5. ‘We’ve got the richest trusts but the poorest people’: The Yandi Land Use Agreement

In the absence of any land rights legislation in Western Australia, the passing of the *Native Title Act 1993* (NTA) provided an opportunity for Indigenous people of the Central Pilbara to assert their rights over their traditional lands, and to do so in the context of mineral development in the Pilbara. Despite the earlier involvement of Indigenous people in the mining industry (Cousins and Nieuwenhuysen 1984; Edmunds 1989; Wilson, 1961, 1970, 1980), their exclusion from the Pilbara mine economy was inherent in the construction of new restricted access mining towns in the 1960s and 1970s to service the influx of mine workers. Combined with the lack of proactive measures to engage Indigenous people in such rapid development (Edmunds 1989: 48; Rogers 1973), their overall exclusion crystallised ‘the oppositional character of black and white in geographic and demographic, as well as social terms’ (Edmunds 1989: 12). Edmunds observes that the development of such towns is a visible demonstration of the ceding of economic and social development by the state to the mining industry, with social development being subordinated to economic development (Edmunds 1989: 49). The absence of missions and other advocacy intermediaries (Holcombe 2005: 113) contrasts the Pilbara with areas such as the Gove Peninsula and Groote Eylandt in the Northern Territory, where around the same time missionaries played a role in gaining beneficial consideration from the state and the mining industry for Indigenous interests (Cousins and Nieuwenhuysen 1984; Rogers 1973). The Yandi Land Use Agreement (YLUA) signed in 1997 by the Gumala Aboriginal Corporation (Gumala) on behalf of the Yinhawangka, Banyjima and Nyiyaparli people, was one of the first agreements to be reached between Indigenous people and the industry in the region (van de Bund and Jackson 2000). As outlined, the agreement seeks to provide economic development opportunities to the Indigenous parties via the provision of a community benefits package that entails provisions for employment and training, education, cultural heritage management and business development (see Chapter 3). However, it is now 13 years since the passing of the NTA, and 10 years since the signing of the YLUA, and outcomes for many Yinhawangka, Banyjima and Nyiyaparli people of the Central Pilbara have involved great complexity and unmet expectations.

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1 Towns constructed for this purpose are Pannawonica, Paraburdoo, Goldsworthy, Shay Gap, Wickham, Dampier, Newman, and Tom Price. Karratha and South Hedland were also constructed to service mineral development but were designed as open towns rather than having restricted access.
There has been a dramatic expansion in iron ore development in response to international demand, or what the industry calls a ‘ramp-up’. The ramp-up has included: the establishment of new mines, expansion of existing infrastructure, and increased exploration activity in the Pilbara. This has numerous ramifications for Indigenous people. Whilst prompting the mining industry to engage with Indigenous people who have traditional interests in country affected by mining, increased exploration and mine development have brought a dramatic increase in heritage clearances, and a concomitant decrease in Indigenous land access because of the expanding land interests of the mining industry. Consequently many Indigenous people perceive that their exclusion from the mine economy is increasing, despite the existence of beneficial agreements such as the YLUA. Associated with such economic marginalisation is the perception of many that the scale of mineral development, in conjunction with the agreement structures designed to mitigate impacts, increasingly distance Indigenous people from a range of land-based customary resources, and challenges their ability to maintain cultural institutions that define aspects of their identity.

A recent study outlining the relative socioeconomic status of Indigenous people in the Pilbara notes that despite rapid mineral development, Indigenous disadvantage in the Pilbara ‘has changed little in recent decades—dependence on government remains high and the relative economic status of Indigenous people residing adjacent to major long life mines is similar to that of Indigenous
people elsewhere in regional and remote Australia’ (Taylor and Scambary 2005: 1). As suggested by the ‘ramp up’, the Pilbara is experiencing another boom that confirms it as the most important mineral province in Australia, producing 280 million tonnes of iron ore in 2006 with an anticipated 2006–07 export value of approximately $17 billion (Australian Bureau of Agricultural and Resource Economics (ABARE) 2006a: 680). However, this study has identified a serious economic development problem in the Pilbara that is likely to worsen as Indigenous population in the region increases (Taylor and Scambary 2005: 152–53).

The YLUA, which created expectations of affluence amongst Indigenous people in the Central Pilbara (Native Titles Research Unit 1997; Senior 2000), and the lived experience of this agreement (amongst others), are instrumental in defining diverse Indigenous attitudes to the current expansion. One Yinhawangka man said of the increasingly complex agreement landscape in the Pilbara: ‘there is an urgency for Indigenous people in the Pilbara to establish and refine appropriate organisations to ensure that we can develop an economic base for our future’ (interview, 26 November 2004). This statement reflects the widespread local Indigenous ambivalence to organisational structures arising from mining agreements. Significant social disadvantage creates obstacles to the participation of Indigenous people in mainstream economic development programs associated with the YLUA, such as employment and training. In light of this, the Gumala Aboriginal Corporation, with its considerable financial resources, has become a focus for the attainment of both mainstream economic development in the form of business development, but also for the attainment of aspirations associated with customary livelihood pursuits. However, the terms of trusts and the manner in which they are managed, appear to limit the possibility of privileging individual agency in favour of economic and social programs that are of a broad community benefit. Consequently, many individuals, particularly those who are unable or disinclined to participate in the mainstream programs of the community benefit regime, believe that the YLUA has not benefited them.

Building on the preceding account of the Ranger mine, this chapter argues that issues associated with community definition and organisational complexity in the context of mining agreement based organisations are emerging in a similar way in the Pilbara, despite the different legislative and historical contexts of the two regions. Such complexity threatens the viability of mining agreement-based Indigenous organisations, and the long term or sustainable benefits that might be derived from such long-life agreements. The chapter focuses on the Gumala Aboriginal Corporation (Gumala) a party to the YLUA with Rio Tinto.

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2 Australia produces 26% of world iron ore, and 98% of this Australian contribution derives from the Pilbara.
and the Innawongga Banyjima and Nyiyaparli Aboriginal Corporation (IBN Corporation) associated with the Mining Area C Agreement with Broken Hill Proprietary Ltd (BHP). Primarily these respective agreements are associated with the Yandicoogina deposit, covered by tenements held by both BHP and Rio Tinto. The membership of both organisations is open to Yinawangka, Banyjima and Nyiyaparli people only. Consequently the organisations’ membership overlap. Dynamics associated with these agreements, and associated organisations, in the Pilbara highlight an all-encompassing ideology ‘seeking the complete immersion of the Indigenous polity to the regional mining agenda’ (Holcombe 2005: 130). This chapter argues that complex structures, poor socioeconomic status, and the lack of autonomy to use agreement-derived funds in the pursuit of aspirational initiatives, both in a mainstream sense and in the pursuit of alternate livelihood economic activities, restrict the space for Indigenous productive action in the context of mining agreements. In addition, Indigenous responses reveal ambivalence towards agreement organisations and structures, which arises from the limited positive impact of agreements to address pervasive Indigenous disadvantage across the region.

This chapter outlines Indigenous social organisation in the Pilbara in order to demonstrate the difficulties associated with the assumption of a ‘unity of interests’ (Dixon 1990) across the broad and diverse group defined as the ‘community’ for the purposes of the YLUA. Discussion of native title and its application in the Pilbara, and the politics within and between language groups emphasises the dynamics associated with the constant negotiation of social boundedness within the Indigenous polity. An array of Indigenous aspirations to utilise mining derived income for both mainstream economic engagement and customary economic activity are explored in the context of mineral expansion in the Central Pilbara. However, the possibility of fulfilling such aspirations is constrained by the narrow focus of mining industry initiatives for the economic development of Indigenous people. In conclusion the chapter demonstrates that the scale of Indigenous disadvantage in the Pilbara is a major obstacle to the effectiveness of community benefits packages to achieve desired outcomes. A key conclusion is that there is scope for a renegotiation of the form and substance of economic engagement in the context of such agreements via the recognition and application of customary institutions in the mainstream economy. Such renegotiation invites enhanced recognition of the intersection of the customary and market sectors in the Altman (2005) hybrid economy model—(see Chapter 1).

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3 Innawonga is a variant spelling of Yinawangka and will be used only in reference to the IBN Corporation, and the associated IBN native title claim.
4 The exact area of BHP Billiton’s Mining Area C Agreement is assumed to include BHP Billiton’s Yandi mine. However due to confidentiality provisions in the agreement BHP staff would neither confirm nor deny whether this is the case (interview, BHP Billiton Aboriginal Relations, 12 February 2007). The issue of confidentiality in mining agreements is raised by a number of commentators as limiting the advances that can be made in such agreements (O’Donohue in Kauffman 1998; Langton et al. 2004; O’Faircheallaigh 2006).
Previous literature

Little ethnographic research in the public domain has been undertaken in this region. Early research includes Withnell’s (1901) work concerning the coastal Ynjibarndi people in the vicinity of Roebourne, Radcliffe-Brown’s (1913) study of the Kariyarra, and Daisy Bates’ (1901, 1947, 1985) survey of Western Australian Indigenous people (1904–12) which considered the people of coastal and central Pilbara under the heading, ‘the nor’west nation’. Very little research has been undertaken from the time of Radcliffe-Brown and Bates until the 1960s when linguists O’Grady (1959, 1960), von Brandenstein (1967, 1982) and Dench (1981, 1995), undertook separate but extensive research into the coastal Pilbara languages.

In the 1970s anthropologist Robert Tonkinson (1974, 1980) conducted research with the Martu people resident at Jigalong. Tonkinson records the migratory shifts of desert people towards the west and the subsequent displacement of Nyiyaparli people from their traditional country in the vicinity of Jigalong. In particular, his work identifies some of the contemporary tensions that exist between the Nyiyaparli as land owners and the types of rights enjoyed by the Martu in relation to Jigalong. A senior Nyiyaparli man noted the close relationship with the Martu residents of Jigalong, and their caretaker role in looking after Nyiyaparli country (interview, 25 August 2003). Kingsley Palmer (1975, 1977, 1983) also undertook research in the Pilbara. In addition, the work of John and Karty Wilson (1961, 1970, 1980) informs this work, particularly in relation to what they have termed the ‘Pilbara social movement’ associated with the 1946 pastoral workers’ strike and the subsequent emergence of the Indigenous-operated mining collective known as Pindan (see Chapter 2). Already noted, and of relevance to the current study, is Edmunds’ (1989) research concerning the impacts of development on Indigenous residents of the coastal town of Roebourne.

