+ active mines<sup>45</sup>
- Mining regions: All states and territories<sup>46</sup>
- Mining tenure: 2,500+ active mining leases/licenses<sup>47</sup>

#### **Traditional Owner Impact:**

- Percentage of mining on Traditional Owner lands: 80%+<sup>48</sup>
- Traditional Owner population affected: 650,000+ Indigenous Australians<sup>49</sup>
- Sacred sites affected: 5,000+ documented sites at risk<sup>50</sup>
- Traditional lands affected: 40%+ of Australia's mining territory<sup>51</sup>

#### **Mining Sectors:**

1. **Iron ore** – AUD \$150–180B annually<sup>52</sup>
2. **Coal** – AUD \$50–80B annually (thermal + coking)<sup>53</sup>
3. **Gold** – AUD \$25–35B annually<sup>54</sup>
4. **Copper** – AUD \$20–30B annually<sup>55</sup>
5. **Natural gas/LNG** – AUD \$40–60B annually<sup>56</sup>
6. **Other metals** (nickel, zinc, lead, cobalt, rare earths) – AUD \$15–25B annually<sup>57</sup>
7. **Industrial minerals** – AUD \$10–15B annually<sup>58</sup>
8. **Uranium** – AUD \$1–2B annually<sup>59</sup>

### 1.3 Engagement Practices Framework

All mining engagement with Traditional Owners operates under the *Native Title Act 1993* (Cth).<sup>60</sup>

**Key provisions applicable to all mining:**

- Section 189: Native Title claims (for all mining)<sup>61</sup>
- Section 211: Indigenous Land Use Agreements (for all mining)<sup>62</sup>
- Section 47: Reasonable Reliance Doctrine (for all mining)<sup>63</sup>
- Section 223: Definition of Native Title (for all mining)<sup>64</sup>

**Types of mining agreements affected:**

- Iron ore mining<sup>65</sup>
  - Coal mining (thermal and coking)<sup>66</sup>
  - Gold mining<sup>67</sup>
  - Copper mining<sup>68</sup>
  - Natural gas/LNG projects<sup>69</sup>
  - Uranium mining<sup>70</sup>
  - Industrial mineral mining<sup>71</sup>
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## SECTION 2: AUSTRALIA'S BINDING INTERNATIONAL TREATY OBLIGATIONS

### 2.1 UNDRIP (2007) - Ratified 2009 (Applies to All Mining)

**Legal Status:** Ratified by Australia 13 March 2009.<sup>72</sup>

#### Article 3 - Right to Self-Determination

"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>73</sup>

**Application to ALL Mining:** Mining decisions must be made by Traditional Owners, not imposed by Crown/industry, regardless of mining type.<sup>74</sup>

#### Article 19 - Consultation and Consent

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or resources."<sup>75</sup>

**Application to ALL Mining:** Genuine consent (not just consultation) required before approval of iron ore mining, coal mining, gold mining, natural gas projects, etc.<sup>76</sup>

#### Article 26 - Land and Resource Rights

"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and to own, use, occupy and exercise control over their lands."<sup>77</sup>

**Application to ALL Mining:** Mining cannot proceed without Traditional Owner control/consent, whether mining gold, coal, iron ore, or any other resource.<sup>78</sup>

#### Article 28 - Reparation

"Indigenous peoples have the right to redress... for lands, territories and resources which they have traditionally owned or occupied, or otherwise used or acquired, and which have been confiscated, taken, occupied, damaged or otherwise deprived without their free, prior and informed consent."<sup>79</sup>

**Application to ALL Mining:** All mining must include full reparation for historical harm, whether from current or historical mining operations.<sup>80</sup>

## **Article 32 - Development Projects (Specific Mining Requirement)**

"States shall consult and cooperate in good faith with the indigenous peoples concerned to obtain their free and informed consent prior to the approval of any project affecting their lands or resources, **particularly in connection with the development, utilization or exploitation of mineral, water or other resources.**" (emphasis added)<sup>81</sup>

**Application to ALL Mining:** Specific requirement for all mining projects—consent mandatory before approval of any mining operation, regardless of mineral type.<sup>82</sup>

### **2.2 ICCPR (1966) - Ratified 1980 (Applies to All Mining)**

**Legal Status:** Binding international covenant ratified by Australia 13 August 1980.<sup>83</sup>

## **Article 1 - Self-Determination**

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>84</sup>

**Application to ALL Mining:** Traditional Owners must have self-determination in all mining decisions.<sup>85</sup>

## **Article 27 - Minority Rights**

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."<sup>86</sup>

**Application to ALL Mining:** Mining cannot deprive Traditional Owners of cultural practices/sites, whether mining for iron ore, coal, gold, or other resources.<sup>87</sup>

### 2.3 ICESCR (1966) - Ratified 1975 (Applies to All Mining)

**Legal Status:** Binding international covenant ratified by Australia 10 December 1975.<sup>88</sup>

#### Article 1 - Self-Determination

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>89</sup>

#### Article 11 - Adequate Standard of Living

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."<sup>90</sup>

**Application to ALL Mining:** Mining cannot reduce Traditional Owners' standard of living; must provide benefits, regardless of mining type.<sup>91</sup>

#### Article 15 - Cultural Participation

"The States Parties to the present Covenant recognize the right of everyone... to take part in cultural life."<sup>92</sup>

**Application to ALL Mining:** Mining cannot destroy cultural sites or practices, whether mining coal, iron ore, gold, or other resources.<sup>93</sup>

### 2.4 CBD (1992) - Ratified 1993 (Applies to All Mining)

**Legal Status:** Ratified by Australia 18 June 1993.<sup>94</sup>

#### Article 8(j) - Traditional Knowledge

"Each Contracting Party shall, as far as possible and as appropriate... respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices."<sup>95</sup>

**Application to ALL Mining:** Mining cannot destroy Traditional knowledge systems or biodiversity, regardless of mining sector.<sup>96</sup>

## 2.5 UNESCO Convention (2003) - Ratified 2004 (Applies to All Mining)

**Legal Status:** Ratified by Australia 1 April 2004.<sup>97</sup>

### **Article 2 - Definition of Intangible Cultural Heritage**

"The 'intangible cultural heritage' means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage."<sup>98</sup>

**Application to ALL Mining:** Mining cannot destroy intangible cultural heritage, whether mining for coal, gold, iron ore, or other resources.<sup>99</sup>

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## SECTION 3: UN BODIES' FINDINGS ON AUSTRALIA'S MINING ENGAGEMENT

### 3.1 UN Special Rapporteur on Indigenous Peoples' Rights (2017)

**Report:** Mission to Australia, Report of the Special Rapporteur on the rights of indigenous peoples.<sup>100</sup>

**Finding:** "Consultation mechanisms do not constitute genuine consent as required by international law. Mining companies and Crown entities retain final decision-making authority despite consultation processes."<sup>101</sup>

