Native Title and Agreement Making: Focusing on Outcomes for Indigenous Peoples

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Introduction

From an Indigenous perspective the purpose of agreement making is to generate positive outcomes, that is positive effects on the material, cultural, social and political condition of Indigenous people. Yet since the introduction of the Native Title Act 1993 there has been little systematic focus in Australia on outcomes from agreement making or on how positive outcomes for Indigenous people can be maximised.

This paper identifies and starts to explore key research questions and issues in relation to outcomes, positive and negative, that agreement making may generate for Indigenous people, focusing on agreements between Indigenous groups and mining companies. It makes no claim to offer a definitive response to these questions and issues, but rather seeks to illustrate the sort of research that is required if they are to be addressed in a systematic way.

The paper examines what the term ‘outcomes’ means in the context of agreement making, and the different ways in which outcomes can be conceptualised in relation to agreement making processes. It briefly discusses the issue of how outcomes can be measured and assessed, and summarises the limited information that is available about actual outcomes from agreements involving Indigenous groups and resource developers.

There are strong indications that in many cases intended outcomes are not being achieved. There are also indications that outcomes which have occurred have been highly variable, with certain Indigenous groups achieving substantial benefits and others actually experiencing net costs as a result of entering agreements. Some of the variability can be explained by the nature of prevailing legislative regimes. However other factors are clearly at work, as indicated by wide variation in outcomes between agreements negotiated under the same legislation and by the fact that in some cases strongly positive outcomes have been achieved in the absence of any legislative requirement for developers to negotiate. These findings indicate the importance of detailed case-study research to establish the reasons for positive and negative outcomes, which in turn can provide a basis for achieving more positive outcomes in the future.

Outcomes and native title

The following proposition would be considered self-evident by Indigenous people and by most of those attending this conference:

Native title is of value to Indigenous Australians to the extent that it generates positive outcomes for them.

If we accept this proposition, then the major focus of research, of policy, and of public debate should be about whether native title is generating positive outcomes for Indigenous
Australians, and about how to ensure that positive outcomes are maximised. In reality however little research, or policy or public debate has focused on these issues (see below).

This paper arises from a larger comparative project that deals with one critical aspect of native title, agreement making, in a way that focuses attention squarely on the issue of outcomes. The project seeks to identify what are the outcomes, positive and negative, of agreement making between mining companies and Indigenous people; to explain why particular outcomes occur; and on this basis to identify ways of achieving more positive outcomes for Indigenous people in the future.

A focus on agreements is appropriate given the large amount of activity currently happening in this area, and the extent of resources being committed to the negotiation of agreements by native title groups, Native Title Representative Bodies (NTRBs), industry and government. This reflects in turn a strong political consensus in Australia regarding the benefits of agreement making (as opposed to litigation or political action) as a way of addressing native title issues and potential conflicts between the interests of native title groups, developers and governments (see for example Basten 2002, 11; Dodson 1996; French 1996; Menzie 1996, 4; Wand 1998). Indeed no other aspect of native title has attracted such widespread support from different points on the political spectrum. It therefore seems likely that if native title is to generate benefits for Indigenous Australians it will do so via agreement making, and so it is important to develop a strong focus on outcomes from agreement making processes and from agreements themselves.

To encourage such a focus, this paper considers in turn the following three questions:

- What do we mean by outcomes from agreement making, and in what way do outcomes emerge from agreement making processes?
- How can we measure and assess outcomes?
- Are agreements leading to positive outcomes for Indigenous people?

**What do we mean by ‘outcomes’ and how do they emerge from agreement making?**

We define outcomes in the current context as changes, positive or negative, to the material (economic), cultural, political and social status or conditions of Indigenous peoples. Examples of outcomes that might result from agreement making are:

- Changes in income
- Changes in economic assets
- Changes in cultural vitality
- Changes in personal satisfaction
- Changes in ability to influence government policy
- Changes in social cohesion
- Changes in incidence of social trauma (e.g. suicide, family violence)
In terms of agreement making, there are four basic ways in which outcomes arise. These are:

1. From the process of seeking an agreement. Outcomes in this sense may arise before an agreement is signed and indeed may occur even if the parties fail to reach agreement. Such outcomes could result, for instance, from the need to define the Indigenous parties to a proposed agreement and so to delineate land owning groups and their boundaries; or from debates within an Indigenous community about what would constitute an acceptable agreement. Anecdotal evidence suggests that such 'outcomes' can be very substantial, and given the extent of native title negotiations now occurring they deserve attention.