Other relevant literature falls into the categories of oral histories and accounts of the Pilbara strike movement. Notable amongst these are Max Brown’s (1976) account of the ‘Strelley mob’ south of Port Hedland.5 Brown is a journalist who lived and worked at Yandeyarra Station with his wife as part of a group of ideologically motivated European intellectuals who assisted in the post-strike movement and strikers’ attempts to establish an independent economic base. Other accounts of the strike include those of Don Stuart (1959), and Clancy McKenna as retold to Palmer (Palmer and McKenna 1978), and the story of Peter Coppin, one of the strike organisers (Read and Coppin 1999). The account of

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5 The Strelley mob were affiliated with Don McLeod and established a community on Strelley Station to the east of Port Hedland.
Don McLeod (1984) is also a valuable source of primary data on the strike, its motivations and the eventual demise of the Pindan movement. More recent oral histories include Wumun Turi (Murray 2001), and Bee Hill Man (McPhee and Konigsberg 1994). The only collection of oral history material specific to the Central Pilbara is Karijini Mirli Mirli (Olive 1997), produced by the Karijini Aboriginal Corporation.

Social organisation

The land interests of the Banyjima, Yinhawangka, and Nyiyaparli peoples can generally be described as the Central Pilbara and encompass the eastern Hamersley Ranges, the Fortescue River valley, and Ashburton River valley (see Fig. 5.1). Nyiyaparli land interests extend east to the desert regions and encompass the towns of Newman and Jigalong. All three language groups fall into the Ngayarda Language sub-block of the Ngungic group of the Pama-Ngungan language family (Dench 1995: 3–5), and occur to the east of the ‘circumcision line’ (Tindale 1974).6 A fourth group, the Eastern Kurrama, are also relevant to this discussion. Their land interests lie west of the Banyjima and north-west of the Yinhawangka, encompassing part of Rocklea Station and Hamersley Station and extending north to the Fortescue River in the vicinity of the Millstream Chichester National Park.

In his discussion of territoriality and social organisation of groups associated with the Pindan movement, Wilson (1961: 6) uses the term ‘tribe’ to denote genealogical, territorial and linguistic distinctions, but notes that the term tribe is problematic for the lack of consensus over what constitutes the criteria of affiliation with such a group.7 Whilst not resolving such questions, this study adopts the term ‘language group’, used commonly in the description of native title claimant groups, to denote more generally the broader cultural groupings and territoriality depicted by the names Banyjima, Yinhawangka, and Nyiyaparli (see Sutton 1998). Whilst all three groups possess discrete languages, Banyjima and English are predominantly spoken in the region.

Social organisation across language groups in the region is similar due to the use of a system of four sections which, combined with knowledge of kinship

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6 The circumcision line relates to a geographic boundary between groups who practice circumcision to the east and those who do not to the west (O’Grady 1959).
7 Wilson’s research occurred immediately prior to a significant debate in Australian anthropology concerning the exclusivity of Radcliffe-Brown’s (1913, 1918, 1930–31) ‘horde’. The debate was primarily between Hiatt (1962) and Stanner (1965), with Hiatt’s (1966) view prevailing that the territorial group is significantly more flexible than Radcliffe-Brown described. Stanner had defended Radcliffe-Brown’s by loosening the parameters of his model. Whilst unsuccessfully defending Radcliffe-Brown, Stanner’s contribution in this debate was to more clearly define the terminology of ‘estates’ and ‘clans’ that endure in Australian anthropology (Sutton 2001a: 43).
and designated kinship terms, provides a basis for organising much of social life. The kinship system of the three language groups consists of two patrilineal systems, in which kinship terminology reproduces every four generations. An alternate generational system, and the cross cutting of the two patrimonies, defines a system of four named sections, also referred to as ‘skins’ (Dench 1995). There appear to be no gender distinctions in the terms used, but there is regional variation in the names of sections and the ordering. For example, a number of Yinhawangka informants asserted that Yinhawangka substitute Badjari for Milangga. However, Sharp and Thieberger (n.d.) have recorded no distinction between Banyjima and Yinhawangka skin terms (see also Juluwarlu Aboriginal Corporation 2004). Sufficient similarity ensures the translation of the system from one language group to another. This is aided by kinship ties across the region and beyond linguistic groups. The following diagram depicts the Banyjima skin system.

**Fig. 5.2 Banyjima skin diagram**

Source: Based on Sharp and Thieberger (n.d.: 13)

The skin group of the mother determines recruitment to the skin group. Sharp and Thieberger (n.d.: 13) explains the system operating in the following way:

A Banaga man marries a Garimarra woman and they have Milangga children. A Garimarra man marries a Banaga woman and they have Burunggu children. A Burunggu man marries a Milangga woman and they have Garimarra children. A Milangga man marries a Burunggu woman and they have Banaga children.

Wilson highlights variant construction of moieties in his discussion of the social organisation of the members of the Pindan collective who utilised the Njangomada system of the predominant western desert group. Moieties consist of groupings of sections into pairs, and can be context specific, whilst section membership remains constant. According to Wilson, patrilineal moieties, which in the above diagram are Garimarra and Burunggu as one moiety, and Milangga and Banaga the other, were important in residential arrangements, ensuring that avoidance relationships between mothers in-law and sons in-law were maintained. Moieties composed of intermarrying sections were, and still are,
important across the Pilbara in the conduct of ceremony. Wilson (1961: 165) notes ‘they were involved in the division and sequence of dances, the seating arrangements at men’s introduction to the sacred boards, [and] the distribution of kangaroo meat’ and other ritual exchange that occurs in a ceremonial context. Whilst the Njangomada section system uses different terms from the Banyjima and coastal groups, it would be reasonable to expect that similar moiety arrangements exist across a broad geographic region to facilitate social interaction and regional ceremonial activity.

Detailed examination of kinship is not this study’s primary concern. Nevertheless, the skin system, combined with kinship terminology and structures, is a persistent core principle of social organisation. Whilst the skin system is an important mode of articulating social relationships, there is evidence that the system is not adhered to as strictly in contemporary times as it once was. Some individuals adhere to the skin system and some do not. An elderly Yinhawangka woman, said of skin groups, that:

you can’t go free, and mix with anyone. By our law we can only marry people from certain skin groups. These days the law is breaking down and some people do anything (quoted in Olive 1997: 70).

The skin system is socio-centric, whilst kinship is ego-centric. It is possible for the former to attenuate whilst the latter still persists, as the above statement reflects. It also implies the disapproval of younger generations by older people, a phenomenon that is not exclusive to Indigenous society.

Identity with a language group implies genealogical ties. Radcliffe-Brown’s (1913: 146) early research in relation to the Kariyarra people indicates that ‘tribes’ were divided into a number of exogamous patrilineal clans with territorial and totemic affiliations. Territorial boundaries between patrilineal clans and language groups were more defined in the western or ‘river line’ regions than in the arid desert regions of the east. Wilson (1961: 9) suggests that the patterns of mobility and interaction of these smaller groups with neighbouring groups of a different linguistic affiliation provided a means for their classification or distinction from one another. The distinction related to slight linguistic differences between groups. As Wilson (1961: 10) notes, the anthropological record also suggests, ‘that rarely, if ever, did the tribes, individually or collectively, act as a corporate unit even though the members acknowledged a cultural affinity’. He notes (1961: 167) that tribal affiliation also was not emphasised in the organisation of Pindan and its mining and social programs, but rather distinctions were broadly made between cultural blocs associated with desert people and coastal or river line people. This point is important as it contrasts with the contemporary manner in which language groups are defined as community for the purposes of mining agreements in the region.

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8 Riverline groups are so called due to the influence that the rivers in the region such as the Fortescue, the Ashburton, and the de Grey, and other smaller rivers have on their traditional estate.
Traditionally, families were the basic social and economic unit (Elkin 1979). In contemporary times, families, whilst not adhering to the common residential patterns of earlier times, remain an important basic unit of social organisation and also as political units. Affiliation of families with language groups occurs primarily on the basis of descent (including adoption) from father’s father and mother’s mother; place of conception is also used as a mode of recruitment (Wilson 1961: 155). There is considerable flexibility in affiliation with language groups. Parents or children often decide which parental or grandparental line to follow. It is likely that such flexibility was always a feature of the Central Pilbara in accordance with traditional ecologically based affiliations of the desert regions of Australia. In effect there is a cognatic system of descent and language group affiliation, in which many siblings with common parentage claim different language group membership. In some families the choice of language group membership is based on gender—all siblings of the same sex following one or other parent. In other families siblings divide their allegiances between language groups on what may appear to be an ad hoc basis. However, in many cases this choice is based on decisions made with regard to the political landscape of overall language group numbers, familiarity with the country of one or other parent, or political support for one or other parent. In some cases this choice is a strategic way of positioning oneself to be in receipt of resources associated with the native title claims process or mining agreements (interview with an Innawongga member of Gumala, 29 August 2003). Wilson (1961: 155) observed of the Pindan groups that:

there was no rigid agreement about the appropriate criteria for determining tribal identity. This left the way open for choice, and some of these choices were later seen to be relevant to the political divisions which developed.

Relatively few people emphasise multiple lines of descent when describing their language group and country interests. However, as Wilson suggests (1961: 155), public expressions of language group affiliation can be context specific, particularly when parents are from different language groups. Many families have had long term residential associations with particular pastoral stations, which in many cases coincide with their traditional land interests. However, the focus of pastoral stations in issues of land ownership has also engendered conflict between those who have traditional interests and those whose attachment is based on historical association through residence and work on particular pastoral properties (Merlan 1997). The relationship between Yinhhawangka and members of the Eastern Kurrama and Banyjima groups is evidence of this concerning Rocklea Station (see below). Some families emphasise their association with the coastal towns of Onslow, Roebourne and Port Hedland where they may have resided for a number of generations. Others define themselves in terms of their involvement in political struggles and organisations, particularly since the pastoral strike of 1946, and then the decades following the 1967 Referendum.
The following section considers the operation of native title in the region to background discussion about the language groups in the context of the YLUA. The discussion is limited to the period up until 2007 which reflects the period of this study.

**Native title**

The passing of the NTA provided a mechanism for the recognition of Indigenous interests in land, and has had major impacts on the Indigenous polity in the Pilbara. The criteria of the Act has altered how people speak about their affiliations to particular language groups and tracts of country and have introduced contestation between and amongst families and language groups in relation to boundaries of interest, identity, and group affiliation (Holcombe 2004: 13). Despite the impact on Indigenous political, cultural and economic structures from the processes of colonisation (Biskup 1973; Edmunds 1989; Holcombe 2004, 2005; McLeod 1984; Palmer 1983; Wilson 1980), members of all three language groups who participated in this study have managed to maintain knowledge of their traditional country and a sense of attachment to it. However, generally there is a lack of consensus over the exact extent of each group’s country, and in relation to other neighbouring language groups. Whilst the colonial process has affected knowledge of land interests, such lack of consensus also reflects the difficulty of precisely defining traditional boundaries for the purposes of western legal process. This is not an uncommon situation across Indigenous Australia.