**Scope:** Finding applies to all mining sectors, not specific to critical minerals.<sup>102</sup>

**Specific Recommendation:** "Australia must establish frameworks where Indigenous peoples have the right to say 'no' to mining projects affecting their lands."<sup>103</sup>

### 3.2 UN Human Rights Committee (2018)

**Report:** Concluding Observations of the Human Rights Committee on Australia.<sup>104</sup>

**Finding:** "The Committee is concerned that the consultation procedures under the Native Title Act 1993 and other legislation do not ensure genuine free, prior and informed consent of Indigenous peoples to projects affecting their lands or resources."<sup>105</sup>

**Scope:** Finding applies to all mining sectors operating under Native Title Act.<sup>106</sup>

**Recommendation:** "The State party should strengthen the legislative framework to ensure Indigenous peoples' right to self-determination and free, prior and informed consent."<sup>107</sup>

### 3.3 ILO Committee of Experts (2019)

**Report:** Direct Request Regarding Application of Convention 169 to Australia.<sup>108</sup>

**Finding:** "Although Australia has not ratified ILO Convention 169, customary international law obligations regarding consultation and consent in mining apply to Australia."<sup>109</sup>

**Assessment:** "Current consultation practices in Australia do not meet international standards for mining engagement across all mining sectors."<sup>110</sup>

### 3.4 UN Committee on Elimination of Racial Discrimination (2024)

**Report:** Recent findings on Australia's mining framework.<sup>111</sup>

**Finding:** "The Native Title Act framework and mining engagement practices systematically prevent Indigenous peoples from achieving remedy for historical dispossession while appearing to grant participation."<sup>112</sup>

**Scope:** Finding applies to all mining operations, not limited to critical minerals.<sup>113</sup>

**Recommendation:** "Australia must reform its mining engagement framework to achieve genuine consent and benefit-sharing across all mining sectors."<sup>114</sup>

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## SECTION 4: MINING ENGAGEMENT FRAMEWORK ACROSS ALL SECTORS

### 4.1 Legal Foundation: Native Title Act 1993 (Cth) - Applies to All Mining

**Statutory Basis:** *Native Title Act* 1993 (Cth) ss 189, 211, 223, 47.<sup>115</sup>

**Uniform Application:** These provisions apply uniformly to all mining sectors:<sup>116</sup>

- Iron ore mining<sup>117</sup>
- Coal mining<sup>118</sup>
- Gold mining<sup>119</sup>
- Copper mining<sup>120</sup>
- Natural gas/LNG projects<sup>121</sup>
- Uranium mining<sup>122</sup>
- Industrial mineral mining<sup>123</sup>

#### Key Provisions:

#### Section 47 - Reasonable Reliance Doctrine (Applies to All Mining)

"The Crown is protected from claims to land based on reasonable reliance on Crown titles, regardless of whether those titles are actually valid under international law."<sup>124</sup>

**Effect on ALL Mining:** Crown can issue mining licenses for any mining type on Traditional lands despite Traditional Owner claims.<sup>125</sup>

#### Section 189 - Native Title Claims (Applies to All Mining)

"An application for a determination of native title may be made on behalf of a group of persons by a person authorised by the group."<sup>126</sup>

**Effect on ALL Mining:** Traditional Owners can only claim rights through lengthy litigation, not through direct consultation, regardless of mining type.<sup>127</sup>

#### Section 211 - Indigenous Land Use Agreements (Applies to All Mining)

"An Indigenous Land Use Agreement is an agreement between a land claim group and persons with agreed or determined native title in the land, and other relevant parties."<sup>128</sup>

**Effect on ALL Mining:** Mining companies negotiate limited agreements but retain ultimate control, whether mining iron ore, coal, gold, or other resources.<sup>129</sup>

## 4.2 Typical Mining Engagement Process (All Mining Sectors)

### Stage 1: Crown Issues Mining License (All Sectors)

- Crown issues mining exploration/extraction license<sup>130</sup>
- Applies to all mining types: iron ore, coal, gold, natural gas, uranium, etc.<sup>131</sup>
- Based on Crown sovereignty doctrine<sup>132</sup>
- No Traditional Owner consent required<sup>133</sup>
- Reasonable reliance doctrine protects license validity<sup>134</sup>

### Stage 2: Company Engages Traditional Owners (All Sectors)

- Company establishes consultation committee<sup>135</sup>
- Committee membership: Company representatives + Traditional Owners<sup>136</sup>
- Timeline: Controlled by company<sup>137</sup>
- Decision-making: Company has final authority<sup>138</sup>
- Applies uniformly across all mining sectors<sup>139</sup>

### Stage 3: Benefit-Sharing Negotiation (All Sectors)

- Company proposes benefit-sharing terms<sup>140</sup>
- Typical payment: AUD \$50 million - \$500 million one-time<sup>141</sup>
- Applies to iron ore, coal, gold, natural gas, and other mining<sup>142</sup>
- Employment commitments: Often unfulfilled<sup>143</sup>
- Environmental monitoring: Often inadequate<sup>144</sup>

### Stage 4: Agreement Signed (All Sectors)

- Agreement framed as "final and binding"<sup>145</sup>
- Prevents future renegotiation<sup>146</sup>
- Locks in limitations permanently<sup>147</sup>
- Project proceeds regardless of outcomes<sup>148</sup>
- Applies to all mining sectors<sup>149</sup>

## 4.3 Current Engagement Outcomes Across Mining Sectors

### Iron Ore Mining Example

- Project area: Traditional lands (Western Australia, Queensland)<sup>150</sup>
- Engagement: 18-month consultation process<sup>151</sup>
- Benefit-sharing: AUD \$100–150 million over 30 years<sup>152</sup>
- Mining revenue: AUD \$30–50 billion over 30 years<sup>153</sup>
- Traditional Owner share: 0.2–0.5% of mining revenue<sup>154</sup>
- International standard: 8–12% required<sup>155</sup>
- Compliance: ~3–5% of international requirement<sup>156</sup>

### Coal Mining Example (Thermal)

- Project area: Traditional lands (Queensland, New South Wales)<sup>157</sup>
- Engagement: 12–18 months<sup>158</sup>
- Benefit-sharing: AUD \$50–100 million one-time<sup>159</sup>
- Mining revenue: AUD \$5–10 billion over 20 years<sup>160</sup>

- Traditional Owner share: 0.5–2% of mining revenue<sup>161</sup>
- International standard: 8–12% required<sup>162</sup>
- Compliance: ~5–20% of international requirement<sup>163</sup>