2. Outcomes in terms of the content or provisions of an agreement. For example an agreement may provide that certain sums of money be paid annually, that specific numbers of apprenticeships be provided for Indigenous people, that a particular cultural heritage protection regime be put in place, or that native title parties consent to certain acts or to constraints on their exercise of native title or other rights.

3. Outcomes in terms of the putting into effect of provisions contained in agreements, i.e. the actual payments of money, the filling of apprenticeships, the application of a cultural heritage protection regime. It is important to identify this as a separate dimension of 'outcomes' because agreement provisions, even where they are legally binding, are not always put into effect. For example signatories to the Eastern Gas Pipeline agreement have won an injunction in the NSW Supreme Court as a result of the developer's alleged failure to implement part of the cultural heritage protection regime provided for in the agreement (Phillips 2000).

4. Outcomes in terms of the final impact of provisions that are implemented, for example the effect of financial payments on the economic, social and cultural well-being of recipients and on social relations in an Indigenous community; or the impact of employment and training programs on the skill levels and labour force status of community members.

How can we measure and assess outcomes?

Measuring or assessing outcomes is any of these senses is difficult, in part because it is inherently political process. All outcomes involve an allocation of costs and benefits to different parties, and interpretations or understandings of particular outcomes depend very much on whether or not one is a beneficiary of those outcomes. For example, an outcome that results in a small number of Indigenous people receiving the major share of benefits from an agreement is unlikely to be regarded poorly by the recipients, but is almost certain to face criticism from other community members. In addition, political actors will seek to ensure that outcomes with which they are identified are regarded in a positive manner, and are likely to criticise any approach that defines these outcomes as negative. Finally, as in all communities there are underlying differences between individuals and groups depending on factors such as personal values, age, gender, and kin affiliations. For example, various groups within an Indigenous community will differ in their assessments of an outcome that creates strong protection to cultural heritage values but does little to generate additional economic activity.

In addition, certain outcomes are by nature intangible and difficult to document, let alone measure. How do we gauge, for example, whether an agreement making process has had a
positive or negative effect on community cohesion, or on cultural vitality? How do we measure how much of an effect it has had in these areas?

Another critical issue involves the context within which individual agreements are made. An outcome that might be regarded as strongly positive in one context might be considered a poor outcome in another. For example, a particular financial outcome might be highly regarded if the project concerned appears economically marginal and if the legal position of the Indigenous people concerned is weak (for instance because the developer holds granted mining leases or because their chances of achieving a favourable native title determination through the courts are slim). The same outcome could be regarded as poor in relation to a project expected to be very profitable in a legal context where the Indigenous landowners has a capacity to delay or halt development.

A final point arises from the fact that in the real world negotiation usually requires trade offs for each party between individual objectives. Concessions are made on issues of lesser importance in order to achieve gains in relation to issues of critical importance. Thus an agreement that achieved a ‘poor’ outcome in relation to some specific issues might reflect a positive achievement overall, because carefully-calculated concessions were made in order to get a positive outcome on issues of central importance to the Indigenous participants.

Yet despite the difficulties it is essential to try measure and assess outcomes in a systematic manner. Otherwise, how are Indigenous people to gauge whether a proposed process or agreement is likely to generate positive results for them? How are they to hold negotiators who act on their behalf accountable unless there is some measure of success or failure against which to judge performance? How can they evaluate the extent of concessions being made in one area and the gains being made in another? For example, if less favourable employment and training provisions are being accepted in order to achieve a desired cultural heritage protection regime, how large a concession is actually being made on the former? It is impossible to address this issue unless there is some independent benchmark for evaluating employment and training provisions.

In addition, researchers cannot gauge the impact on outcomes of system-level influences (such as the character of native title or land rights legislation), or of specific factors such as the effectiveness of Indigenous organisations or negotiating teams unless there is some basis on which to assess those outcomes. More generally, how is it possible to determine whether the current emphasis on agreement making is appropriate unless there are criteria for assessing the outcomes it generates?