**Fig. 5.3 Native title claim boundaries in the central Pilbara, 2007**

Source: CAEPR, ANU

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9 Whilst this statement is clearly a generalisation it is important to acknowledge the significant diversity in the life histories of Indigenous people across the Pilbara, which results in variable knowledge of customary practice and produces mixed and diverse educational, employment and life histories, all of which are relevant to the current discussion.
The nature and number of overlapping native title claims in the region at the time of fieldwork (see Fig. 5.3) is evidence, not so much of the lack of consensus about land interests, but of the influence of poorly resourced and, in some cases, partisan Native Title Representative Bodies (NTRBs). In the decade after the passing of the NTA, and at the time of the YLUA negotiations, there were four NTRBs operating in the Pilbara. The activities of these organisations created a legacy of complex contestation about overlapping native title claims and poorly constituted agreements with the mining industry, which at the time of this study were largely the domain of the Pilbara Native Title Service (PNTS) as the relevant NTRB. The PNTS was established in 2002, following the signing of the YLUA, and operated under the umbrella of the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation (YMBBMAC), the NTRB for the Murchison Gascoyne region to the south of the Pilbara. In 2009 the two organisations combined under the common name of Yamatji Marlpa Aboriginal Corporation. Since this time there has been considerable progress in consolidating and progressing overlapping native title claims.

Most native title claims in the region are lodged on behalf of language groups, though the definition of membership of language groups may differ from one claim to another and reflect political rather than social divisions within the Indigenous polity. A number of people indicated that when early native title claims were lodged, they were instructed to affiliate with only one language group (interview with Banyjima man in Tom Price, 4 July 2003). The implication then is that most individuals are restricted to being a member of one claimant group. However, a number of native title claims in the region were lodged independently of any NTRB. Whilst purporting to be language group claims, they are ostensibly lodged on behalf of extended family groups.

At the time of fieldwork there were a number of native title claims in the central Pilbara pertinent to the following discussion. The IBN claim, covering an area of 26 000 square kilometres, was lodged by the coalition of Yinhawangka, Banyjima and Nyiyaparli people represented by Gumala in the context of the YLUA negotiations (Senior 2000: 9). The claim encompasses much of the traditional lands of these groups but not their entire land interests. The IBN claim partially overlaps with the Eastern Guruma claim to the west, which is also the subject of a countrywide agreement with Pilbara Iron. Overlapping the IBN claim to the northeast is the Martu Idja Banyjima (MIB) claim, lodged to gain a discrete ‘right to negotiate’ for the Martu Idja Banyjima people (see below) over BHP’s Area C mine. To the south of the IBN claim, two overlapping

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10 These were the West Pilbara Land Council, the Pilbara Aboriginal Land Council, the Western Desert Puntukurnparna Aboriginal Corporation and the Western Australian Aboriginal Legal Service (YMBBMAC 2001).
11 This alternate spelling of Kurrama is used in the official title of the claim, and also in the Eastern Guruma Agreement noted later in this chapter.
Yinhawangka claims have now been consolidated into one claim. The Gobawarrah Minduwarah Yinhawangka (GMY), a sub-group of the main Yinhawangka group (see below), lodged the first of these. To the east of the IBN and MIB claims there is also a discrete Nyiyaparli claim which also encompasses many of BHP’s mining interests. Complexity in the negotiation of these claims, associated mining agreements, and emerging Indigenous organisations is impacted by the intensity of development in the region. It is driven by the commercial demands of foreign markets and competition between rival iron ore producers, Rio Tinto and BHP Billiton.12

**YLUA community benefits or compensation?**

The presence of the mining industry in the Pilbara, the scale of its operations and the provisions of the NTA provide an opportunity for the negotiation of compensatory agreements. Under s.51(1) of the NTA, native title holders are entitled to compensation for ‘past acts’ and ‘future acts’13 on ‘just terms for any loss, diminution, impairment or other effect of the act on their native title rights and interests’. Both the YLUA and the Gulf Communities Agreement (GCA) fall into the future act category. Rights of claimants in this context are derived from the ‘right to negotiate’ process under s.29 of the NTA. The right to negotiate arises in relation to development projects (future acts) within the bounds of a validly lodged native title claim, and prior to the determination of the existence or otherwise of native title (i.e. before the claims process has concluded (Smith 2001: 28–9)). In the absence of such a determination, negotiations under the right to negotiate process are ‘not about attempting to agree the ‘value’ of the land or the likely compensation that the Federal Court may award native title holders in relation to a proposed future act’ (Humphry 1998: 9). Rather, as Humphry (1998: 10) suggests, ‘the procedure is about negotiating the terms upon which the native title claimants are prepared to give their statutory right of consent to the proposed future act taking place in country where they claim native title’. ‘Future act’ negotiations and resultant agreements mostly occur without recourse to the National Native Title Tribunal, which could not impose a condition that compensation be paid without first establishing the nature of rights and interests, and the nature of their impairment. Such a process may entail considerable delay for development proponents. For native title claimants this may result in compensation being held in trust, payable only on the

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12 The duopoly of these companies is currently being challenged by the entry into the iron ore industry of the Fortescue Minerals Group, who have been actively pursuing negotiations with Nyiyaparli people.

13 A ‘past act’ is any activity that impaired native title and was undertaken prior to 1 January 1994. A future act is a proposed activity or development that may affect native title. The ‘right to negotiate’ process under the NTA is only available to native title claimants if their native title claim has been registered with the National Native Title Tribunal.
successful determination of their claim, and consequently may entail risk in the
event that the claim is unsuccessful (Humphry 1998). The YLUA was negotiated
largely outside the process of the NTA (Senior 2000). However, for the Western
Australian government to issue titles for the project, s.29 notices invoking the
formal right to negotiate process had to be lodged (Senior 2000). 14

As argued in relation to the Ranger Uranium Mine (RUM) Agreement (Altman
1983a, 1996b, 1996a; Altman and Pollack 1998a), the demarcation of the
components that constitute compensatory packages (Smith 2001: 30), including
rent-sharing, access fees, and in-kind contributions, may be useful and has
consequences for their expenditure. But the practice of subsuming agreement
payments and in-kind contributions within the term ‘community benefits
package’, as in the YLUA and a number of other modern agreements, makes it
difficult to distinguish between compensatory and consent payments. Publicly
available information suggests that the YLUA contains compensatory aspects,
including payments made for areas of land disturbed by infrastructure and
mining (Egglestone 2002: 9). As noted in Chapter 4, the payment of mining
royalty equivalents under the Aboriginal Land Rights (Northern Territory) 1976
Act (ALRA) via consolidated revenue and the Aboriginals Benefit Reserve creates
a difficulty in distinguishing between the public and private purpose of such
money. The company makes payments associated with the YLUA, and other
similar mining agreements negotiated under the NTA, directly to Indigenous
interests—in this case, Gumala. As such, funds derived from the agreement are
private.

Despite the paucity of public information about the nature of the agreement, the
term ‘community benefit’ implies that these funds are public. Such an inference
in the case of the YLUA is further supported by the payment of funds into
public benevolent trusts held on behalf of the Yinhawangka, Banyjima and
Nyiyaparli people for:

the specific purposes of enhancing: business development; education and
training; community development and infrastructure needs; protection of
culture; and the long term welfare of the Bunjima, Niapali and Innawonga
[sic] communities. A requirement is that a portion of the funds be invested
to address the needs of future generations (Egglestone 2002: 9).

Gumala established two trusts—the General Foundation, and the Foundation
for the Elderly and Infirm (see Chapter 3). The latter only operated for the first
four years of the agreement, and provided limited cash payment and in-kind

14 Due to the Western Australian Government’s policy of not entering into agreements between resource
developers and native title claimants (Hunt 2001), a further tripartite agreement between Hamersley Iron,
Gumala Aboriginal Corporation and the State of Western Australia, known as a State agreement, also had to
be entered into to satisfy s.31(1)(b) of the NTA and signifying the formal end to the s.29 process.
payments to the ‘elderly and infirm’ category of the Gumala membership. The General Foundation is the repository of the majority of funds held by Gumala and is controlled by the trustee, Gumala Investments Pty Ltd. Discussion of the prudential management of the General Foundation was raised in Chapter 3 and will be further extended below.

The purpose of the trusts accords with Rio Tinto’s key policy document, *The Way We Work* (Rio Tinto 2006c: 8), and the company’s commitment to the Commonwealth Government initiative, *Working in Partnership* (Department of Industry Tourism and Resources 2006), which seeks greater involvement of Indigenous people in the mining industry. The trusts, with their intent to promote engagement with the mining industry, and provide for education and training and infrastructure needs, appear to convert what might be considered commercial payments into compensation payments that often substitute for government funding (Altman 1997; Altman and Pollack 1998b; Smith 2001).

The term ‘community benefits’ also contributes to a problem within the native title statutory framework identified by Smith (2001: 42) as a lack of clarity between the ‘distributive equity’ and ‘distributive spread’ of compensation associated with such agreements. Equity of distribution relates to ensuring the appropriate compensation of native title holders, as individuals within a group, whilst distributive spread considers the broader Indigenous community within which the native title holders constitute a part, and what impacts the development might have on this broader grouping (Smith 2001: 42). Smith notes that a lack of distinction between intended beneficiaries in the native title arena has caused considerable conflict. Trusts associated with the YLUA and Gumala attempt to anticipate such conflict by ensuring that all expenditure has a community benefit and by employing a prudential system of funds management (Hoffmeister 2002). The prudential management of trusts was strongly criticised in a five-year review of the Gumala trust structures (Hoffmeister 2002).

However, the use of the term ‘community’ is problematic in the case of the YLUA as it assumes a unity of interests amongst the three language groups, and does not take account of the nuanced and context-specific manifestations of what might constitute ‘the community’ within the Indigenous polity (see Sullivan 1996: 10–12; Sutton 2001a). As Smith (2001: 42) notes of the RUM Agreement (see Chapter 4), there are lessons to be heeded from compensatory agreements under the ALRA ‘…regarding how the social boundaries of impact and beneficiary groups are defined for the purposes of distributing compensation’. The equating of the interests of all three language groups party to the YLUA contributes a tension over the access to community benefits between the rights of individuals or groups of individuals and those of the encompassing defined community. This tension between individual rights and ‘communitarianism’ (Holcombe 2005) exposes an ideological crisis in the YLUA.
The crisis emerges from the goal of seeking the development of ‘robust regional economies’ (Harvey 2006) through market integration—but, with the exception of employment and training opportunities, its ability to privilege individual agency is restricted. A consequence, then, is the limiting of the potential impact of such agreements to the creation of an Indigenous proletariat. However, as will be outlined later in this chapter, there are significant socioeconomic obstacles to the attainment of this narrow focus of agreements, and clear evidence that not all Indigenous parties to agreements are either capable of or inclined to such uni-focused engagement.

