# How the upstream oil and gas industry can leverage interdisciplinary research to more effectively engage with Indigenous communities

Deborah Lockhart and Jessica Xu, Australian Disputes Centre, Sydney, Australia.

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### Abstract

Since 2010, mining companies have requested permission for the destruction of over 463 Aboriginal heritage sites. Recent high-profile events have profoundly impacted culturally significant Indigenous sites, and mining companies are under intense pressure to demonstrate greater sensitivity in their relationships with stakeholders. The Australian Disputes Centre uses several case studies to explore how the upstream petroleum industry can leverage current interdisciplinary research to engage with Indigenous communities more effectively, both nationally and internationally. Interest-based negotiation frameworks are considered as actionable mechanisms that are as applicable in day-to-day business operations as they are in supporting consistent, culturally-sensitive stakeholder agreements. The application of a range of communication strategies and skills to harness intersectional decision-making is reviewed, and asks the extent to which engagement with external stakeholders reflects internal corporate culture. Obtaining and retaining a social licence to operate is top of mind for all resource companies, but it does not come without a congruent culture of principled negotiation. This study considers the emerging challenges within the sector, including how to empower all parties to negotiate more fulsome outcomes. Using various case studies, including one involving the conservation of submerged Indigenous heritage, an holistic, interdisciplinary methodology for managing cross-cultural sensitivities while companies undertake technical investigations, liaise with archaeological and ethnographic experts and negotiate with local community leaders has been reviewed. Clearly, inclusive communication is just the beginning.

### Keywords

social licence to operate, SLO, community engagement, Indigenous engagement, corporate social responsibility, CSR, negotiation, dispute resolution, environmental, social and governance, ESG, upstream oil and gas, ADC partnership process, partnership framework, Australian Disputes Centre.

## A real and present risk

Community relations together with social licence to operate (SLO) are no longer mere fringe considerations, but are real and present risks for the industry. According to the KPMG (2020) global survey of mining executives, the top 10 industry risks had community relations together with social licence as the sixth most pressing risk.

In the Joint Standing Committee on Northern Australia's (2020) interim report on Juukan Gorge, The Hon. Warren Entsch MP remarked:

> *Rio Tinto has paid a high price in reputation for its failure at Juukan Gorge. Other resource companies need to take note: governments, investors and the community will no longer tolerate such tragedies.*

His words encapsulate the pervading attitude to SLO. The media furore around Juukan Gorge, and ongoing public attention with the Senate inquiry, present significant and ongoing financial and reputational costs to Rio Tinto, and cast a shadow across the sector. Uncertainty over potential legislative reform arising from the Senate Inquiry's recommendations means regulatory uncertainty for the entire resource industry (Toscano 2021).

News feeds are full of SLO issues arising in the industry. The absence of an SLO was evident in the costly legal challenges brought against Adani by environmental interest groups in state and federal courts (Environmental Law Australia 2020). In a concerning perpetuation of the issues surrounding Rio Tinto, the same absence of an SLO again came under fire, this time with BHP, for planned projects on sacred Apache land in Arizona, the United States (Lannin 2021). Also in the United States, the highly disputed Keystone XL pipeline's permits were revoked by Executive Order (Biden 2021), after significant and sustained opposition from environmental groups, Indigenous communities, business owners, unions and religious and political leaders (BBC 2021; Denchak 2021).

Laurence (2020) sums up:

> *Successes are rarely acknowledged however, but failures are highlighted, by the media, opponents of the industry, and governments. Clearly, the business as usual approach is not enough.*

The rise of environmental, social and governance (ESG) investing principles (Boele and Bayes 2020) and increased activism by institutional investors magnifies the risks for the resource sector. A key tenet of the 'social' arm of ESG is the primacy of community relations and engagement (Principles for Responsible Investment Association 2017). The analysis from McKinsey highlights the financial risk. McKinsey valued ESG investment as worth US$30 trillion (McKinsey 2019), up 68% from 2014. McKinsey attributes this upward trajectory to heightened social, governmental and consumer awareness of corporate social responsibility (CSR), and argues a strong correlation between ESG and business performance. In late 2020, 64 institutional investors increased their pressure on the sector, coauthoring a letter demanding that the industry reviews its Indigenous engagement processes and agreements with Indigenous landowners (Ker 2020).

