

**The research for this fact sheet was carried out by Jörg Imberger and Mark Andrich. CWR take no responsibility for the facts listed or the view implied.**

**Question:** *Did saying sorry to the indigenous population, last year, bring anything useful to aboriginals or was it merely a way to clear the white-fellows conscience?*

**Background:** Aborigines have lived in Australia for between 100,000 and 60,000 years, having migrated down across the Torres Strait to Australia during the last ice age. Currently, there are approximately 78,000 people of aboriginal origin living in Western Australia. Shortly after arrival, the new European settlers, confiscated the whole of the State of Western Australia and vested it in the Empire, calling it Crown Land; Aborigines living at the time were collectively lumped in with the native fauna and flora. Thus with one stroke of the pen, the early settlers confiscated all of the traditional owners of their home and outlawed their culture. The *Transfer of Land Act 1893* created a process for registering transfers of freehold title and some leases of freehold title, and presently applies to about 7% of the land mass of WA. The remaining 93% of WA is designated as 'Crown land' by the State. That designation arises from the assertion of British sovereignty over the Swan River Colony by Stirling on behalf of the British Crown in 1829. The effect of the High Court's decision in *Mabo* is to rule that the claim of the British Crown to hold the land as within the sovereign power of the Crown, or as 'Crown land', does not extinguish the rights of the prior occupants of the land. However, the common law principle is that the Crown does have power to make grants of that land which, if inconsistent with the prior interests of indigenous peoples, extinguishes those rights. It becomes a complex analysis as to which grants are inconsistent with what native title rights. In the *Wik* case the High Court's conclusion was that pastoral leases did not extinguish native title and co-existed alongside it. That applies to about 43% of WA. However, the High Court in *Ward* decided that the grant of a pastoral lease extinguished the right of a native titleholder to exclude anybody from land that had at any time been the subject of a grant of a pastoral lease.

### **Current Situation**

- The present politically correct thing to say is that Aborigines are the traditional owners of designated areas of Western Australia. The Office of Native Title website states: "Native title is a form of land title that recognises the unique ties some Aboriginal groups have to land. Australian law recognises that native title exists where Aboriginal people have maintained a traditional connection to their land and waters, since sovereignty, and where acts of government have not removed it. Native title was first recognised by the High Court of Australia in 1992 with the *Mabo* decision. The [Mabo](#) decision overturned the idea of 'terra nullius', that the Australian continent did not belong to anyone at the time of Europeans' arrival. It recognised for the first time that indigenous Australians may continue to hold native title and to be uniquely connected to the land. Points to note about this designation are:
  - The total claims covered by this designation is most of Western Australia; about 93% of WA is under claim, but only in respect of some rights. For example, although the outer boundary of the Single Noongar claim encompasses the whole of the South-West of

the State, the claim does not include any of the freehold title within that external boundary. About 43% of the State is under claim for a non-exclusive title only (i.e., a title co-existing with pastoral leases). The situation, even within the claims framework is complex.

- Freehold extinguishes native title.
- Commitment to co-operate to ensure the ongoing protection of Aboriginal heritage;
- Commitment for parties to discuss proposed activities and conduct heritage surveys where appropriate;
- Capped daily rates for survey costs, agreed by both parties. Rates are region specific and administration fees are capped; and
- Certainty for exploration and prospecting companies and individuals in undertaking activities for the life of the tenement.

*Summary: From these points it is clear that native Title only serves to acknowledge that Aboriginal people were the traditional owners and have the right to voice an opinion on land use activities as well as have certain access rights to the land. About 50% of WA is 'unallocated Crown land' that may be the subject of an exclusive native title. That arguably gives native titleholders a right to veto activities on that land. However, the State asserts in the Mining Act the ownership of all minerals in the State and the right to grant licences to miners to mine the minerals in those lands. Arguably the miner is obliged to negotiate with the native titleholders who hold exclusive native title the right to enter those land to exercise the licence to mine. The State also asserts in the Rights in Water and Irrigation Act the ownership of all water in the State and in the Wildlife Conservation Act ownership of all fauna and flora in the State. That allows the State to regulate activities in respect of those resources also.*

*In simple terms, the traditional owners, do not have equal land rights to what is gained by purchasing the land anew.*