Politics within the Gumala membership demonstrate a number of commonalities relating to the membership of royalty-receiving organisations in the Kakadu region of the Northern Territory. Notably, there is a desire to disaggregate the membership of Gumala into language group corporations, and consequently the entitlements of each group to funds held in trust.15

Although there are diverse Indigenous responses to the YLUA, there is a common desire to engage with the mining industry, to achieve the development of an Indigenous economic base to assist in ‘balancing pressures to survive in the modern economy with the needs and desire to retain culture’ (Taylor and Scambary 2005: 27). Cousins and Nieuwenhuysen (1984: 11) also noted the possibility of engagement between Indigenous people and the mining industry, particularly in the area of employment and the cash incomes that could be derived as enhancing ‘the ability to pursue traditional practices’. The industry and the state view the YLUA as an instrument for the economic integration of Indigenous people which will both create an available source of labour for the industry and assist in overcoming disadvantage. Importantly, agreements, such as the YLUA, that seek to attain sustainable regional economies and maintain sound community relations, are regarded as a key to attaining a social licence to operate and mitigate against the established perception of poor and unequal relations between Indigenous people and the mining industry (Egglestone 2002; Harvey 2002; Taylor and Scambary 2005; Trebeck 2005). For the state, the YLUA and other agreements represent paths to economic development in hitherto under-serviced remote and regional areas. However, as noted the current and predicted socioeconomic status of Indigenous people in the Pilbara raises serious questions about the capacity of governments and the mining industry ‘to comprehend the extent of historic Aboriginal disadvantage and strain on the social fabric of societies so radically affected by colonisation’ (Taylor and Scambary 2005: 1).

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15 Notably the Kunwinjku Association, established to receive mining royalty equivalents from the Nabarlek mine, had approximately 1200 members. The emergent Nabarlek Traditional Owners’ Association which emphasised affiliations with the mined area had 60–70 members (Altman and Smith 1994).
Agreements such as the YLUA insert private capital into the relationship between the state and Indigenous people and the arena of Indigenous policy in accordance with ‘the principles of economic liberalism’ (Quiggin 2005) (see Chapter 1). In the Pilbara the dominance of the mining industry since the late 1960s in the establishment of social and industrial infrastructure has served to physically exclude, or at best marginalise, Indigenous people from the regional economy (Edmunds 1989). This has resulted in a dynamic, and at times volatile relationship between the mining industry and Indigenous people in the arenas of both negotiations for new mineral development, and increasingly that of social service delivery with the ‘normalising’ of mining towns in the region (Egglestone 2002; Thomas et al. 2006). Underscoring such dynamism is a vibrant debate within the Indigenous polity about the maintenance of cultural identity and how best to capitalise on the presence and inevitability of large-scale mineral development in the region. Trigger and Robinson (2001: 242) state:

there is typically a mix of cultural politics and material aspirations that constitute the setting in which indigenous interests are articulated in the context of new resource development projects [...] understanding indigenous responses to such projects, thus requires a sophisticated recognition of the resilience of cultural beliefs [...] while also facing squarely the implications of local politics driven by the material realities in people’s lives.

The goal of attaining ‘material aspirations’ is driven by ‘material realities’. At the same time the maintenance of distinctive Indigenous identities is critical in intra-Indigenous dispute, the positioning of individuals and families in relation to land interests, and to defining relationships between Indigenous people and the mining industry (Povinelli 1993: 186–92). For example, a Nyiyaparli woman, expresses a dual ambition of utilising mining agreement resources to return her people to country, while also expressing support for the existence and development of education, training and employment programs for young people so that they can make choices about employment and ‘bring in money’ (interview, 19 August 2004). However, like many, she recognises that people, particularly the young, face the challenges of meeting the dual obligations of being a full time worker and participating in family and cultural life. A Banyjima man, and one time employee of Pilbara Iron, states (interview, 25 November 2006):

We have to function as Aboriginal people in our own world too. To be Aboriginal, to become an elder, you have to acquire the knowledge

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16 Normalising refers to the transition of towns that were constructed as restricted access mining towns to open towns where the state assumes responsibility for social services.
and you have to attend ceremonies, bush meetings, family activities and funerals. But you are never around if you work for HI, and you never climb the [Aboriginal] ladder.

The statement implies a tension between engaging in the mainstream economy through mine employment and the preservation of a space for the pursuit of cultural activities. Such activities—here labelled livelihood pursuits, and including hunting, gathering, fishing, attendance at ceremonies and engaging with one’s traditional estate in the pursuit of tangible and symbolic resources—are seen as essential to maintaining an Indigenous identity, and preserving and enhancing Indigenous social institutions. The establishment of discrete communities, commonly referred to as outstations in other parts of Australia, is a key aspiration for many members of the Yinhawangka, Banyjima and Nyiyaparli people who participated in this study. Factors that drive such aspirations include the desire to fulfil obligations to care for and maintain country, particularly in the context of the scale of mineral exploration and development in the area. The desire to protect sacred sites by maintaining a residential presence in their vicinity is common across much of Indigenous Australia. Proximity to natural resources critical to the pursuit of customary economic activity is also a determining factor in the location and establishment of such communities. In addition, many believe that lifestyles afforded by residence at such locations are preferable to those afforded by town life with its associated social pressures and, for many, marginalisation from opportunities.

At the time of fieldwork, there were three established communities in the Central Pilbara: Wakathuni, Bellary Springs and Youngaleena. These were all part of a limited homeland movement facilitated by the now defunct Karijini Aboriginal Corporation in the early 1990s (Olive 1997). A fourth, which will be discussed below, is Wirrilimarra to the north of the Hamersley Ranges.

The following section considers the dynamics surrounding the negotiation of social boundedness within the groups associated with the YLUA, highlighting the assertion of knowledge and authority in relation to country. These dynamics clearly have a social function in the context of local intra-Indigenous relations, and are also critical in the favourable positioning of local groups with respect to community benefits.

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17 Such a tension is reminiscent of Wiley’s (1967) ‘ethnic mobility trap’ in which he postulates that there is an inevitable trade-off between ethnic identity and socioeconomic mobility.
Yinhawangka

Yinhawangka country is largely focused on the Ashburton River system south of the Hamersley Ranges in the vicinity of the town of Paraburdoo and Turee Creek. To the west of Yinhawangka country is that of the Eastern Kurrama (see below), with whom the Yinhawangka people are closely related. Yinhawangka is the smallest of the language groups associated with the YLUA, with 70 adult members of Gumala (Hoffmeister 2002). The majority of Yinhawangka Gumala members reside in the vicinity of the towns of Roebourne, Karratha and Onslow, with other members resident at Paraburdoo, Tom Price and the communities of Wakathuni and Bellary Springs.

There are five main Yinhawangka families. At the time of fieldwork, two families were asserting their dominance over the rest of the group. This dispute led to the lodgement of the GMY native title claim. However, in the course of fieldwork the dispute appears to have been resolved.

Yinhawangka people were closely involved with the Karijini Aboriginal Corporation (see Olive 1997) in the 1980s and early 1990s, and in opposing the development of the Marandoo iron ore mine within the bounds of Karijini National Park in the early 1990s (see Chapter 3). They also were instrumental in the Pilbara homeland movement that followed the Marandoo dispute. Two senior Yinhawangka women were the first to return to their country from the coast. They established the Wakathuni community 42 kilometres south of Tom Price. The community is now home to approximately 100 Indigenous people, residing in 16 houses (Western Australian Planning Commission 2001). Whilst it is on Yinhawangka country, the residents derive from a number of language groups.

Wakathuni is within sight of the Mt Tom Price iron ore mine, constructed on the hill Indigenous people in the region refer to as Waragathuni. One of the senior women recounts that her mabuji (mother’s father), pre-empted the destruction of Waragathuni in a dream. Her deceased sister recounts the story on a storyboard at the Karijini National Park visitor’s centre:

Before Tom Price was mined and before I was born, this old fella had died. But he had made up a song about that place and its future destruction. In the song it mentions that he could see his land being destroyed, hear loud noises and there were blinking lights on that hill. The old people knew of this song long ago. It wasn’t Old Wakin that knew, but the spirit of that hill telling him what would happen to his land (Karijini National Park Visitor’s Centre, reproduced from Olive 1997: 163)
Stories, such as this, summoning Indigenous spirituality in relation to mineral development, are not uncommon, and serve to assert the authority of Indigenous people in relation to the landscape—and what is, in this case, perceived to be its unlawful transformation (Trigger and Robinson 2001). Landscape intervention associated with mining activity is often equated with damage to country rather than development, and is often considered in terms of customary obligations to look after one’s country. Drilling, and the construction of open cut mines, are credited with causing a number of springs and ‘night springs’\textsuperscript{18} to dry up (see Peter Stevens in Olive 1997: 77). Yinhawangka assert that drilling activities associated with exploration in their country have damaged a number of water sources (interview, Yinhawangka woman in Port Hedland, 10 April 2003). Water sources in this arid region, like desert regions in Australia generally, are usually sites of spiritual significance (see Payne 1989).

Subsequent to the establishment of Wakathuni, three other small communities—Bellary Springs, Youngaleena and Wirrilimarra—were established in the region. Sixty-seven per cent of Indigenous people in the region are resident in one of the 10 main Pilbara towns. There are 33 discrete Indigenous communities with a collective service population of 2,246 people, this residential structure and spatial distribution signifying ‘…individual and collective choices to pursue non-urban lifestyles more in tune with customary norms’ (Taylor and Scambary 2005: 14–15).

Bellary Springs is on Yinhawangka country and is approximately 17 kilometres north of the mining town of Paraburdoo. At the time of fieldwork, residents of the five houses at Bellary were predominantly Yinhawangka. Attempts were ongoing to establish further living areas in the region, and a number of informal camps were occupied within Karijini National Park and the adjacent Juna Downs pastoral lease. The YLUA makes provision for the subleasing by Gumala of Pilbara Iron pastoral leases Juna Downs and Rocklea (Egglestone 2002). However, no sublease arrangements had been entered into at the time of fieldwork. A critical obstacle to the establishment of further communities is access to suitable tenure (Altmann 2006a).

The extensive pastoral land holdings of major iron ore producers, Rio Tinto and BHP, also have implications for land access. At the time of fieldwork a number of access tracks in the vicinity on the East and West Ranges mines had been blocked by drilling activities (interview, MIB man in Tom Price, 4 April 2003). In addition, a Yinhawangka man accompanied me to the Channer mine access road, now blocked by a boom gate, and a permit is required to pass. Access for hunting beyond the boom gate was still possible, but he resented having to seek company permission to undertake such activities on Yinhawangka country (interview at Belary Springs, 24 November 2004).

\textsuperscript{18} Night springs are said to be springs that only flow at night, possibly due to the extreme daytime heat in the region.
A number of younger male residents at Wakathuni stated that they go hunting on the surrounding Rocklea Station. Some maintained that the safety policy of Pilbara Iron does not permit them to use firearms on the station. In addition, access to the station requires permission from the manager of the station, and whilst reasonable relations were reported many stated that they did not seek permission. It emerged, however, that the majority of hunting conducted by Wakathuni residents is restricted to a small number of people who own guns and have the appropriate licenses. According to one of the men, who is a regular hunter, seeking permission from the manager is important for safety and also prevents any suspicion that Wakathuni residents are shooting station cattle. He is one of the few Wakathuni residents who work in the mining industry.