Juukan Gorge has thrown this existential threat into sharp relief. Yet ESG principles, CSR and the need for an SLO are not new concepts. If the risks are clear, and the upside of more effectively engaging with Indigenous communities is well documented, it is timely to ask why the resource sector, despite its efforts and investment, has regularly failed to realise the financial and reputational gains from getting this right.

Drawing on interdisciplinary knowledge systems, and introducing a new partnership framework, this study proposes that the industry has an opportunity to take a quantum step 'out in front' of community and investor expectations by owning the issues, leading the conversations and realising the upside of an SLO.

## Leveraging process, structure and alignment

This study proposes a comprehensive framework (Fig. 1) for guiding internal negotiation and collaborative decision-making; each party entering principled negotiations with full authority. The framework draws on transparency, communication skills, negotiating for mutual gain, and incorporates elements of an ancient Indigenous dispute resolution process fired in the heat of international diplomacy at the Paris Climate Change Conference in 2015 (Högl 2018).

Oil and gas (O&G) companies know that a strong community relations and development (CRD) team is central to maintaining their social licence; implementing strategies of engagement, communication, negotiation, conflict resolution and development programming (Kemp and Owen 2013). Yet, the evidence indicates that companies have not effectively integrated CRD teams into their business operations (Kemp and Owen 2013; Harvey 2014). Bottlenecks in reporting or escalating CRD issues lead to major risks for an SLO, as seen with Juukan Gorge (Hopkins and Kemp 2020).

The SLO is relevant to all levels of corporate operations. A corporate structure that demonstrates a top-down focus on the SLO is a cornerstone of managing risk and to reflect internally what the company wants to see happen externally. The C-suite is accountable to all stakeholders, and its decision-making requires that SLO issues are aligned in real-time with corporate objectives. This study encourages a direct reporting line between the CRD team and an SLO Director, i.e. a dedicated executive director who can drive the financial and reputational gains inherents in ESG and SLO. When analysed against the key elements of best practice collaborative decision-making as outlined in the study's proposed framework, the impact of a dedicated SLO Director presents as a potential game changer in corporate culture and informed C-suite decision-making (Fig. 1).

The exemplar case study, of a West African miner giving visibility to both the CRD team's function and the relevance of community concerns to the broader business, highlights SLO gains from a corporate structure that facilitates deep listening and straight-talking between corporate teams. The result was a business enabled to listen for and respond to any issues that would impact their bottom line (Kemp and Owen 2013).