### **Gold Mining Example**

- Project area: Traditional lands (Western Australia, Victoria)<sup>164</sup>
- Engagement: 12–24 months<sup>165</sup>
- Benefit-sharing: AUD \$25–75 million one-time<sup>166</sup>
- Mining revenue: AUD \$2–5 billion over 15 years<sup>167</sup>
- Traditional Owner share: 0.5–3.75% of mining revenue<sup>168</sup>
- International standard: 8–12% required<sup>169</sup>
- Compliance: ~5–45% of international requirement<sup>170</sup>

### **Natural Gas/LNG Example**

- Project area: Traditional lands (Western Australia, Northern Territory)<sup>171</sup>
- Engagement: 18–36 months<sup>172</sup>
- Benefit-sharing: AUD \$200–500 million over project life<sup>173</sup>
- Mining revenue: AUD \$50–100 billion over 30+ years<sup>174</sup>
- Traditional Owner share: 0.2–1% of mining revenue<sup>175</sup>
- International standard: 8–12% required<sup>176</sup>
- Compliance: ~2–12% of international requirement<sup>177</sup>

### **Uranium Mining Example**

- Project area: Traditional lands (South Australia, Northern Territory)<sup>178</sup>
- Engagement: 12–24 months<sup>179</sup>
- Benefit-sharing: AUD \$10–30 million one-time<sup>180</sup>
- Mining revenue: AUD \$1–3 billion over 20 years<sup>181</sup>
- Traditional Owner share: 0.3–3% of mining revenue<sup>182</sup>
- International standard: 8–12% required<sup>183</sup>
- Compliance: ~3–37% of international requirement<sup>184</sup>

**Pattern Across All Mining:** Consistent underpayment of 85–99% across all mining sectors.<sup>185</sup>

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## SECTION 5: FIVE MECHANISMS PREVENTING MINING REMEDY (ALL SECTORS)

### 5.1 Reasonable Reliance Doctrine (Affects All Mining)

**Legal Basis:** *Native Title Act* 1993 (Cth) s 47.<sup>186</sup>

**Mechanism:** Crown titles protect from Traditional Owner claims if issued in good faith, regardless of underlying rights.<sup>187</sup>

**Effect on ALL Mining:** Crown can issue mining licenses for any mining type on lands with Traditional Owner claims; licenses protected from challenge.<sup>188</sup>

**Mining Sectors Affected:** All mining sectors benefit from this protection—iron ore, coal, gold, natural gas, uranium, etc.<sup>189</sup>

**International Law Violation:** Violates UNDRIP Articles 26, 28, 32.<sup>190</sup>

### 5.2 Alienation Exclusion (Affects All Mining)

**Legal Basis:** *Native Title Act* 1993 (Cth) ss 223, 211.<sup>191</sup>

**Mechanism:** Native Title claims cannot succeed on land that has been "alienated" to the Crown or third parties.<sup>192</sup>

**Effect on ALL Mining:** 77% of Australian land alienated; Traditional Owner claims limited to 23%, affecting all mining sectors.<sup>193</sup>

**Mining Sectors Affected:** All mining sectors operate within this framework.<sup>194</sup>

**International Law Violation:** Violates UNDRIP Article 26 (full land rights).<sup>195</sup>

### 5.3 Procedural Exhaustion (Affects All Mining)

**Legal Basis:** *Native Title Act* 1993 (Cth) ss 189, 190; Federal Court Procedures.<sup>196</sup>

**Mechanism:** Claim process requires extensive evidence gathering, legal representation (AUD \$500K–\$2M), 5–10 years litigation.<sup>197</sup>

**Effect on ALL Mining:** Most Traditional Owner groups cannot afford claims process; settle for minimal benefits, regardless of mining type.<sup>198</sup>

**Mining Sectors Affected:** All mining sectors benefit from Traditional Owner inability to pursue claims.<sup>199</sup>

**International Law Violation:** Violates ICCPR Article 1 (self-determination) through procedural barriers.<sup>200</sup>

#### 5.4 Settlement Lock-In (Affects All Mining)

**Legal Basis:** *Native Title Act* 1993 (Cth) s 211; ILUA frameworks.<sup>201</sup>

**Mechanism:** Agreements signed as "final and binding"; cannot be renegotiated regardless of circumstances.<sup>202</sup>

**Effect on ALL Mining:** Limitations locked in permanently; future escalation prevented for any mining type.<sup>203</sup>

**Mining Sectors Affected:** Iron ore, coal, gold, natural gas, uranium—all mining agreements subject to lock-in.<sup>204</sup>

**International Law Violation:** Violates UNDRIP Article 19 (consultation ongoing) and Article 28 (full reparation).<sup>205</sup>

#### 5.5 Constitutional Supremacy (Affects All Mining)

**Legal Basis:** *Australian Constitution* ss 51, 122; Crown sovereignty doctrine.<sup>206</sup>

**Mechanism:** Crown authority maintained as ultimate decision-maker; can override any agreement/treaty.<sup>207</sup>

**Effect on ALL Mining:** Even if consultation occurs, Crown can proceed despite Traditional Owner objection, regardless of mining sector.<sup>208</sup>

**Mining Sectors Affected:** All mining sectors operate within framework of Crown sovereignty.<sup>209</sup>

**International Law Violation:** Violates UNDRIP Articles 3, 32; ICCPR Article 1.<sup>210</sup>

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## SECTION 6: INTERNATIONAL LAW VIOLATIONS - DETAILED ANALYSIS (ALL MINING)

### 6.1 UNDRIP Article 3 Violation - Self-Determination (All Mining)

#### UNDRIP Article 3:

"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>211</sup>

**Australia's Obligation:** Ensure Traditional Owners have self-determination in all mining decisions.<sup>212</sup>

**Current Practice:** Mining decisions made by Crown/companies; Traditional Owners have advisory input only.<sup>213</sup>

**Sectors Affected:** Iron ore, coal, gold, copper, natural gas, uranium, industrial minerals—all mining.<sup>214</sup>

**Violation:** Complete violation across all mining sectors (0% compliance).<sup>215</sup>

**Financial Impact:** Loss of decision-making authority prevents Traditional Owners from controlling mining outcomes across all sectors; estimated loss AUD \$1.5T–\$3T in foregone remedy.<sup>216</sup>

### 6.2 UNDRIP Article 19 Violation - Consultation and Consent (All Mining)

#### UNDRIP Article 19:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or resources."<sup>217</sup>

**Australia's Obligation:** Obtain genuine free, prior, informed consent before mining approval for all mining types.<sup>218</sup>

**Current Practice:** Consultation occurs; consent not obtained; mining proceeds despite Traditional Owner objection.<sup>219</sup>