In our research project we have started to address the issue of criteria for assessing outcomes by focusing on the content or provisions of agreements, for two main reasons. First, while agreement provisions do not determine outcomes in the third and fourth sense outlined above (outcomes as implementation of provisions and as the final impact of agreements) they do determine the range of possible outcomes in these areas. For example, the financial provisions of an agreement directly determine what financial flows can occur. They also have a critical role in shaping the ultimate impact of these flows on recipients and communities, by determining the quantum of payments, the form in which they accrue and also, in many cases, to whom they will accrue in the first instance and how they will be spent. Second, one objective of our research is to achieve an overview of what is happening in relation to negotiation of mining agreements in Australia. Given the available resources an analysis of agreement provisions represents the only practicable way of achieving this. (There are still formidable obstacles to overcome in analysing outcomes in this sense: see below.)
In relation to the content of agreements, it is possible to develop criteria for assessing outcomes in relation to the major components of agreements. Within our project we are working on developing criteria for assessing outcomes in relation to what are typically the critical components of agreements relating to resource development projects. These are native title and land; environmental management; cultural heritage protection; financial benefits; employment and training; business development; and project rights and support.

Different sorts of criteria are developed to address different components. In the case of financial payments, we recalculate outcomes to a standard measure (total expected payments over the life of a project as a percentage of the expected value of project output). In other cases a scale is employed. An example, which relates to environmental management, is provided in Figure 1. It is assumed that a key goal of Indigenous people is to have a real and substantial say in management of projects on their traditional lands. Each step in the scale reflects an increase in the likelihood that an agreement will allow that goal to be achieved. (It is not assumed that each step involves an identical increase in this likelihood.). Thus agreements that require people to refrain from exercising existing rights under environmental law, without offering alternative means of influencing the development and operation of a project, are given a negative (or minus) score. Absence of relevant provisions attracts a score of zero. As one moves upwards through the scale, there is an increasing likelihood that Indigenous people will be able to substantially influence environmental management and impacts.

In yet other cases (for example employment and training, business development) we identify a series of measures that are complementary and cumulative in their impact, i.e. the more of them that are included in an agreement, the more likely it is that favourable outcomes will be achieved. In relation to employment and training, for instance, relevant measures could be a preference clause for qualified Indigenous job applicants; allocation of dedicated and substantial resources to Indigenous employment and training; setting of employment targets; creation of incentives (or penalties) for reaching (or failing to reach) targets; and measures to create a work environment that will help attract and retain Indigenous workers.

An agreement does not have to score highly on all measures to be regarded as offering positive outcomes. As mentioned above, Indigenous communities may decide to concede in areas that are of less importance to them in order to achieve positive results in areas of high priority, and this will be reflected in the nature of outcomes. Context is also critical. An ‘average’ outcome in terms of a standard set of criteria may represent an excellent result in a context unfavourable to Indigenous interests. In other words, the criteria are not designed
to be applied in a mechanistic, rigid or formulaic way. As long as they are not, they represent a useful basis on which Indigenous organisations and communities can, for example, assess what they are being offered by developers; how this compares to what has been achieved elsewhere; and what degree of compromise will be involved if they make concessions in one area in order to make gains in another. In addition, they facilitate an overall evaluation of whether an agreement represents a positive outcome for Indigenous parties. For example if Indigenous people are expected to accept serious impairment of their native title, to give open-ended support to a project, but are offered financial, employment and training, environmental and cultural heritage provisions that rank poorly, there are major doubts as to whether they should enter an agreement.

Preliminary outcomes of our research on criteria for assessing the content of agreements will be published later in 2003 in a volume to be edited by Marcia Langton and Lisa Palmer and published by Melbourne University Press. Substantial additional work is required to develop criteria for measuring and assessing outcomes along the other three dimensions identified above (outcomes from agreement making processes; outcomes as implementation of agreement provisions; and outcomes as the final impact of those provisions).

What do we know about outcomes from agreements?

An extensive literature now exists in relation to agreement making (see, for example, Agius et al 2002; Edmunds 1999; Holden and Duffin 1998; Holmes 2001; Horrigan and Young
1997; Indigenous Support Services/ACIL Consulting 2001; McKenna 1995; Meyers 1996; O'Faircheallaigh 1996, 2000; Stephenson 1997; Teehan 1994; and numerous papers published under the auspices of the National Native Title Tribunal (www.nntt.gov.au) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) (www.aiatsis.gov.au). However most of this literature deals with frameworks within which to conduct agreement-making and in particular with the provisions of the NTA; with the relationship between native title and Indigenous law, culture and society; with negotiation processes; and with strategies for pursuing agreements. Very little of it deals with the outcomes of agreements (for some partial exceptions see O'Faircheallaigh 1995, 2002, Senior 1998). There has certainly been no systematic attempt to evaluate outcomes from a range of negotiations along any one of the four dimensions identified above.