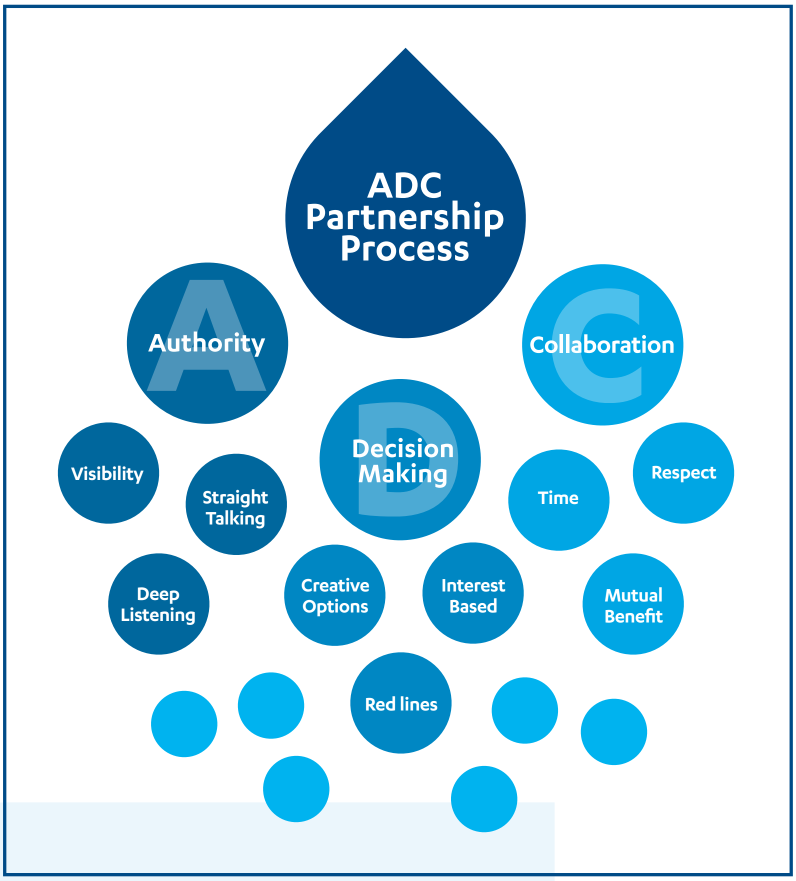

Figure 1: ADC Partnership Process and Framework

## Closing the gap for the O&G industry

ESG investing principles are steeped in familiar risk management frameworks: investors will not tolerate the long-term risks that actions today are misaligned with future considerations (Allam et al. 2020; HESTA 2020; Toscano 2020). The upstream extractive industry can benefit from a social licence that adopts similar core tenets as ESG.

This study considers Shell's approach in a case study that highlights a cost-benefit analysis. Following the weight of scandals over its Niger Delta operations (Maiangwa and Agbiboa 2013), Shell adopted a proactive SLO approach to its later operations at Malampaya in the Philippines (Sohn et al. 2007). The efficacy of the collaborative principles of time, respect and mutual benefit was evident in a clearly defined engagement strategy to obtain community consent (Choudhury 2014). Shell expended US$6 million in this dialogue, and compensation for relocations. Shell's estimate of its benefits was US$50–72 million, including completing construction ahead of schedule and avoiding costs relating to construction, project delays and contractual penalties (Sohn et al. 2007).

Australia's reconciliation action plans (RAPs) provide a public record of a company's intent and their actions in relation to indigenous engagement strategies. In reviewing the RAPs of 11 O&G companies with major operations in Australia (Fig. 2), the gaps between corporate intent and practice are underscored, and the near total failure to incorporate a focus on 'cultural heritage management' is stark. We consider the discovery of the first underwater Aboriginal archaeological sites in the Pilbara region in mid-2020 (Michelmore 2020), and the opportunity to catalyse cultural heritage management as a bourgeoning area of corporate-community relations.

Western Australia offers not only Woodside's positive approach to community dialogue in the Pilbara, but also Rio Tinto's decommission of the Argyle Diamond Mine, which has been widely applauded as setting an exemplary standard for Indigenous engagement. Through these case studies, this study seeks to demonstrate how a holistic partnership framework can enable the upstream extractive industry to facilitate doable and durable agreements with Indigenous communities.

| Reconciliation Action Plan Themes | Arrow Energy | Beach Petroleum | BHP Billiton | Chevron Australia | Cooper Energy | Karoon Gas | Origin Australia | Santos | Strike Energy | Total Energy | Woodside Petroleum |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Governance | | | ● | ● | ● | ● | | | | | |
| Economic Empowerment | ● | | ● | | ● | | | ● | | ● | ● |
| Social and Cultural Support | | | ● | | | | | | | | |
| Constructive Engagement and Dialogue | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | ● |
| Cultural Heritage Management | | | | | | | | | | | ● |
| Cultural Awareness | ● | ● | | | ● | ● | ● | ● | ● | ● | |
| Industry Engagement | ● | | | | ● | ● | | | ● | ● | |
| Respect | | ● | | ● | ● | ● | ● | | ● | ● | ● |
| Education and Support | ● | ● | | ● | | | ● | ● | | ● | |
| Employment and Training | ● | ● | | ● | | | ● | ● | | ● | ● |
| Relationship Building | | ● | | | | ● | ● | ● | | ● | |

Figure 2: Reconciliation Action Plan Matrix

## Conclusion

The earlier noted comment from Laurence that criticism of the bad flows far more freely than recognition of the good is illustrative of the precipitous relationship the O&G sector experiences with investors and Indigenous communities.

The risks of failing to gain and maintain a social licence are significant, and yet decades of talk and investment have failed to deliver positive results. This study advocates for embedding a pragmatic partnership framework within the business that can support collaborative decision-making. The flexibility and universality of the partnership process enables it to apply internally for all parties; gaining full authority to negotiate, and externally; the parties negotiating in goodfaith for mutually beneficial and durable outcomes.

Leveraging multidisciplinary knowledge systems, the upstream O&G industry can mitigate against future reputational and legal risks and deliver on the promise that getting the job done right is simply good business.


## Conflicts of interest

All authors confirm that there are no conflicts of interest.

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For more information please contact us:

T +61 2 9239 0700
adr@disputescentre.com.au

www.disputescentre.com.au