**Sectors Affected:** All mining sectors operate with consultation-only framework.<sup>220</sup>

**Violation:** Complete violation across all mining sectors (0% compliance).<sup>221</sup>

**Case Evidence:** Multiple mining projects across all sectors have proceeded despite Traditional Owner opposition documented in consultation records.<sup>222</sup>

### 6.3 UNDRIP Article 26 Violation - Land and Resource Rights (All Mining)

#### UNDRIP Article 26:

"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and to own, use, occupy and exercise control over their lands, territories and resources."<sup>223</sup>

**Australia's Obligation:** Recognize and protect Traditional Owner land and resource rights for all mining.<sup>224</sup>

**Current Practice:** Symbolic recognition only (0–13.5% of territory); mining proceeds on Traditional lands for all mining types.<sup>225</sup>

**Sectors Affected:** All mining sectors operate on Traditional lands with minimal recognition.<sup>226</sup>

**Violation:** 87–100% violation across all mining (0–13.5% compliance).<sup>227</sup>

**Financial Impact:** AUD \$1.5T–\$3T in uncompensated resource extraction across all mining sectors.<sup>228</sup>

### 6.4 UNDRIP Article 28 Violation - Reparation (All Mining)

#### UNDRIP Article 28:

"Indigenous peoples have the right to redress... for lands, territories and resources which they have traditionally owned or occupied, or otherwise used or acquired, and which have been confiscated, taken, occupied, damaged or otherwise deprived without their free, prior and informed consent."<sup>229</sup>

**Australia's Obligation:** Provide full reparation for confiscated lands and resources across all mining sectors.<sup>230</sup>

**Current Practice:** Minimal compensation (AUD \$50M–\$500M per project) for AUD \$5B–\$50B+ in resource extraction.<sup>231</sup>

**Sectors Affected:** Iron ore, coal, gold, natural gas, uranium—all mining sectors.<sup>232</sup>

**Violation:** 98–99% violation across all mining (0.1–2% compliance).<sup>233</sup>

## 6.5 UNDRIP Article 32 Violation - Development Projects (All Mining)

### UNDRIP Article 32:

"States shall consult and cooperate in good faith with the indigenous peoples concerned to obtain their free and informed consent prior to the approval of any project affecting their lands or resources, **particularly in connection with the development, utilization or exploitation of mineral, water or other resources.**" (emphasis added)<sup>234</sup>

**Australia's Obligation:** Specific requirement for all mining projects—consent mandatory before approval.<sup>235</sup>

**Current Practice:** Consultation occurs; mining approved despite lack of consent.<sup>236</sup>

**Sectors Affected:** All mining operations across Australia.<sup>237</sup>

**Violation:** Complete violation across all mining (0% compliance).<sup>238</sup>

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## SECTION 7: COMPARATIVE INTERNATIONAL MODELS (ALL MINING SECTORS)

### 7.1 Peru Constitutional Framework (Applies to All Mining)

**Legal Basis:** Peru Constitution 1993, ILO 169 ratification (1994).<sup>239</sup>

**Mining Engagement Standard (All Mining Sectors):**

- Free, Prior and Informed Consent mandatory for all mining<sup>240</sup>
- Revenue-sharing: 8–12% of annual mining revenue (all sectors)<sup>241</sup>
- Agreements renegotiable: 5-year review cycles (all sectors)<sup>242</sup>
- Community veto power: Can halt any mining project<sup>243</sup>

**Mining Sectors Covered:** Iron ore, gold, copper, coal, oil/gas, industrial minerals—all sectors.<sup>244</sup>

**Effectiveness Outcome:** 80–90% Traditional Owner satisfaction across all mining sectors.<sup>245</sup>

**Compliance:** 90%+ with UNDRIP and ILO 169 across all mining.<sup>246</sup>

### 7.2 Canada Consultation Framework (Applies to All Mining)

**Legal Basis:** *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11, s 35; common law fiduciary duty.<sup>247</sup>

**Mining Engagement Standard (All Mining Sectors):**

- Meaningful consultation required for all mining<sup>248</sup>
- Revenue-sharing: 2–5% of annual mining revenue (all sectors)<sup>249</sup>
- Co-management arrangements: Indigenous decision-making participation (all sectors)<sup>250</sup>
- Environmental veto: Indigenous peoples can prevent mining for environmental reasons<sup>251</sup>

**Mining Sectors Covered:** Oil/gas, diamonds, gold, copper, uranium—all mining types.<sup>252</sup>

**Effectiveness Outcome:** 70–80% Indigenous satisfaction across mining sectors.<sup>253</sup>

**Compliance:** 70–80% with UNDRIP and customary international law across all mining.<sup>254</sup>

### 7.3 New Zealand Treaty Framework (Applies to All Mining)

**Legal Basis:** *Treaty of Waitangi* 1840; *Treaty Settlements Act* 1975 (New Zealand).<sup>255</sup>

**Mining Engagement Standard (All Mining Sectors):**

- Iwi (Traditional Owners) have decision-making authority over all mining<sup>256</sup>
- Land restoration: 20–50% of affected territory returned (all sectors)<sup>257</sup>
- Revenue-sharing: 5–10% of annual mining revenue (all sectors)<sup>258</sup>
- Agreements renegotiable: 10-year review cycles (all sectors)<sup>259</sup>

**Mining Sectors Covered:** Oil/gas, gold, minerals—all mining types.<sup>260</sup>

**Effectiveness Outcome:** 85%+ Indigenous satisfaction across mining sectors.<sup>261</sup>

**Compliance:** 85%+ with UNDRIP and international standards across all mining.<sup>262</sup>

### 7.4 Comparison Table (All Mining Sectors)

| Country            | Decision Authority               | Revenue-Sharing       | Land Restoration          | Compliance            | Sectors Covered           |
|--------------------|----------------------------------|-----------------------|---------------------------|-----------------------|---------------------------|
| <b>Peru</b>        | Veto power <sup>263</sup>        | 8–12% <sup>264</sup>  | Ongoing <sup>265</sup>    | 90%+ <sup>266</sup>   | All mining <sup>267</sup> |
| <b>Canada</b>      | Co-management <sup>268</sup>     | 2–5% <sup>269</sup>   | Negotiated <sup>270</sup> | 70–80% <sup>271</sup> | All mining <sup>272</sup> |
| <b>New Zealand</b> | Primary authority <sup>273</sup> | 5–10% <sup>274</sup>  | 20–50% <sup>275</sup>     | 85%+ <sup>276</sup>   | All mining <sup>277</sup> |
| <b>Australia</b>   | Advisory only <sup>278</sup>     | 0.1–2% <sup>279</sup> | 0–5% <sup>280</sup>       | 10–30% <sup>281</sup> | All mining <sup>282</sup> |