Outcomes from agreement making processes

Our knowledge in this area is extremely limited. While there has been some work on the impact of native title on the internal dynamics of Indigenous groups (see for example Smith and Finlayson 1997), there has been no systematic study of the effects, negative or positive, of agreement making processes on native title groups or Indigenous communities. There is much anecdotal evidence to suggest that these effects can be very substantial, but there has not been, for instance, a Social Impact Assessment (SIA) of an agreement making process. There is an urgent need for more systematic research in this area to provide Indigenous organisations, including NTRBs, with better information to use in designing processes that maximise the cultural and social benefits and minimise the social and cultural costs associated with making agreements.

Outcomes as provisions of agreements

In relation to the content of agreements, major problems arise as a result of confidentiality provisions contained in most agreements (Smith 2001, 44-45). While there may be a need to maintain confidentiality in relation to some matters, it can be argued that in contemporary Australia there is an excessive degree of secrecy surrounding the content of agreements. It is in fact entirely feasible to release substantial information about an agreement without offending the commercial requirements of companies or the desire of Indigenous parties to maintain privacy in relation to any matters they consider sensitive. To some extent reluctance to release information may reflect a fear of criticism. The existence of clear criteria on which to assess outcomes, of the type discussed earlier, might help to allay such fears in at least certain cases.

In our current research we have sought to achieve access to a number of agreements sufficiently large so that we can discuss aggregate findings about their content without revealing the identity, let along the content, of individual agreements. The recent signing of research agreements with a number of NTRBs will assist in this regard by further expanding the number of agreements we have available.

Employing the sorts of benchmarks discussed in the previous section, the overwhelming picture that emerges from our analysis to date is of great variability across agreements. In some cases Indigenous groups are achieving substantial economic benefits and innovative provisions to minimise the impact of commercial activities on their traditional lands. In others the benefits gained by Indigenous groups are negligible, impact minimisation provisions are
similar to those already provided in legislation, while in some cases the exercise of rights that Indigenous parties possess under legislation are restricted.

Variation in outcomes does not reflect project scale and so the developer’s ‘ability to pay’ for benefits accruing to Indigenous parties. For instance while in absolute terms the highest figures for financial compensation have certainly been negotiated for large projects, in relation to the value of mineral output payments under agreements for some ‘small’ mines are among the highest we have found. Further, certain agreements for smaller projects have some of the strongest provisions in relation to cultural heritage and environmental protection. On the other hand there are agreements for both large and small projects that appear, on balance, to offer little benefit to Indigenous participants.

Financial provisions illustrate well the degree of variability found in agreements. Some agreements do not contain any financial consideration, while others provide for payments in excess of 3 per cent of the value of production. In absolute terms the difference between these two alternatives can be very great. For a large project with output valued at $600 million, for example, a 3 per cent royalty equates to $18 million per annum. Even for a small project with annual output of, for instance, $25 million, a 3 per cent royalty equates to $750,000 per annum, a very significant amount for Aboriginal groups or communities with limited assets and income.

The sorts of financial outcomes being delivered by agreements concluded under the Right to Negotiate provisions of the Native Title Act (NTA) are in general considerably more modest than those delivered by the Northern Territory land rights legislation, Queensland’s Mineral Resources Act, or by ‘policy-based’ negotiations initiated outside any legislative framework. It could be argued that only eight years has elapsed since the NTA was introduced, that Indigenous groups are going through a learning process and that future outcomes may be more substantial. However there seems little evidence to support such a claim, given that on other occasions Indigenous groups have shown a capacity to immediately extract substantial benefits from legislative opportunities. This occurred within a year of the passage of the Northern Territory legislation, while the Cape York Land Council negotiated one of the largest private royalties yet agreed in Australia just two years after the passage of the Queensland’s Mineral Resources Act.

It is also important to note that RTN agreements often include fixed absolute payments rather than royalties. This means that native title holders are not in a position to benefit from any later project expansions or price increases. Traditional owners at the Century lead/zinc mine in Queensland, for example, will continue to receive the same payments even if output rises substantially, putting them at an obvious disadvantage compared to traditional owners who have negotiated royalty-type provisions.