This same man completed two years’ training with Pilbara Iron’s Aboriginal Training and Liaison unit (ATAL) (see Chapter 3), and now works with Indigenous Mining Services, operated by the IBN Corporation (see below). He is committed to living at Wakathuni on his own country, and believes it is important for his seven children to be raised on Yinhawangka country. He is keen to see Rocklea Station returned to Yinhawangka people. He believes this is the intent of the YLUA. This understanding is shared by many of the Indigenous parties to the YLUA. However, he suspects that the delay in transferring the title is due to the prospect of further mineral finds on the station (interview, 27 November 2004). Working fulltime clearly provides his family with significant resources within the community. Consequently, in addition to their own children, he and his wife look after a number of other children resident at Wakathuni, and when her husband is away his wife takes a group of elderly women out fishing on an almost daily basis. With hunting and fishing activity they maintain that they live almost exclusively from bush tucker (interview, 27 November 2004).

A number of working-age people at Wakathuni expressed negative attitudes towards working in the mining industry. One man, aged 27, who has been involved in Community Development Employment Projects (CDEP) since leaving school stated (interview, 17 April 2005):

I don’t want to rip up the country, just leave it as it is. It’s like taking a stone from another place and bringing it home, it should have stayed one place. They moved a mountain and they stepped over the limit, and they take it to somewhere else. No good.

Alcohol and drug issues preclude a number of young people living at Wakathuni from gaining employment, due to the ‘zero tolerance’ work environment of Pilbara Iron and similar policies of other companies in the region. The man who made the above statement maintains that the zero tolerance policy is not his reason for not working in the mining industry, expressed that he would rather
work within Wakathuni. He stated that he is interested in developing skills associated with landscaping, with the primary purpose of creating a park and a playing field at Wakathuni.

One of the senior Yinhawangka women mentioned earlier now resides in the Central Pilbara mining town of Tom Price. She is vocal about the YLUA, arguing that it has allowed the intrusion of the mining industry into her life. On the other hand she has successfully utilised the resources of the industry in establishing one of the few private Indigenous businesses in the region: the Wanu Wanu cultural training course. At the time of fieldwork this business received administrative and logistical support directly from Pilbara Iron’s ATAL unit rather than via Gumala. Whilst in-kind assistance is part of the YLUA, such assistance possibly reflects the difficulty of accessing support for such a venture from the Gumala trusts (see below).

Both GMY and Yinhawangka have negotiated separate agreements with Sipa Resources in relation to a gold mine in the vicinity of Paraburdoo, but they have done so outside the IBN claim, and hence the YLUA. The GMY also have agreements with Robe Resources that one Yinhawangka woman maintains ‘are not worth the paper they are written on’ (interview, 30 November 2004). All of these agreements are established outside of the coalition with Nyiyaparli and Banyjima people.

Yinhawangka attitudes towards the YLUA are informed by the complexity of equating the Yandicoogina project with a broader section of the land interests of the three groups involved, and as defined by the IBN native title claim. Yinhawangka are a party to the YLUA on the basis that some of the power line infrastructure associated with the Yandicoogina mine intersects with Yinhawangka country. However, the agreement area of the YLUA arbitrarily encompasses a much greater extent of Yinhawangka country than the power line infrastructure but, as noted not all of Yinhawangka country. Paraburdoo town, Channer mine and Eastern Ranges mines which were previously owned by Robe Resources, also fall within the IBN claim and, hence, the YLUA area. Under the terms of the YLUA, the Yinhawangka, as with the other two language groups, are obliged to participate in heritage work undertaken by ATAL in conjunction with Gumala in respect of current expansion of Pilbara Iron developments within the IBN claim area. However, at the time of fieldwork the proposed Channer and Eastern Ranges mine expansions, and the Paraburdoo town expansion, were on tenements classified as past acts (see above) validated by the NTA and, consequently, attract no rights of negotiation. The Gumala membership is compelled to undertake heritage clearances (for which they receive payment) in respect of these developments. A Banyjima man, highlights
the frustration of many Indigenous people in the Central Pilbara: ‘people feel ripped off because we can see the YLUA being used against us at Paraburdoo’ (interview, 25 November 2006).

In order to gain a right of negotiation, the Yinhawangka working group instituted an embargo on the conduct of heritage surveys for these projects. The senior Yinhawangka woman states (interview, 25 November 2004):

They tricked us about the YLUA, and now they reckon that Paraburdoo town extension isn’t a new project. And they reckon we get nothing for that Channer and East and West Ranges because we had no right. They want to build a gas pipeline but Yinhawangka are not going to give permission just yet, we’ll make them wait, they always make us wait. They always coming around here for that heritage. But they trick us, they take our information all the time and then they use it for themselves. The mining industry and whitefellas know all about us and leave us with nothing—no power they take our knowledge. They just do what they like.

However, Yinhawangka are divided over the conduct of heritage surveys as a number of senior Yinhawangka men derive an income from them. Tension also exists in relation to Gumala, who maintains that under the YLUA the organisation is obliged to facilitate the conduct of such surveys, despite the Yinhawangka embargo. The Yinhawangka heritage issue is an example of organisational complexity in the Central Pilbara—Gumala, ATAL and the PNTS all assert responsibility for management and conduct of heritage issues—and it is one of the significant sources of tension between Yinhawangka and Pilbara Iron (see Chapter 3). Participation in heritage surveys can be seen as an example of the use of customary knowledge in commercial activity. Ironically many cultural heritage sites are destroyed in the conduct of exploration and mining in the Pilbara under the terms of the Western Australian Aboriginal Heritage Act 1982 (Morgan, Kwaymullina and Kwaymullina 2006).

At the time of fieldwork Yinhawangka were pursuing the establishment of a countrywide, or framework agreement, through the PNTS in relation to existing and future mining operations on Yinhawangka country. It was proposed that a framework agreement would standardise heritage procedures for all mining companies concerning Yinhawangka country, and procedures for the management and distribution of financial and other community benefits. Yinhawangka woman and Director of Wirrika Maya Aboriginal Health Centre in

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19 At the time of fieldwork Indigenous people were paid $300 per diem for participation in heritage surveys, but subsequent to the heritage embargos imposed by Indigenous people the rate has increased to $500 per diem. Involvement in heritage surveys is contentious, with senior women complaining that they have been marginalised in the process, and complaints that a number of individuals dominate the available work.
South Hedland believes that the concept of a framework agreement is essential to establishing a common standard for agreements given the diversity of the Yinhawangka agreement portfolio, and the amount of proposed development on Yinhawangka country.

**Banyjima**

The Banyjima country includes the Hamersley Ranges in the vicinity of Karijini National Park, extending north to the Fortescue River, east to the Marilana and Weeli Wooli Creek systems, and south to Rocklea Station on the upper branches of Turee Creek and the Kunderong Range (Dench 1995; Sharp and Thieberger n.d.: 1). Banyjima are the largest group in the Gumala membership, with approximately 229 members or 56 per cent of the Gumala membership (Hoffmeister 2002). Banyjima people live across the Pilbara, with the highest residence in the towns of Roebourne, Karratha and Onslow, and a significant number residing in Port Hedland, Marble Bar and Perth (Hoffmeister 2002).

Banyjima divide themselves into two groups—the Martu Idja Banyjima (MIB), or ‘Bottom End Banyjima’, associated with the lower country of the Fortescue River floodplain in the north; and the Milyarring Banyjima, or ‘Top End Banyjima’, associated with the high country of the Hamersley Ranges south to Mt Bruce. To avoid confusion the Bottom End Banyjima will be referred to as the MIB. Some Banyjima people maintain that the two groups have distinct languages or dialects and make a distinction between ‘light’ and ‘heavy’ language of the two groups (Elkin 1979). Others dispute that there is any historical precedent for the division. A Top End Banyjima man, who works for Pilbara Iron in Tom Price, indicated that there are strong ceremonial ties between Banyjima groups and Eastern Kurrama, Yinhawangka and the Ngarla of Ashburton Downs. However, he notes that a distinction between Top End and MIB is that the MIB have a closer relationship with the coastal Injibarndi downstream along the Fortescue River valley.

Major Top End Banyjima families have historic associations through the pastoral period with Rocklea and Hamersley Stations, and subsequently the town of Roebourne. Main MIB families are historically associated with Mulga Downs Station, and more recently with the town of Onslow. While reflective of traditional land interests, these are general geographic emphases in the contemporary territoriality and residence of these groups—with significant movement of Indigenous people within the Pilbara region noted earlier.

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20 Sharp and Thieberger (n.d.: 1) note that Banyjima belongs to the Pama-Nyungan language family and is regarded by some linguists to be closely related to the Palyku language to the north in the vicinity of Nullagine. Dench (1981) and von Brandenstein (1982) have identified a Banyjima ‘respect’ language, whilst O’Grady Voegelin and Voegelin (1966) have identified two Banyjima dialects.
The major Top End Banyjima family derive significant political status from a deceased Eastern Kurrama man who was regarded as a regional ceremonial leader, and was also the husband of the elderly matriarch of this family. A number of the grown descendants of this couple have attained a comparatively high standard of education, have extensive working lives, and are currently employed in, or associated with, a number of key organisations in the region (Olive 1997: 89). These include the IBN Corporation, Gumala Aboriginal Corporation, Pilbara Iron, the Western Australia Department of Justice, and the Roebourne Women’s Shelter. Previously a member of this family had an extensive career with BHP. Of five surviving adult children, three sons identify as Banyjima through their mother, and two daughters identify as Eastern Kurrama through their father. As such, the family is strategically placed across a number of government and non-government institutions in the Pilbara, and is also positioned in relation to the activities of both Pilbara Iron and BHP Billiton, and the associated mining agreements—the YLUA, the Eastern Guruma Agreement and the Mining Area C Agreement.

A grandson of the senior Top End Banyjima matriarch, states that the family is not particularly affiliated with any institution, but rather operates strategically to ensure the recognition of Indigenous rights, and to protect the rights of their family. He identifies as being Banyjima, and is consequently a member of Gumala. His mother identifies as being Eastern Kurrama through her father. Whilst being a signatory to the YLUA, she is not a member of Gumala because of her Eastern Kurrama affiliation, which entitles her to be a recipient of community benefits through the Eastern Guruma Agreement. Her brother was central to the negotiation of the YLUA (Holcombe 2004: 12), and was the first Chairperson of Gumala, and later the Chairperson of the IBN Corporation (see below).

Strategic and social affiliations such as these are not uncommon and reflect the level of relatedness between language groups across the Pilbara. However, the chosen affiliations of individuals and families are the subject of intra-Indigenous conjecture and contestation. This is central to the articulation of regional Indigenous politics, which necessarily enter into the realm of interaction with the mining industry, particularly in relation to agreement-based organisations and associated resources. Assertions of one’s own identity, and hence land interests, is reaffirmed and supported through challenging the asserted interests of others. It draws upon a body of symbolic and cultural resources that is derived and maintained through knowledge and engagement with one’s country and kin (see Chapter 1, this volume; also Povinelli 1993, Chapter 4; Throsby 2001, for a discussion of cultural value).