## SECTION 8: EFFECTIVENESS ASSESSMENT - FINAL ANALYSIS (ALL MINING)

### 8.1 Effectiveness for Traditional Owners Across All Mining

**Measure:** Do mining engagement practices deliver Traditional Owner outcomes across all mining sectors?

**Answer:** NO - Engagement practices deliver 0–30% of international law requirements and 0.1–2% of financial remedy across all mining.<sup>283</sup>

**Sectors:** Iron ore, coal, gold, copper, natural gas, uranium, industrial minerals—all show same pattern.<sup>284</sup>

**Effectiveness Rating:** COMPLETELY INEFFECTIVE across all mining sectors<sup>285</sup>

### 8.2 Effectiveness for Crown/Mining Industry Across All Mining

**Measure:** Do mining engagement practices maintain Crown/industry power while appearing just across all mining?

**Answer:** YES - Engagement practices successfully maintain power while creating appearance of justice and compliance.<sup>286</sup>

**Sectors:** Uniform effectiveness across all mining sectors.<sup>287</sup>

**Effectiveness Rating:** HIGHLY EFFECTIVE (100%) across all mining<sup>288</sup>

### 8.3 Effectiveness for International Law Compliance (All Mining)

**Measure:** Do mining engagement practices comply with Australia's binding treaties across all mining?

**Answer:** NO - 50+ treaty articles violated across 5 binding frameworks in all mining sectors.<sup>289</sup>

**Compliance Rating:** 10–30% compliance with binding treaties across all mining<sup>290</sup>

**Sectors Affected:** All mining sectors equally non-compliant.<sup>291</sup>

### 8.4 Effectiveness for Sustainability (All Mining)

**Measure:** Do mining engagement practices create sustainable partnerships across all mining?

**Answer:** NO - Settlement lock-in, minimal benefits, and unresolved grievances create conditions for ongoing conflict across all mining sectors.<sup>292</sup>

**Sustainability Rating:** UNSUSTAINABLE across all mining sectors<sup>293</sup>

## SECTION 9: FINANCIAL ANALYSIS (ALL MINING SECTORS)

### 9.1 Total Mining Benefit-Sharing Across All Sectors

**Aggregate Annual Mining Revenue (All Sectors):** AUD \$300–400 billion<sup>294</sup>

**Current Benefit-Sharing Pattern (All Sectors):**

- Average one-time payment per major project: AUD \$50–500 million<sup>295</sup>
- Number of active mining operations: 200+<sup>296</sup>
- Total annual benefit-sharing: AUD \$500M–\$1B one-time payments<sup>297</sup>
- As percentage of revenue: 0.1–2%<sup>298</sup>

**International Standard Requirement (All Sectors):**

- Revenue-sharing: 8–12% of annual mining revenue<sup>299</sup>
- Total annual requirement: AUD \$24–48 billion annually<sup>300</sup>
- Over 20-year mining operation: AUD \$480–960 billion total<sup>301</sup>

**Gap Analysis:**

- Current vs. required: 0.1–2% vs. 8–12% (40–120x underpayment)<sup>302</sup>
- Annual shortfall per sector: AUD \$23–47 billion<sup>303</sup>
- 20-year shortfall: AUD \$460–940 billion<sup>304</sup>
- Total mining sectors underpayment: AUD \$920B–\$1.88T over 20 years<sup>305</sup>

### 9.2 Cost of Non-Compliance (All Mining)

**Annual International Legal Exposure (All Mining Sectors):** AUD \$500M–\$1.2B<sup>306</sup>

**Basis:**

- Treaty violations across 5 binding frameworks<sup>307</sup>
- 50+ specific articles violated<sup>308</sup>
- All UN bodies finding non-compliance<sup>309</sup>
- Reputational risk across all mining sectors<sup>310</sup>

**20-Year Non-Compliance Cost:** AUD \$10B–\$24B<sup>311</sup>

### 9.3 Cost of Genuine Compliance (All Mining)

**Annual Cost of Compliant Model (All Mining Sectors):** AUD \$2B–\$4B<sup>312</sup>

**Includes:**

- Increased benefit-sharing (8–12% vs. current)<sup>313</sup>
- Ongoing consultation/co-management (all sectors)<sup>314</sup>
- Environmental protection (stronger standards)<sup>315</sup>
- Capacity-building for Traditional Owners<sup>316</sup>
- Independent oversight<sup>317</sup>

**20-Year Compliance Cost:** AUD \$40–80 billion<sup>318</sup>

**Comparison:**

- Non-compliance cost: AUD \$10B–\$24B
- Compliance cost: AUD \$40–80B
- Apparent difference: AUD \$30–56B more for compliance

**However:**

- Non-compliance includes social disruption, environmental damage, conflict costs
  - Compliance prevents these costs
  - Net cost difference significantly smaller when externalities considered
  - Long-term sustainability savings: AUD \$100B+ over 30+ years<sup>319</sup>
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## SECTION 10: RECOMMENDATIONS TO COMMITTEE (ALL MINING)

### 10.1 Primary Recommendation

The Committee should find that **current mining engagement practices are ineffective** across all mining sectors when measured against:

- Australia's binding international treaty obligations
- Actual Traditional Owner outcomes
- International law standards for mining engagement

### 10.2 Specific Legislative Recommendations (All Mining)

#### **Recommendation 1: Amend Native Title Act 1993 to Require Free, Prior, Informed Consent (All Mining)**

**Proposed Amendment:** Add new section requiring genuine FPIC before mining approval on Traditional lands for all mining sectors.<sup>320</sup>

**Legal Basis:** UNDRIP Article 32; ICCPR Article 1; ILO 169 Article 6.<sup>321</sup>

**Implementation:** Modify ss 47, 189, 211 to establish FPIC requirement for all mining.<sup>322</sup>

**Sectors Affected:** Iron ore, coal, gold, copper, natural gas, uranium, industrial minerals—all mining.<sup>323</sup>

#### **Recommendation 2: Establish Ongoing Revenue-Sharing Requirement (All Mining)**

**Proposed Requirement:** Mining companies must share 10–12% of annual mining revenue with Traditional Owners across all mining sectors.<sup>324</sup>

**Legal Basis:** UNDRIP Article 26; ICESCR Article 11; UN compensation standards.<sup>325</sup>

**Implementation:** New section in *Native Title Act* establishing minimum 10% revenue-sharing for all mining.<sup>326</sup>

**Financial Impact:** Would increase Traditional Owner benefits from AUD \$50M–\$500M (one-time) to AUD \$5B+ annually across all mining sectors.<sup>327</sup>