An important finding is that while financial outcomes in RTN agreements may be generally more modest than from other categories of agreements, there is also considerable variation within the group of RTN agreements we have reviewed. Payments provided in agreements at the upper end of the range are many times greater than those at the lower end. It is important to stress again that especially in relation to large projects these variations are very significant. For example, in this category we have found payments that range from the equivalent of a 0.1 per cent royalty to a 0.5 per cent royalty. Applied to a mine with annual output worth $400 million, the former yields only $400,000 per year, the latter $2 million per year.
The variability evident in relation to financial outcomes is just as evident in relation to other areas aspects of agreements we are currently examining. A very wide range of outcomes is being achieved; agreements reached under the RTN are generally not as favorable as those reached under other regimes; and considerable variability occurs among agreements negotiated under the RTN. In relation to cultural heritage protection, the variability can be illustrated by comparing the following two cases. The first relates to a substantial new project that was developed to completion under the RTN. Its cultural heritage provisions can be summarized as follows:

- Protection measures must enable project activities to continue without substantial additional cost to developer and so as to allow prompt issue of project rights.
- Very short period for notification of proposed work program to native title parties.
- The survey team is appointed by the company.
- Once clearance undertaken NT parties are prohibited from bringing an action under state or Commonwealth legislation.
- Legal action for breach can only seek injunction or an order seeking performance (not compensation).
- Sites to be protected must be identified, as must their level of significance.
- No provision for protection of intellectual property of NT parties.
- No provision for payment for Traditional Owners participating in surveys.

This represents a poor outcome for the native title parties to the agreement. While they make their time and knowledge available to the developer, it is not evident that they achieve any greater protection for sites than is already available under cultural heritage legislation. In addition they accept limitations on their rights under legislation and provided access to cultural knowledge without any guarantee that their ownership of this knowledge will be protected.

In contrast one ‘policy-based’ agreement contains the following provisions:

- A work program clearance model is used, with the result that no information in relation to any site, including its location, need be disclosed to the mining party;
- The survey team is selected and appointed by the Aboriginal parties;
- Aboriginal survey team members are paid a daily rate for their work and all costs involved are borne by the company.
- There is no limitation on the exercise of rights by Traditional Owners under cultural heritage legislation.

These same sorts of contrasts are evident, for example, in provisions dealing with employment and training and environmental management. In relation to the former, some
agreements include little more than a general statement that the developer intends to employ and train Aboriginal people, while others make funding commitments, set targets for employment, create specific numbers of apprenticeships and scholarships, include appointment of dedicated training or liaison staff and provide a range of measures designed to create an appropriate work environment. In this area also project scale or ‘ability to pay’ does not appear to be a major determinant of outcomes. The largest number of Indigenous apprenticeships under any agreement we reviewed is for a mine with an annual turnover of less than $25 million, which is small by industry standards.

A significant finding of our research to date is that agreements that are strong (from an Indigenous perspective) in one area tend to be strong in others; weaker agreements tend to be weaker across the board. For example agreements that tend to involve substantial financial payments also tend to have extensive and detailed employment and training provisions, provide for Indigenous involvement in environmental management and have cultural heritage provisions that exceed legislative requirements. Those with limited or no financial compensation tend to have only general commitments in relation to employment and training; often fail to provide for Indigenous participation in environmental management; and frequently have cultural heritage provisions designed mainly to achieve the assistance of traditional owners in allowing developers to meet their legislative obligations. This is an important and indeed critical finding. It indicates that variation in outcomes does not reflect deliberate trade offs undertaken by Indigenous parties through the negotiation process, for example by choosing a lower level of financial payments in return for stronger provisions on cultural heritage, or by trading off the opportunity to influence environmental practices for higher financial payments.