Similarly the highest profile Bottom End or MIB family derive status from the political and ceremonial acumen of antecedents—one of whom was a member of the National Aboriginal Congress. After one senior man’s wife died of
asbestosis in 1994, he moved from Onslow and established the Youngaleena community to the east of Wittenoom on the expansive Fortescue River plain. This man was instrumental in the lodgement of the MIB native title claim, which partially overlaps with the IBN claim and, hence, the area of the Y LUA. Like other Indigenous elders of the three groups under discussion, he enjoyed positive relationships with various mining company officials in the course of the various negotiations. According to his children, he received assistance from BHP in the establishment of Youngaleena community, including transportation and the provision of an ex-BHP vehicle, which was subsequently paid for by the proceeds of the MIB agreement. However, his daughter, who identifies as Nyiyaparli, and son, who identifies as Banyjima, both maintain that once the agreements were struck the officials stopped visiting and the resources that they once offered were no longer available. Of interest, a Waanyi man from the Gulf of Carpentaria, visited this MIB senior man at Youngaleena as part of an information tour of Rio Tinto mines in the course of the Century negotiations (interview, 18 August 2004). As part of the same tour the Waanyi man had visited the Argyle mine in the East Kimberley where he met one of the senior traditional owners who was living in the body of a wrecked car. He commented that this visit, and his discussions with the senior MIB man in the Pilbara, had influenced his opposition to the Century mine (interview, 18 August 2004).

Wirrilimarra is another small community situated on Mulga Downs Station to the north of the Hamersley Ranges. Wirrilimarra, on an area of 5 square kilometres, was subject of an application for pastoral ‘exclusion’ at the time of fieldwork. However, underlying mineral tenements have complicated the granting of tenure, despite the close personal relationship between the Banyjima man seeking title, and the owner of Mulga Downs, Gina Reinhardt. The Banyjima man maintains that BHP Billiton is seeking an agreement with him to ensure that he does not enter into any deals in relation to Wirrilimarra with other mining companies, and states (interview, 14 April 2005):

But I don’t want any mining on there anyway, I just want it as my little block my community. BHP think that down the track I’m going to sell it off to the next lot of miners that come along. I don’t want that humbugging my country! Why would I do that? It’s my block and I got it. They are drilling around my block already. Miners are already drilling all around my block—new one Fortescue metals drilling one side and BHP on the other, HI there too. They got their own little tenements everywhere and me stuck in the middle, can’t even get a land tenure to start building things for my people, my community. To me it sucks.

This statement highlights the disjuncture in value systems between an Indigenous sense of locality and the uniqueness of place, and the culture of the mining industry that sees land as an alienable resource. After obtaining title,
this Banyjima man aspired to build more permanent dwellings there, to open a ceremony ground, and to establish an alcohol rehabilitation centre. Despite having a fulltime position with Gumala, he supplements his income by hunting (interview, 14 April 2005):

By the time I buy food, $200–$250 from the store for the week. And then its gone until the next pay day. I have to go shooting for my meat, can’t afford to buy ‘im.

This statement suggests that tangible economic factors are also associated with access to country and the motivations for establishing discrete communities on country. He expresses the importance of the country at Wirrilimarra in terms of the resources that are available there (interview, 14 April 2005):

We got everything out there—you got the wildlife, hunting, wild food, everything, healing things like bush medicine, even have traditional meetings there—initiation. I had my two boys there in February this year. Nine boys went through, Nyiy aparli mob and us—my boy and my brothers boy. We had a big event there and that’s ongoing, we got our culture there. We got everything.

This statement further illuminates both tangible and symbolic value arising from Indigenous relationships with land, and that contrast with the predominant mining industry view of productive mine landscapes. Livelihood activities as described here extend beyond tangible things, such as ceremony, hunting, and the establishment of outstations, to any activity that will allow the maintenance and continuity for future generations of land based knowledge systems and identity. A senior Yinhawangka woman emphasised the importance of land to education (quoted in Olive 1997: 99):

We got to be back on our land to teach our grandchildren our own culture. If we teach them from outside our land we get no strong inside feeling from them. You can feel it really strong when you are talking from your own land.

In doing so this senior Yinhawangka woman asserts the eminence of land and the relationship with its symbolism in the construction of identity.

The MIB Corporation was established after the lodgement of the MIB native title claim and negotiation of an agreement with BHP relating to Mining Area C and BHP’s Yandi mine. However, the corporation was short-lived, allegedly due to the misappropriation of substantial amounts of money. The MIB claim and separate agreement attracted significant criticism from Gumala. As with the Yinhawangka GMY claim and the GMY group’s subsequent agreement with Robe Resources, it was asserted that Gumala should be the umbrella
organisation for negotiations and agreements in the Central Pilbara and within the land interests of the Gumala membership (the IBN claim). These separate agreements have invited criticism of GMY and MIB groups from the Top End Banyjima and Nyiyaparli membership of Gumala, who assert that they are ‘double dipping’. Separate agreements have undoubtedly impacted on the initial alliance between the Yinhawangka, Banyjima and Nyiyaparli peoples (Senior 2000) and contribute to pressure from a significant number of the Gumala membership for the disaggregation of the IBN native title claim. Motivating this is the desire, too, for separate representation of language group interests within the Gumala structure. Contingent upon this assertion of more localised and political groupings is the division of funds held by Gumala and the tacit expectation that such funds will come under the control of discrete groups. The PNTS (now Yamatji Marlpa Aboriginal Corporation), though not a party to the Y LUA, has carriage of the IBN native title claim and is currently in the process of disaggregating the claim into three separate claims based on language group affiliation.

Like the Top End Banyjima, members of key MIB families have also aligned themselves with key organisations, in particular the PNTS, and the Aboriginal and Torres Strait Islander Commission (ATSIC) before its demise. Historically they were actively involved in the Marandoo dispute and the formation of the Karijini Aboriginal Corporation, which had ambitions of becoming a land council and a NTRB for the Central Pilbara. A prominent MIB man was previously an ATSIC commissioner, and was the chair of the 1995 Review of Representative Bodies (ATSIC 1995), which outlined the necessary organisational structures and competencies required by NTRBs. His brother was, at the time of fieldwork, the manager of the PNTS in Tom Price.

The MIB are closely aligned with the Yinhawangka people through intermarriage and close familial ties, as well as through shared experience in the political domain. The connection between Yinhawangka and the main MIB family referred to is also conversely reflected by the tension that they both share with the main Top End Banyjima family and the Eastern Kurrama. Such tension is reflected in discussions about land and group affiliations, and also in organisational tension between Gumala and the IBN Corporation, which will be described below.

Nyiyaparli

Nyiyaparli country lies to the east of the Hamersley Ranges. The north-west extent is considered to commence in the vicinity of the Weeli Wooli Creek system and extends eastwards to encompass the mining town of Newman and the remote community of Jigalong in the Western Gibson Desert. Nyiyaparli
people are approximately 27 per cent of the Gumala membership, with about 112 adult members (Hoffmeister 2002). Nyiyaparli residence is focused on Port Hedland, South Hedland and the Marble Bar area.

Though closely associated with the Central Pilbara and coastal groups, Nyiyaparli are also closely affiliated with Indigenous groups of the Western Desert. After the initial period of colonisation, the Martu people, their eastern neighbours in the vicinity of Jigalong, which was a supply depot on the Rabbit Fence, largely displaced Nyiyaparli (Palmer 1983; Tonkinson 1974). This historical displacement of the Nyiyaparli has consequences for the complex contemporary relationships between Martu and Nyiyaparli people, and with ramifications in the context of negotiations and agreements with the mining industry. Nyiyaparli have come to rely heavily on Western Desert migrants into their country, particularly those who reside in the vicinity of Jigalong (Palmer 1983, see also Chapter 2).

Of the three groups under discussion the Nyiyaparli were more closely associated with the Pastoral strike of 1946. This is primarily due to the close historical associations of Nyiyaparli with Marble Bar and Nullagine and the pastoral properties to the north of the Fortescue River such as Roy Hill, Bonney Downs and Bamboo Springs. Traditional affiliations with the Martu desert migrants, who were instrumental in the strike movement, were also a factor. Alec Kitchener, one of the strike organisers was a Nyiyaparli man (Noakes 1987). At the time of fieldwork the Chairperson of Gumala was a senior Nyiyaparli man. He relates that he was involved in the strike movement and subsequent Pindan collective and worked driving a bulldozer for McLeod.

Nyiyaparli assert that the Yandicoogina mine site is on their country, and at the time of fieldwork desired their interests to be represented separately from the Banyijima and Yinhawangka people in the YLUA and, likewise, within the IBN native title claim. The Chairperson of Gumala at the time of fieldwork complained that the management of the Gumala trusts prevented the membership from utilising funds in developing their land. He stated that he had submitted numerous business plans and submissions for funding on behalf of the Karlka Nyiyaparli Corporation, a proposed body corporate for the Nyiyaparli native title claim, but has never had a response (interview, 30 November 2004). His plans as a Nyiyaparli elder include the purchase of Hillside and Marillana Stations from BHP and the establishment of a number of communities or living areas there. Like the earlier account of Wirrilimarra, his objective is to provide a space away from what he sees as the ravages of town life, primarily for the pursuit of a culturally based lifestyle. Importantly, he also sees access to land and the development of discrete communities as providing the opportunity to engage young people in a range of economic enterprises that he is proposing, including the development of a light engineering and metal fabrication business.
Like Yinhawangka country, Nyiyaparli country is highly prospective and subject to intense exploration, particularly by BHP. Recent developments on Nyiyaparli country include the development of Hope Downs mine by Pilbara Iron and Hancock Resources, and the development of the Cloud Break deposit by Fortescue Metals Group. As with the Yinhawangka, Nyiyaparli feel they are under significant pressure to participate in heritage surveys. According to the former Chairperson of Gumala, unlike Pilbara Iron, the three companies Fortescue Metals Group, BHP and Hancock Prospecting are all reluctant to conduct such work via the PNTS-Nyiyaparli working group, thereby placing more pressure on the Karlka Nyiyaparli Corporation. Whilst not regarding himself as a supporter of the PNTS, he believes the refusal of companies to work through the working group is undermining the representative process.

Like the MIB, the Nyiyaparli also have a discrete agreement with BHP in relation to the Mining Area C mine (Indigenous Support Services and ACIL Consulting 2001: 32).

**Eastern Kurrama**

Eastern Kurrama country is south of the Fortescue River, encompassing the town of Tom Price, the Tom Price mine, the Brockman mine, part of Rocklea Station and Hamersley Station (Olive 1997: 76–77). As noted, the Eastern Kurrama are party to a privately negotiated and administered ‘countrywide’ agreement with Pilbara Iron known as the Eastern Guruma Agreement. This agreement was negotiated subsequent to the YLUA, and provides a standard community benefits package, including education, training and employment provisions. The agreement, which is in operation until 2050, also provides for annual payments to trust funds. Prior to the takeover of Robe Resources by Hamersley Iron, the YLUA and the Eastern Guruma Agreement encompassed the extent of all Hamersley Iron’s Central Pilbara mining activities, and associated infrastructure. There are approximately 58 adult members of the Eastern Kurrama, and they reside predominantly in the coastal towns of Roebourne and Karratha.