- The Industry Commission Report, *Mining and Minerals Processing in Australia*, 1991, recommended a clearer definition of Aboriginal property rights and focuses on improvements in NT Aboriginal land rights provisions by suggesting that governments investigate the possibilities of transferring mineral rights on Aboriginal lands to the traditional owners. Further (at pp.67-68), it accepts - in similar terms to the recommendations of Justice Woodward (1974), Justice Fox (1977), Justice Toohey (1983) and P. Seaman QC (1984) - that Aborigines should have a right to veto mineral development on their land, subject only to the normal exercise of the 'national interest' power of Federal Parliament. Industry Commission, *Mining and Minerals Processing in Australia*, Australian Government Printing Service, 1991.  
(from <http://www.austlii.edu.au/au/journals/AboriginalLB/1991/56.html>)

### **Comparison of Living Conditions:**

- Gross State Product per Person: \$60,845
- Average Weekly Earnings for Adult Population: \$1200 per week.
- Aboriginal Income in Remote Communities Average \$267 per week.
- Average Life Expectancy: 50 for males; 64 for females (about 20 years less than non-indigenous population.)
- Only 1.9% of Aboriginals who live in remote areas have a Bachelor degree or higher, and only 2.1% who live in non-remote areas.
- 60% of Aboriginals older than 15 don't have any qualifications and haven't completed Year 10 or above.
- The ratio of indigenous to non-indigenous rate of imprisonment in WA is about 21 and rising as of 2007. This means there about 1,560 indigenous people in prison of a population of about 78,000 and 2,680 non-indigenous people in prison of a population of about 2 million.
- Approximately 50% of people between 10 and 17 in juvenile correction facilities are indigenous.
- About 19% of indigenous people, 14 years and over (ABS 4715) consumed alcohol at risky and high risk levels compared to 39% for national average (Delivering a Healthy WA)

Analysis of the Economics of the Pilbara: Iron Ore in Pilbara (Rio Tinto & BHP are 95%): 2008

**Introduction:** In places such as Saudi Arabia the original owners have retained all land, mineral and environmental right; this country has the highest per capita GDP in the world, all due their oil resources. It is thus interesting to examine the Pilbara, to see how the traditional owners are benefiting from the iron ore wealth in that area. The Pilbara is the home of over 20 recognized tribal groups with a total population of around 7,100. Under the ground in the Pilbara is a Reserve Base of iron ore containing about 25,000 billion tonnes of iron content, representing about 14% of the global reserve base. This may be compared to Saudi Arabia that has about 21% of the global oil reserve and a population of around 12 to 16 million Saudis. The oil reduction is around 10 Million Barrels a day, which at an average price of crude oil of A\$25 per bbl amounts to a revenue of B\$91. The indigenous owner, the Bedouin, is the main recipient of this wealth income.

The economics of the Pilbara iron ore industry in 2008, was as follows:

**Income:** Iron Ore Sales in 2008: B\$ 31.7

**Expenditure:**

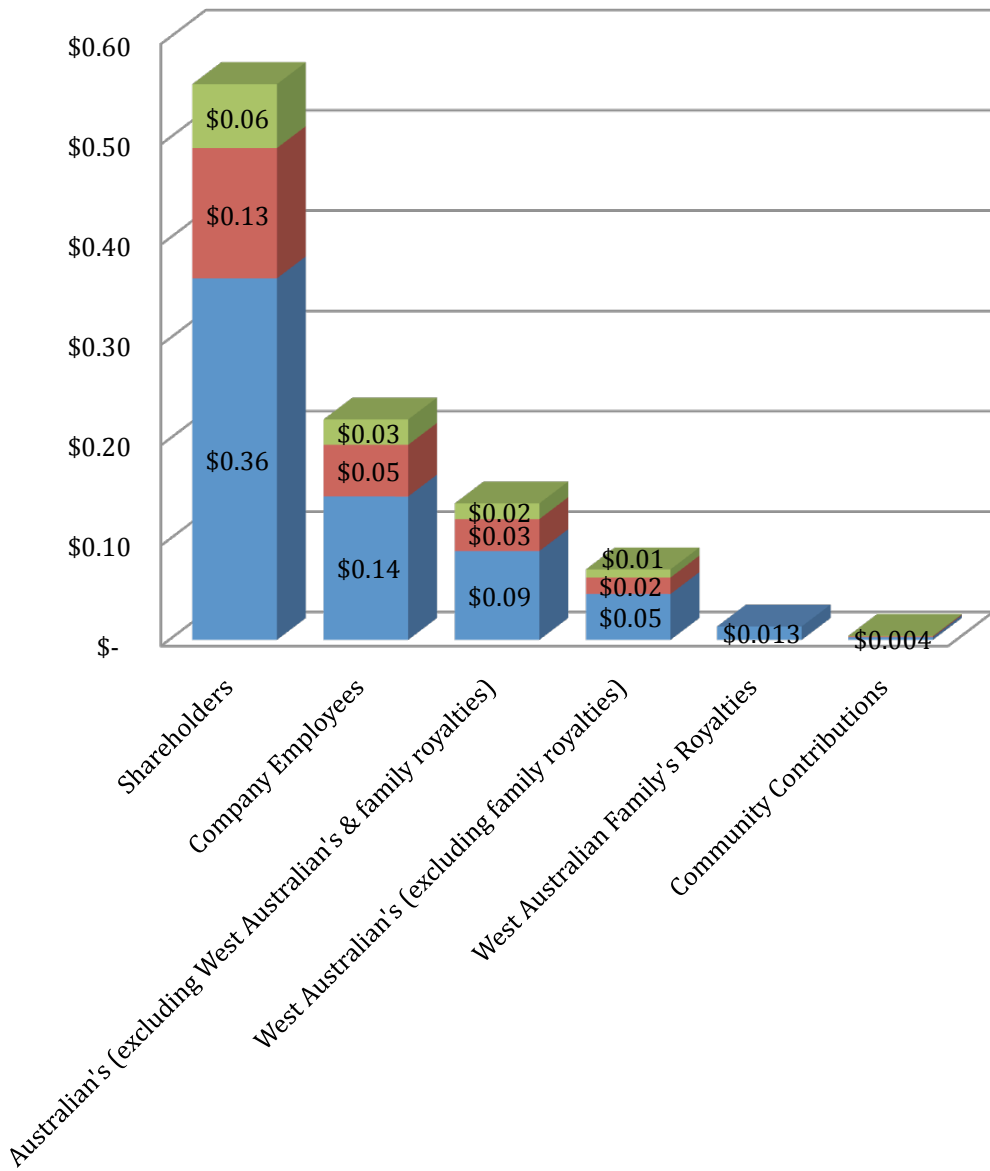
- Payment to Suppliers: M\$ 11,425.0
- Wages and Benefits: M\$ 4,530.0
  - Top 2 Execs: M\$ 40.6
  - Next 38: M\$ 96.9
  - Top 40 Execs M\$ 137.5
  - Work force (23,000) M\$ 4,392.5
- WA Royalties: M\$ 1,205.0
- Earnings: M\$ 11,423.7
  - Retained by Companies: M\$ 6,508.7
  - Return to shareholder: M\$ 4,915.0
- Federal Tax: M\$ 3,050.0
- Community Contributions: M\$ 81.8

In summary, for every dollar gained through iron ore sales as export income, the following cents are received by:

- Shareholders: .....\$0.5539
- Employees as salaries: .....\$0.2197
- Fed Taxes & Contributions Paid to Australians (excluding WA): ..\$0.136
- Contribution to State of WA:..... \$0.0703
- Royalties to Hancock & Wright Families:..... \$0.0134
- Community:..... \$0.004
- Aboriginal Health (assume 7,100 people):..... \$0.0004
- Indigenous Protected Areas Funding: .....\$0.000025
- Aboriginal Early Childhood Development:.....\$0.000079

**Conclusion:** *Little of the revenue from the sale of iron ore goes back to the State, the community or the indigenous owners.*

## Revenue Distribution from \$1 of Iron Ore Sales



- Tertiary Distribution from Secondary Payments to Suppliers & Contractors
- Secondary Distribution (from payments to suppliers & contractors)
- Primary Distribution

Reference: The web addresses for the literature used to compile above fact sheet is: [http://www.cwr.uwa.edu.au/~jimberger/Fact\\_Sheet\\_Refs/](http://www.cwr.uwa.edu.au/~jimberger/Fact_Sheet_Refs/)

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