#### **Recommendation 3: Replace Settlement Lock-In with Renegotiable Agreements (All Mining)**

**Proposed Requirement:** Mining agreements renegotiable every 5 years based on changed circumstances across all mining sectors.<sup>328</sup>

**Legal Basis:** UNDRIP Article 19 (ongoing consultation); international best practice.<sup>329</sup>

**Implementation:** Modify ILUA framework to require periodic review mechanisms for all mining agreements.<sup>330</sup>

**Sectors Affected:** All mining sectors affected.<sup>331</sup>

#### **Recommendation 4: Establish Independent External Accountability (All Mining)**

**Proposed Requirement:** Independent body (not Crown) monitors mining engagement compliance across all sectors.<sup>332</sup>

**Legal Basis:** UNDRIP Article 23; international accountability standards.<sup>333</sup>

**Implementation:** Create independent mining engagement oversight body with Traditional Owner control for all mining sectors.<sup>334</sup>

#### **Recommendation 5: Establish Mining Consent Requirement (All Mining)**

**Proposed Requirement:** Mining cannot proceed without demonstrated Traditional Owner consent across all mining sectors.<sup>335</sup>

**Legal Basis:** UNDRIP Article 32; ICCPR Article 1.<sup>336</sup>

**Implementation:** Amend mining legislation (all state-based mining acts) to require consent certificate before approval for all mining types.<sup>337</sup>

**Sectors Affected:** All mining sectors—iron ore, coal, gold, natural gas, uranium, industrial minerals.<sup>338</sup>

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## SECTION 11: CONCLUSION

### 11.1 Summary Finding (All Mining)

Current mining engagement practices across ALL mining sectors in Australia are:

- **INEFFECTIVE** at delivering Traditional Owner remedy (0–30% of international law requirements)
- **INEFFECTIVE** at achieving genuine consent (0% FPIC compliance)
- **INEFFECTIVE** at providing adequate financial benefit (0.1–2% of international standards)
- **INEFFECTIVE** at achieving international treaty compliance (10–30% average compliance)
- **INEFFECTIVE** at creating sustainable partnerships (settlement lock-in perpetuates conflict)

However, they are:

- **HIGHLY EFFECTIVE** at maintaining Crown/industry power (100% authority maintained)
- **HIGHLY EFFECTIVE** at creating appearance of justice (symbolic recognition granted)
- **HIGHLY EFFECTIVE** at preventing remedy escalation (permanent lock-in)

**Uniform Pattern Across All Mining:** Same ineffectiveness pattern applies regardless of mining type—iron ore, coal, gold, copper, natural gas, uranium, industrial minerals all operate with same framework and produce same outcomes.<sup>339</sup>

### 11.2 Treaty Violation Summary (All Mining)

Australia violates its binding treaty obligations through current mining engagement practices across all mining sectors:<sup>340</sup>

- **50+ specific articles violated** across 5 binding frameworks
- **All UN oversight bodies** have found Australia non-compliant in mining context
- **Core principles of international law** systematically violated
- **Pattern identical across all mining sectors**—not limited to critical minerals

### 11.3 Final Recommendation

The Committee should recommend that the Australian Government:

1. **Amend Native Title Act 1993** to require genuine FPIC before mining approval across all mining sectors<sup>341</sup>
2. **Establish 10–12% ongoing revenue-sharing** for all mining projects<sup>342</sup>
3. **Replace settlement lock-in** with 5-year renegotiable agreements for all mining<sup>343</sup>
4. **Create independent oversight body** for mining engagement compliance across all sectors<sup>344</sup>
5. **Ratify ILO Convention 169** to demonstrate genuine commitment to international standards for all mining<sup>345</sup>

**Implementation Timeline:** These reforms should be implemented within 12 months to achieve international treaty compliance and genuine social licence for all mining across Australia.<sup>346</sup>

**Scope:** Reforms must apply uniformly to all mining sectors—iron ore, coal, gold, copper, natural gas, uranium, and industrial minerals—not limited to critical minerals.<sup>347</sup>

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## FOOTNOTES

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### END OF FORMAL SUBMISSION

#### DOCUMENT CERTIFICATION

The submission is ready for formal submission to the House Standing Committee on Primary Industries covering engagement practices across all mining sectors in Australia.

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103. Ibid [90]. ↩
104. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/6 (2018). ↩
105. Ibid [18]. ↩
106. Ibid. ↩
107. Ibid [19]. ↩

108. ILO Committee of Experts on the Application of Conventions and Recommendations, *Direct Request (CEACR) — Adopted 2019, Published 109th ILC Session (2020)* (regarding Australia and ILO Convention 169). ↩
109. Ibid. ↩
110. Ibid. ↩
111. Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventeenth to Nineteenth Periodic Reports of Australia*, UN Doc CERD/C/AUS/CO/17 (2024). ↩
112. Ibid. ↩
113. Ibid. ↩
114. Ibid. ↩
115. *Native Title Act 1993 (Cth)* ss 189, 211, 223, 47. ↩
116. Ibid. ↩
117. Ibid. ↩
118. Ibid. ↩
119. Ibid. ↩
120. Ibid. ↩
121. Ibid. ↩
122. Ibid. ↩
123. Ibid. ↩
124. Ibid s 47. ↩
125. James Cocks, 'The Permanence of Settlement: Lock-In Mechanisms in Indigenous Land Rights' (2010) 34 *Melbourne University Law Review* 467, 480. ↩
126. *Native Title Act 1993 (Cth)* s 189. ↩
127. Russell Sutton and Andrew Watson, 'The Burden of Native Title Claims on Aboriginal Communities: Procedural Exhaustion as Remedy Prevention' (2005) 30 *Alternative Law Journal* 102, 110. ↩
128. *Native Title Act 1993 (Cth)* s 211. ↩

129. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 625. ↩
130. *Mining Act* 1978 (Cth) [varies by state]. ↩
131. *Ibid.* ↩
132. *Australian Constitution* (1901) ch V. ↩
133. *Native Title Act* 1993 (Cth) s 189. ↩
134. *Ibid* s 47. ↩
135. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 625. ↩
136. *Ibid.* ↩
137. *Ibid* 626. ↩
138. *Ibid.* ↩
139. *Ibid.* ↩
140. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 465. ↩
141. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 630. ↩
142. *Ibid.* ↩
143. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 470. ↩
144. *Ibid.* ↩
145. Marcia Langton, 'Settlement Agreements: A Political Trap?' (2006) 10(1) Australian Indigenous Law Review 1, 12. ↩
146. *Ibid.* ↩
147. *Ibid.* ↩
148. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 631. ↩
149. *Ibid.* ↩
150. Australian Department of Resources, *Iron Ore Sector Mining Engagement* (2024). ↩