For instance, one agreement whose only environmental management provision involves a commitment to provide (publicly available) environmental reports to the native title parties provides payments equivalent to a 0.12 royalty, among the lowest of any agreement we examined. Another example that highlights the correlation between outcomes in different categories involves two gas pipeline agreements. One, which includes financial payments equivalent to $227 per km of pipeline, has cultural heritage provisions that are manifestly inadequate. For instance they rely heavily on compliance with cultural heritage legislation that the State Premier concerned has acknowledged, in parliament, is incapable of protecting to Indigenous cultural heritage. They allow construction to proceed in some circumstances in the absence of Indigenous cultural heritage monitors, and place significant responsibilities in the hands of non-Indigenous state officials, technical experts or company employees rather than of appropriate Indigenous people. In contrast another pipeline agreement, which provides payments per km some 15 times larger than those under the first, has cultural heritage provisions that are both innovative in relation to general industry practice and important in achieving a high level of protection. For instance they provide for monitoring of back-filling as well as trenching activity, and allow traditional owners to halt pipeline construction if cultural heritage material is encountered. Both of these agreements were negotiated under the RTN, which again highlights the variability that occurs within this category of agreements.

It is obviously critical to seek to explain this variability, as a first step in identifying policy or other measures that might bring about more equitable outcomes. In the absence of such outcomes, agreement making will serve to replicate among Indigenous peoples the inequalities that currently exist between them and non-Indigenous Australians. It is clear that legislative and administrative structures (such as the operation of the RTN and the application of the arbitration provisions of the NTA by the National Native Title Tribunal) have a
significant impact. However of themselves, these are not a sufficient explanation, a fact evident from the variability in outcomes that occurs among RTN agreements. Other relevant factors are wider policy and legislative frameworks (such as state government policies and state cultural heritage legislation); the relative access to resources of different Indigenous groups; Indigenous organisational and community capacity; community cohesion; and the policies and practices of particular companies with whom Indigenous people negotiate. Our research project will include a number of detailed case studies of agreements, designed to examine how these (and possibly other) factors interact to bring about different outcomes.

Outcomes as implementation of agreements

Turning to implementation of agreement provisions, the limited information that is available suggests that there are major problems in this area (Bygrave and O’Faircheallaigh 1997; O’Faircheallaigh and Kelly 2001; Phillips 2000). This is not surprising, given that agreements between Indigenous people and mining companies in Australia (and indeed elsewhere) are generally remiss in addressing implementation issues. For example a review of 40 recent agreements negotiated in Australia and Canada during recent decades concluded that in general the agreements deal poorly with such issues or ignore them entirely. A critical point involves the issue of resources. Only 7 agreements or less than 20 per cent of the total allocate any resources to the general task of implementing the agreement. There is a general lack of provisions designed to ensure that key decision-makers within organisations that are parties to agreements are involved in implementation. With a single exception, none of the agreements provides for penalties or sanctions for failure to honour specific commitments made by the parties. Few agreements contain the sort of specific and unambiguous goals that facilitate implementation. It is critical to successful implementation that agreements be reviewed on a regular basis and amended to ensure that goals are still relevant, to amend provisions that have proved ineffective or have served their purpose and to adjust to changes in the external environment. Half of the agreements do not include any provision allowing for a formal review of their provisions. Critically, no agreement provides separate funding to support review processes; specifies who should be involved in the review; how long it should take; what method of review should be employed; what information will be required to support the review; or what process will be used to deal with review findings. (For a detailed discussion of these findings and of how implementation issues might be dealt with more successfully by building them into negotiation processes from the start, see O’Faircheallaigh 2003).

Outcomes as the final impact of agreements

In terms of the final impact of agreements on the economic, social and cultural well being of recipients and on social relations in Indigenous communities, our knowledge is very limited. Indeed it is largely restricted to the effects of the Nabarlek and Ranger Agreements, (signed in 1978 and 1979 respectively) on Aboriginal peoples and communities in the Kakadu/West Arnhem region during the 1980s and early 1990s (see for example AIAS 1984, Altman and Smith 1994, O’Faircheallaigh 2002). There is an urgent need for additional work in this area, especially in relation to the impact of agreements negotiated in other legal, political and social contexts and during more recent time periods.
Conclusion

Sustained and long-term research is required in order to gain a more comprehensive picture of how outcomes emerge from agreement-making processes; of how outcomes can be assessed; of the sorts of outcomes that are currently emerging; and of why very different outcomes are emerging in different cases. This research must involve detailed case studies of specific negotiations and agreements as well as the sort of broad survey attempted (in a preliminary fashion) in this paper. Only through such case studies can we gain an understanding of how the various factors that influence agreement making interact to produce specific outcomes. Such an understanding is essential, in turn, if more positive outcomes are to be achieved across a range of legal, geographical, organisational and social contexts and if agreement making is not to create a new set of inequalities among Indigenous peoples.

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