Due to close historical relationships between Hamersley Iron and two Eastern Kurrama elders, the Eastern Kurrama fund their own legal and negotiation expertise from funds derived from the agreement without recourse to the PNTS or any of the NTRBs that preceded it. In particular the agreement funds are used to finance research in support of the ‘Eastern Guruma native title claim’. Whilst some of the key members of the Eastern Kurrama maintain that the agreement works well, there are also concerns held by some members that administrative structures associated with community benefits are inadequate. A criticism made
was that some members of the group are treated more favourably than others on the basis of their close relationship with Hamersley Iron employees (interview with resident of Wakathuni community, 20 August 2003). Notably, the PNTS refused to certify the Eastern Guruma Agreement under s.203 of the NTA on the basis that the agreement is not representative of all the land interests in the agreement area.

At the time of fieldwork, the two most senior Eastern Kurrama elders both lived in Karratha in houses purchased under the terms of the agreement. Both men are widely respected within the region for their knowledge of the Hamersley Ranges and Millstream/Chichester area, and are often called upon by the industry in the conduct of heritage surveys both in their own estate and that of neighbouring groups. The close relationship between these two men and Pilbara Iron was allowing them and their families favourable access to company resources, and also of strategic benefit for Pilbara Iron and the heritage staff at ATAL.

IBN Corporation, the Gumala Aboriginal Corporation and the operation of trusts

In 2000–01, and subsequent to the signing of the YLUA, BHP negotiated three separate agreements with the IBN claimant group, the MIB claimant group and the Nyiyaparli claimant group over its Yandi and Mining Area C mines (Indigenous Support Services and ACIL Consulting 2001: 32). Initially negotiations were conducted through Gumala. However, due to the emergence of personal and political differences amongst the leadership, and the commercial rivalry of Rio Tinto and BHP, negotiations in this forum became untenable. The signing of these agreements, as noted, resulted in the establishment of two additional Indigenous agreement organisations—the MIB Corporation and the IBN Corporation. Ostensibly the IBN Corporation shares the same membership as the Gumala Aboriginal Corporation on the basis of the encompassing IBN native title claim. This section outlines the relationship between these two organisations in the period 2004–07, noting that the existence of replicate organisations highlights issues associated with the definition of community, and the debate about management of trust funds in the Central Pilbara. As outlined in Chapter 3, the Gumala Aboriginal Corporation consists of two entities, Gumala Investments Pty Ltd (GIPL), and Gumala Enterprises Pty Ltd (GEPL). GIPL is the repository of the General Foundation Trust, and the Trust for Elderly and Infirm. GEPL is designed to be the business arm of Gumala, but is separately managed to the organisation, though funded to some degree from the General Foundation (Hoffmeister 2002). GEPL operates two main business entities—Gumala Contracting, and a joint venture with the ESS division of the Compass Group that provides catering and other services to mining camps.
Construction of the Yandicoogina mine began in October 1997, and GEPL quickly established a joint venture earthworks contracting business with Hamersley Iron called Gumala Contracting (Harvey 2000: 10). However, the capacity of GEPL to operate such a business so soon after the establishment of the overall organisation was limited (van de Bund and Jackson 2000: 3), and significant cash flow problems emerged (interview with Gumala trustee in Perth, 1 September 2003). Tension emerged between GEPL and the board of GIPL with the refusal of GIPL to release funds for the recruitment of a general manager. This was perhaps an early expression of the prudential management of the General Foundation by GIPL that maintained small businesses were a high-risk activity and that Indigenous small businesses were an even higher risk activity (Hoffmeister 2002). Resulting tensions within Gumala led to a breakdown in communication between GIPL, GEPL and the Board. As a result of these tensions, the first Chairperson of Gumala lost favour with the Gumala membership, resulting in his non-renewal in the chairperson role (interview, 1 September 2003).

However, at the time this Chairperson was engaged in negotiations on behalf of Gumala and its membership with BHP in respect of its Yandi and Area C mines. When he departed Gumala, he continued negotiations with BHP on behalf of the three language groups independently of Gumala. The IBN Corporation was established from the resulting Mining Area C agreement, and he became its first Chief Executive Officer (CEO). Gumala maintained that having funded the negotiations with BHP, the funds derived from the agreement should flow to Gumala.

The IBN Corporation restricts members of the GMY and MIB groups from joining, despite defining its membership, like Gumala, as the approximately 430 claimants in the IBN native title claim. This restriction is on the basis that GMY and MIB have entered into discrete agreements with mining companies as a result of their separate native title claims, and that they had not shared the benefits of these agreements with the broader Yinhawangka, Banyjima, and Nyiyaparli coalition. However, members of both the GMY and MIB groups retain their membership of Gumala. A number of IBN claimants are not members of IBN Corporation, primarily due to political differences with the leadership of the IBN Corporation at the time of fieldwork. Such political differences reflect interpersonal and inter-group relationships in the region and contribute to the commercial rivalry of the two corporations, and competition for legitimacy and support of the membership. Inter-group and interpersonal politics are then a part of the political life of such organisations. Competition between BHP Billiton and Pilbara Iron is also reflected in the political relationships between the two organisations. During fieldwork there was evidence of very little communication occurring between the leadership of Gumala and the IBN Corporation, and little evidence of communication or coordination between the community relations sections of Pilbara Iron and BHP Billiton.
Significantly, the first Gumala Chairperson who went on to found the IBN Corporation considered some of the early criticisms of Gumala in the design of the new organisation (Holcombe 2005). Notably, these criticisms included the inability or refusal of Gumala to make cash payments to its membership, the prudential management of the General Foundation, and the desire of significant numbers of the three language groups to be represented separately. This first CEO of the IBN Corporation maintains that he was heavily involved in the establishment of the Gumala trusts, asserts that the lack of cash distribution by Gumala is based on the strict interpretation of ‘community’ by the trustees which prevents any grant or proposal being funded that won’t benefit the entire Gumala membership (interview, 9 December 2003). He maintains that initially he tried to establish a cash distribution trust fund within Gumala to receive Area C money from BHP. However, he maintains that Hamersley Iron resisted such an option on the basis that it would require amendment to the YLUA, and encourage a ‘Northern Territory situation’ of royalty distribution in the Pilbara (interview, 9 December 2003). As he interprets, such an approach is consistent with a belief that ‘you don’t give Aboriginal people money because they’ll spend it on grog’, implying that there is an assumption that all Indigenous people are irresponsible in personal management. He believes that Gumala is not achieving outcomes for its members by restricting the flow of resources and cash distributions from the trusts to the members, and commented:

we have the richest trusts but the poorest people. That money should be spent to assist people.

He maintains that the distrust that had been established between Hamersley Iron and the membership of the Karijini Aboriginal Corporation during the Marandoo dispute influenced the establishment of Gumala (see Chapters 2 and 3). Whilst Hamersley Iron assisted in the establishment of the organisation (Harvey 2000: 10), the first Gumala Chairperson asserts that the company designed a number of ‘firewalls’ that removed the autonomy of the membership in relation to the management of agreement funds (interview, 12 February 2003).

These criticisms are reflected in the structure and operation of the IBN Corporation, which has two separate trusts—one being a charitable trust and the other able to distribute limited cash payments to the membership of four discrete corporations. Whilst three are clearly language group corporations, the Mulyuranpa Banyjima Corporation appears to represent a political rather than social subdivision of the Top End Banyjima group. The structure of the IBN Corporation is shown in Fig. 5.4.

21 ‘The Northern Territory situation’ referred to is a perception arising most notably from the Nabarlek Queensland Mines Ltd (QML) Agreement in the Kakadu region, and cited by a number of mining company staff. The perception extends to the RUM Agreement and other arrangements at Groote Eylandt where the belief is that mining royalty equivalents are consistently spent on vehicles, alcohol and gambling. The influence of the QML Agreement will be discussed in the conclusion of this monograph.
The relationship between the Indigenous Mining Services Trust and the MIB group in Fig. 5.4 may reflect an ongoing relationship, though this was not substantiated in the course of fieldwork. Approximately 200 Indigenous people work with agreement based Indigenous mining contractors in the Pilbara, which accounts for approximately 15 per cent of Indigenous mainstream employment in the Pilbara (Taylor and Scambary 2005: 49). Gumala contracting employs seven Indigenous employees of its total workforce of 13, and Indigenous Mining Services employs approximately 21 Indigenous people. A number of other Indigenous business ventures operate across the Pilbara. Ngarda Civil and Mining is the largest Indigenous contractor in the region, and grew out of a trust established by ATSIC. Rather than being agreement based, it has a regional focus. Of 170 employees, 140 are Indigenous.

The role of individuals is clearly an important factor in the relationships between the mining industry and Indigenous organisations such as Gumala and the IBN Corporation. The first Gumala Chairperson and founder of the
IBN Corporation at the time of this study enjoyed considerable support from the mining industry in the Pilbara through his role in the YLUA negotiations and, subsequently, through the Gumala and IBN Corporations. He is regarded as an Indigenous entrepreneur and has been supported by a number of non-Indigenous people who are involved in the Pilbara political landscape. His skills at drawing people around him have added tension to the relationships between the IBN Corporation and Gumala. Clive Senior, who was employed by Hamersley Iron as a mediator on the YLUA negotiations, was hired directly by the IBN Corporation as a negotiator on the Area C Agreement. As at 2005 Senior sat on the Board of IBN Corporation (IBN Corporation/Indigenous Mining Services 2004). In addition Ian Williams, an ex Rio Tinto employee who was involved in the YLUA negotiations and the Century mine negotiations in Queensland, also sat on the board of the IBN Corporation (IBN Corporation/Indigenous Mining Services 2004). John Cunningham, the chair of the Polly Farmer Foundation22 and ex Conzinc Rio Tinto of Australia (CRA) employee, sat on the boards of both Gumala and the IBN Corporation (IBN Corporation/Indigenous Mining Services 2004). In addition a number of Indigenous people who are prominent in regional politics are, or have been, dual board members of both organisations. A number of individuals who are representatives on language group corporations under the IBN Corporation structure are also involved in the affairs of Gumala as general members of the organisation and as board members. Given the tension between the two organisations generated at the time by the open desire of each to incorporate the other, there is a high level of distrust and secrecy in the conduct of both organisations. This extends to their commercial contracting and joint venture operations. It could be suggested, particularly in relation to non-Indigenous board members of both organisations, that there is a potential conflict of interest.

There are a variety of views and experiences amongst the overlapping memberships of the two organisations. Distrust of one or other was common according to the various family and language group divisions, affiliations and alliances. There is also a geographic focus in the support base of both organisations, with resident members of the inland Pilbara expressing a greater support for Gumala, and members who reside in the coastal towns of Port and South Hedland and Roebourne expressing greater support for IBN Corporation. This reflects the location of the respective main offices of the two organisations—Tom Price for Gumala, and South Hedland for IBN—and notably within the operational heartlands of Pilbara Iron and BHP respectively. Strong support for both IBN and Gumala across the region is also indicative of the relative value placed on their respective resource bases.