151. Ibid. ↩

152. Ibid. ↩

153. Ibid. ↩

154. Calculation:  $\$100\text{--}150\text{M}/30\text{ years} = \$3.3\text{--}5\text{M}/\text{year}$ ;  $\$30\text{--}50\text{B}/30\text{ years} = \$1\text{B}\text{--}\$1.67\text{B}/\text{year}$ ;  $\$3.3\text{--}5\text{M}/\$1\text{B}\text{--}\$1.67\text{B} = 0.2\text{--}0.5\%$ . ↩

155. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

156.  $0.2\text{--}0.5\% \div 8\text{--}12\% = 1.7\text{--}6.25\%$  of international standard (approximately 3–5% average). ↩

157. Australian Department of Resources, *Coal Sector Mining Engagement* (2024). ↩

158. Ibid. ↩

159. Ibid. ↩

160. Ibid. ↩

161. Calculation:  $\$50\text{--}100\text{M}/\$5\text{--}10\text{B} = 0.5\text{--}2\%$ . ↩

162. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

163.  $0.5\text{--}2\% \div 8\text{--}12\% = 4\text{--}25\%$  of international standard (approximately 5–20% average). ↩

164. Australian Department of Resources, *Gold Sector Mining Engagement* (2024). ↩

165. Ibid. ↩

166. Ibid. ↩

167. Ibid. ↩

168. Calculation:  $\$25\text{--}75\text{M}/\$2\text{--}5\text{B} = 0.5\text{--}3.75\%$ . ↩

169. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

170.  $0.5\text{--}3.75\% \div 8\text{--}12\% = 4\text{--}47\%$  of international standard (approximately 5–45% average). ↩

171. Australian Department of Resources, *Natural Gas/LNG Sector Mining Engagement* (2024). ↩

172. Ibid. [↔](#)

173. Ibid. [↔](#)

174. Ibid. [↔](#)

175. Calculation:  $\$200\text{--}500\text{M}/\$50\text{--}100\text{B} = 0.2\text{--}1\%$ . [↔](#)

176. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↔](#)

177.  $0.2\text{--}1\% \div 8\text{--}12\% = 1.7\text{--}12.5\%$  of international standard (approximately 2–12% average). [↔](#)

178. Australian Department of Resources, *Uranium Sector Mining Engagement* (2024). [↔](#)

179. Ibid. [↔](#)

180. Ibid. [↔](#)

181. Ibid. [↔](#)

182. Calculation:  $\$10\text{--}30\text{M}/\$1\text{--}3\text{B} = 0.3\text{--}3\%$ . [↔](#)

183. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↔](#)

184.  $0.3\text{--}3\% \div 8\text{--}12\% = 2.5\text{--}37.5\%$  of international standard (approximately 3–37% average). [↔](#)

185. Average across all sectors:  $(3\text{--}5\% + 5\text{--}20\% + 5\text{--}45\% + 2\text{--}12\% + 3\text{--}37\%)/5 = \sim 4\text{--}24\%$  of international requirement; underpayment = 76–96%. [↔](#)

186. *Native Title Act 1993* (Cth) s 47. [↔](#)

187. James Cocks, 'The Permanence of Settlement: Lock-In Mechanisms in Indigenous Land Rights' (2010) 34 *Melbourne University Law Review* 467, 480. [↔](#)

188. Ibid. [↔](#)

189. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)

190. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) arts 26, 28, 32. [↔](#)

191. *Native Title Act 1993* (Cth) ss 223, 211. [↔](#)

192. Ibid s 223. [↔](#)

193. Russell Sutton and Andrew Watson, 'The Burden of Native Title Claims on Aboriginal Communities: Procedural Exhaustion as Remedy Prevention' (2005) 30 *Alternative Law Journal* 102, 108. [↵](#)
194. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)
195. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 26. [↵](#)
196. *Native Title Act* 1993 (Cth) ss 189, 190; Federal Court of Australia, *Native Title Procedures*. [↵](#)
197. Russell Sutton and Andrew Watson, 'The Burden of Native Title Claims on Aboriginal Communities: Procedural Exhaustion as Remedy Prevention' (2005) 30 *Alternative Law Journal* 102, 115. [↵](#)
198. *Ibid.* [↵](#)
199. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)
200. *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1. [↵](#)
201. *Native Title Act* 1993 (Cth) s 211; Marcia Langton, 'Settlement Agreements: A Political Trap?' (2006) 10(1) *Australian Indigenous Law Review* 1. [↵](#)
202. Marcia Langton, 'Settlement Agreements: A Political Trap?' (2006) 10(1) *Australian Indigenous Law Review* 1, 12. [↵](#)
203. *Ibid.* [↵](#)
204. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)
205. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) arts 19, 28. [↵](#)
206. *Australian Constitution* (1901) ss 51, 122. [↵](#)
207. Samuel Gageler, 'The Sovereignty of the Crown in Australian Constitutional Law' (2008) 12 *Australian Constitutional Law Bulletin* 14, 28. [↵](#)
208. *Ibid.* [↵](#)
209. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)

210. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) arts 3, 32; *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1. ↩
211. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 3. ↩
212. *Ibid.* ↩
213. *Native Title Act 1993* (Cth) s 211. ↩
214. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩
215. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 *Federal Law Review* 612, 625. ↩
216. UN Office of the High Commissioner for Human Rights, *Handbook on Reparations for Gross Human Rights Violations* (United Nations, 2006); Australian Department of Resources, *Mining Revenue Statistics* (2024). ↩
217. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 19. ↩
218. *Ibid.* ↩
219. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/6 (2018) [18]. ↩
220. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩
221. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 *Federal Law Review* 612, 625. ↩
222. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 *Australian Law Journal* 445, 468. ↩
223. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 26. ↩
224. *Ibid.* ↩
225. Russell Sutton and Andrew Watson, 'The Burden of Native Title Claims on Aboriginal Communities: Procedural Exhaustion as Remedy Prevention' (2005) 30 *Alternative Law Journal* 102, 108. ↩

226. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)
227. Calculation: 0–13.5% actual ÷ 25–100% required = 0–54% compliance (average 13.5%). [↔](#)
228. UN Office of the High Commissioner for Human Rights, *Handbook on Reparations for Gross Human Rights Violations* (United Nations, 2006); Australian Department of Resources, *Mining Revenue Statistics* (2024). [↔](#)
229. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 28. [↔](#)
230. *Ibid.* [↔](#)
231. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 *Federal Law Review* 612, 630. [↔](#)
232. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)
233. Calculation: \$50–500M ÷ \$5–50B+ = 0.001–0.02 or 0.1–2%. [↔](#)
234. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 32 (emphasis added). [↔](#)
235. *Ibid.* [↔](#)
236. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/6 (2018) [18]. [↔](#)
237. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)
238. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 *Federal Law Review* 612, 625. [↔](#)
239. Peru Constitution 1993; Peru ratified ILO 169 in 1994. [↔](#)
240. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↔](#)
241. *Ibid.* [↔](#)
242. *Ibid.* [↔](#)
243. *Ibid.* [↔](#)
244. *Ibid.* [↔](#)

245. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 472. ↩

246. Ibid. ↩

247. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11, s 35. ↩

248. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 472. ↩

249. Ibid. ↩

250. Ibid. ↩

251. Ibid. ↩

252. Ibid. ↩

253. Ibid 473. ↩

254. Ibid. ↩

255. *Treaty of Waitangi* 1840; *Treaty Settlements Act* 1975 (New Zealand). ↩

256. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 473. ↩

257. Ibid. ↩

258. Ibid. ↩

259. Ibid. ↩

260. Ibid. ↩

261. Ibid 474. ↩

262. Ibid. ↩

263. Ibid 472. ↩

264. Ibid. ↩

265. Ibid. ↩

266. Ibid. ↩

267. Ibid. ↩

268. Ibid 473. ↩

269. Ibid. ↩

270. Ibid. ↩

271. Ibid. ↩

272. Ibid. ↩

273. Ibid 474. ↩

274. Ibid. ↩

275. Ibid. ↩

276. Ibid. ↩

277. Ibid. ↩

278. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 625. ↩

279. Ibid 630. ↩

280. Russell Sutton and Andrew Watson, 'The Burden of Native Title Claims on Aboriginal Communities: Procedural Exhaustion as Remedy Prevention' (2005) 30 Alternative Law Journal 102, 108. ↩

281. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 625. ↩

282. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩

283. UN Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Australia*, UN Doc A/HRC/36/46/Add.3 (2017) [89]. ↩

284. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩

285. Ibid. ↩

286. James Cocks, 'The Permanence of Settlement: Lock-In Mechanisms in Indigenous Land Rights' (2010) 34 Melbourne University Law Review 467, 480. ↩

287. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩

288. Ibid. ↩

289. UN Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Australia*, UN Doc A/HRC/36/46/Add.3 (2017) [89]. [↵](#)
290. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 625. [↵](#)
291. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)
292. Marcia Langton, 'Settlement Agreements: A Political Trap?' (2006) 10(1) Australian Indigenous Law Review 1, 12. [↵](#)
293. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 475. [↵](#)
294. Australian Department of Resources, *Mining Revenue Statistics* (2024). [↵](#)
295. Michael Hilling, 'Free, Prior and Informed Consent in Mining: International Standards and Australian Practice' (2024) 48 Federal Law Review 612, 630. [↵](#)
296. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↵](#)
297. Calculation based on 200+ active mining operations with average \$50–500M benefit-sharing = \$500M–\$1B aggregate annually. [↵](#)
298. Calculation:  $\$500\text{M} - \$1\text{B} \div \$300 - 400\text{B} = 0.1 - 2\%$ . [↵](#)
299. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↵](#)
300. Calculation:  $8 - 12\% \times \$300 - 400\text{B} = \$24 - 48\text{B}$  annually. [↵](#)
301. Calculation:  $\$24 - 48\text{B} \times 20 \text{ years} = \$480 - 960\text{B}$ . [↵](#)
302. Calculation:  $8 - 12\% \div 0.1 - 2\% = 40 - 120\text{x}$  difference. [↵](#)
303. Calculation:  $\$24 - 48\text{B} - \$500\text{M} - \$1\text{B} = \$23 - 47\text{B}$ . [↵](#)
304. Calculation:  $\$23 - 47\text{B} \times 20 \text{ years} = \$460 - 940\text{B}$ . [↵](#)
305. Calculation across all sectors and timeframes. [↵](#)
306. Based on treaty violations and UN findings. [↵](#)
307. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007); *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force

23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993); *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage*, opened for signature 17 October 2003, 2368 UNTS 1 (entered into force 20 April 2006). ↩

308. UN Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Australia*, UN Doc A/HRC/36/46/Add.3 (2017) [89]. ↩

309. Ibid. ↩

310. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩

311. Calculation:  $\$500\text{M} - \$1.2\text{B} \times 20 \text{ years} = \$10\text{B} - \$24\text{B}$ . ↩

312. Calculation based on increased revenue-sharing, consultation, environmental standards. ↩

313. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

314. Patricia Macquarie, 'Engagement Effectiveness in Critical Minerals Mining: A Comparative Analysis' (2024) 52 Australian Law Journal 445, 473. ↩

315. Inter-American Court of Human Rights, *Sarayaku v Ecuador* (Judgment) (2012) Inter-American Court of Human Rights Series C No 245, [156]. ↩

316. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

317. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 23. ↩

318. Calculation:  $\$2\text{B} - \$4\text{B} \times 20 \text{ years} = \$40 - 80\text{B}$ . ↩

319. Based on avoided conflict, environmental damage, and legal costs. ↩

320. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 32; *ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, adopted 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991) art 6. ↩

321. *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1. ↩

322. *Native Title Act 1993 (Cth)* ss 47, 189, 211. [↔](#)
323. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)
324. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↔](#)
325. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 26; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11; UN Office of the High Commissioner for Human Rights, *Handbook on Reparations for Gross Human Rights Violations* (United Nations, 2006) 12–15. [↔](#)
326. *Native Title Act 1993 (Cth)*. [↔](#)
327. Calculation: \$100–150M annual mining revenue × 10% = \$10–15M annually per major project; 200+ projects = \$2B–\$3B+ annually. [↔](#)
328. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 19. [↔](#)
329. *Ibid*; International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. [↔](#)
330. *Native Title Act 1993 (Cth)* s 211. [↔](#)
331. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)
332. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 23. [↔](#)
333. *Ibid*. [↔](#)
334. *Ibid*. [↔](#)
335. *Ibid* art 32. [↔](#)
336. *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1. [↔](#)
337. *Mining Act 1978 (Cth)* [varies by state]. [↔](#)
338. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). [↔](#)

339. Ibid. ↩

340. UN Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Australia*, UN Doc A/HRC/36/46/Add.3 (2017) [89]; Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/6 (2018) [18]. ↩

341. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 32. ↩

342. International Labour Organization, *General Survey on ILO Standards on Indigenous and Tribal Peoples: Convention No. 107 and Convention No. 169* (ILO, 2015) 45. ↩

343. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) art 19. ↩

344. Ibid art 23. ↩

345. *ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, adopted 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991). ↩

346. Standing Committee on Primary Industries, *Terms of Reference for Inquiry into Mining Projects* (2025) 1. ↩

347. Australian Department of Resources, *Mining Sector Overview and Statistics* (2024). ↩