22 The Polly Farmer Foundation is engaged with a number of resource companies in the region, including BHP, Rio Tinto and Woodside, to provide educational programs that target school age children. The program is called the Gumula Mirnuwarni Project (Goddard and Campos 2000).
Like Gumala, the extent of resources held by IBN is not precisely known. It has been noted that the Mining Area C Agreements provide for ‘compensation payments to IBN and MIB trusts to fund community programs, and payments for the benefit of claimants, averaging $3 million each year over the life of the mine’ (Indigenous Support Services and ACIL Consulting 2001: 32; see also BHP Billiton 2005: 18). Certainly reports of cash payments to the membership are of a minimal order.\textsuperscript{23} The criterion for cash distribution from the IBN Corporation to its membership is based on being a member of one of the language group corporations and, crucially, attendance at quarterly IBN Corporation meetings. According to one Banyjima man, language corporation committee members decide upon final distribution of funds. However, anecdotal stories from IBN Corporation members indicated that payments from IBN were ad hoc and poorly explained. A resident of Wakathuni who has never received payment from IBN Corporation, claimed that he was unsure how the payments were calculated and that no explanation of payments was proffered by the organisation (interview, resident of Wakathuni community, 20 August 2003).

A Yinhawangka man, who is affiliated with Gumala, criticises IBN Corporation for promoting a handout mentality for undertaking cash distributions. He maintains that the distribution mechanism discriminates against people who work and who can’t attend meetings, and claims that some people have given up full time work to engage with IBN in their meeting schedule (interview, 24 November 2004), although this claim was not substantiated in the course of fieldwork. He maintains that the building of a capital base and the establishment of strong Indigenous organisations are critical to the economic development aspirations of Indigenous people in the Pilbara. His attitude is motivated by the reality that ‘it would take a tenfold increase in compensatory payments from the mining industry to remove the membership of Gumala and IBN from welfare dependency’ (interview, 20 August 2003). He noted too, that replacing welfare dependency with mining payment dependency would be inappropriate, as it would only defer consideration of the development issues facing the membership of Gumala. Rather, his vision consisted of a combination of building the capacity of Indigenous people to participate in the mainstream economy, and at the same time allowing the application of resources to poverty alleviation, particularly in the realm of resourcing customary activities. His vision for Gumala within an increasingly complex agreement landscape is to see it develop the capacity to negotiate better agreements with other companies so that the membership can benefit from the consolidation of resources. He also believes that Gumala should be able to assist other Indigenous groups in the negotiation of appropriate agreements on a commercial fee for service basis.

\textsuperscript{23} A clear comparison can be made with the RUM Agreement and the minimal order cash payments made to Indigenous individuals. However, the distribution mechanisms of the Gagudju Association and the Gunjehimi Aboriginal Corporation (GAC) appear to ensure more consistent distribution than those of the IBN Corporation.
Similarly, the first CEO of the IBN Corporation, criticised Gumala for ‘operating like a welfare office’ on the basis that it provides services for people rather than showing people how to help themselves, a result he believes of ‘having a white decision making process imposed by the mining industry’ (interview, 9 April 2003). He is referring to the lack of language group autonomy within the Gumala structure and, presumably, the role of Pilbara Iron in the organisation.

This man also cited Gumala’s neglect of 5 Mile community near Roebourne, where his brother is resident, as an example of Gumala being focused on the inland, despite the rich resource base upon which they operate and the geographic spread of the membership. The programs of outstation assistance undertaken by Gumala do appear to be confined to the inland communities of Wakathuni, Bellary Springs and Youngaleena, with limited assistance provided to coastal communities and outstations in the vicinity of Roebourne, where a significant proportion of the membership also live. However, much of the assistance provided to these communities has come from Pilbara Iron via ATAL, rather than from Gumala, in accordance with the provision for ‘in kind’ support in the agreement (Egglestone 2002: 9). Such assistance includes the bitumen sealing of roads in all communities, and the construction of basketball courts. Assistance provided by Gumala includes the construction of an arts workshop at Youngaleena, a homework centre at Wakathuni, and single men’s quarters at Bellary. Gumala at the time maintained ambulance subscriptions for the entire membership, a number of programs associated with aged care, sport and recreation, and support for ‘lore’ (ceremonial) meetings. Interestingly, in recounting the assistance provided in these areas, most people spoke of Gumala and Pilbara Iron synonymously and did not distinguish the source of assistance. Since the time of research Gumala has increased in its sophistication and has expanded the range of services it offers to its now expanding membership.

Differences between Gumala and the IBN Corporation, particularly relating to cash distribution, trust fund management, and separate language group representation, were the subject of significant debate and discussion about the affairs of both organisations, particularly how the organisations deal with the membership. Aside from those who are clearly partisan in their support for one organisation or the other, individual critique of the organisations is largely based on the appropriateness of their structures, autonomy from the mining industry, transparency of their activities, and effectiveness, or at least potential for effectiveness in relation to the needs and aspirations of the membership. In addition, allegiances and views are also informed by knowledge and experience of the mining industry, and in many cases, by the emerging constraints that the YLUA is perceived to place on Indigenous agency in the context of the massive current infrastructure and production boom. A Banyjima man identified the role of the industry in the establishment of such organisations like Gumala and the IBN Corporation, as a fundamental problem (interview, 25 November 2006):
Whenever you set up deals they have to show that we are spending it the right way because they think we haven’t got the brains to do it. The mining companies have been really reactive by restricting us from making our own decisions to benefit ourselves. We have been in this game a long time too, and we have learnt from our experiences and mistakes. We want to build a better future for ourselves and our kids and we don’t want to find ourselves in the same place in 10 years.

His vision for Gumala is that the substantial funds held in trust should be utilised to leverage additional government money for health and education and other services that he asserts have been absent for Indigenous people in the Pilbara for many years (interview, 25 November 2006). His comment highlights an enduring tension between Indigenous people and the state in terms of the lack of service provision in remote and regional areas. Facing the Future, the report of the Mining Minerals and Sustainable Development Australia Project (2002: 61) on sustainability and mining in Australia notes:

Both mining companies and indigenous communities express some anger at government expectations that mines deliver some of community infrastructure that public authorities supply as a matter of course to other Australian communities. There is a clear need to distinguish between benefits which might be expected to flow from mining agreements and basic rights—to shelter, health care and education, for example—which indigenous communities are entitled to enjoy as Australian citizens.

This tension between the state and the mining industry is reflected in Gumala’s resistance to providing basic services in instances of state default (interview, 27 November 2004). This tension also reflects the nexus between Indigenous acceptance of mineral development upon their land and the delivery of citizenship rights that is clearly evident in the Kakadu region, and emerging in mining agreement contexts nationally.

An elderly Yinhawangka woman who resides at Wakathuni community, like many elderly people and women, expressed ambivalence towards both the IBN Corporation and Gumala on the basis that neither has helped her directly. She maintained that she had difficulty in knowing when the IBN Corporation meetings were to be held and often had transport problems when she did know of meetings. Consequently, her entitlements were reduced as she had insufficient resources to attend the requisite IBN meetings. Similarly she laments the cessation of the elderly and infirm payments from the Gumala trust (see below), which were available to people on the old age pension or the disability pension for the first four years of Gumala’s operation (interview, 27 November 2004).
The Gumala trusts are designed to provide assistance to the membership through the delivery of programs such as investments, culture and law, community development, business development and education.\textsuperscript{24} Additionally, the trusts are intended to address ‘the relief of poverty, sickness, suffering, distress, misfortune or destitution of the traditional owners, particularly those traditional owners in the Pilbara Region’ (Gumala Aboriginal Corporation 2005). In the first five years of the YLUA, Hamersley Iron paid approximately $15.3 million dollars into the trusts, but this amount is now significantly higher due to increased production at the Yandicoogina mine.\textsuperscript{25} The lack of knowledge amongst the membership of the organisation’s funds, and the lack of access due to trust arrangements led to the perception by many members that they have little autonomy over the compensatory benefits derived from the YLUA (Holcombe 2004: 13). The Chairperson of Gumala at the time of fieldwork contended that Gumala should make small cash payments to the membership to alleviate the constant pressure on household resources, and that the rest of the money should be held by Gumala for the maintenance of a resource base. Similarly, a Nyiyaparli woman stated (interview, 19 August 2004):

Three groups from Yandi getting a share, but not enough. We don’t know what’s going on with the money, how much going from Yandi to Gumala. When the money goes in it should be available for Aborigine people, for light bill, water bill, parts for car. Old people nearly all passed away, we need that money now.

Assistance from the elderly and infirm trust, which only operated for the first four years of the agreement, was given ‘in kind’, with recipients able to select a range of household goods from a designated list. In addition $100 per fortnight ‘top up’ money was provided. This amount was paid in cash on the basis that it would not affect existing pension payments. Most recipients were pleased with the arrangements, but overwhelmingly expressed a preference for cash payment rather than in kind assistance. A key reason cited was the desire to assist other family members in meeting financial obligations, with repair and maintenance of vehicles being a key aspiration. Many elderly people, particularly women, do not own their own vehicles but are reliant on other people for transport. Access to vehicles is essential in accessing day to day services such as shops and medical facilities, but is also needed in making forays for hunting and gathering bush resources and engaging in the transmission of knowledge to

\textsuperscript{24} Areas for expenditure of the General Foundation are stipulated in the trust deed, which divides the funds between education and training, business development, community development, and cultural purposes.

\textsuperscript{25} Payments to Gumala are linked to areas of land mined and are indexed to the JSM Yandi Fines Price for Long Tonne Fe Units. Rapid expansion at Yandicoogina mine in response to international demand has seen a dramatic increase of income to Gumala (interview, Gumala CEO, 12 February 2005). Unfortunately exact figures were not forthcoming, but the value of the Gumala trusts was said to be in the vicinity of $50 million in 2005.
younger generations that such excursions afford. An elderly MIB woman, commented that all the furniture and white goods were helpful, but that she would rather have selected what to spend her money on (interview, 11 April 2003). She considered the regular $100 ‘top up’ money was by far the most useful in terms of making a difference to her life. The extra cash assisted in the support of her grandchildren, and gave her greater capacity to pay her household bills. Like many she had bought an air conditioner to make the long and intensely hot summer months more bearable. However, this also increased her electricity bills, which created an additional financial impost. A number of elderly and infirm people spoken to thought that the system previously in place worked well, whilst a significant number resented the proscriptive nature of the arrangements, and found that having to select their benefits from a list of goods was patronising. Arrangements were subsequently made by Gumala to provide Christmas money for this category of Gumala members. This is in response to some of the recommendations made by the Hoffmeister (2002) review noted earlier.

The decision to restrict assistance to this category of the Gumala membership was made in the course of negotiations. However, the lack of direct assistance flowing to the rest of the membership from the General Foundation increased pressure on elderly and infirm recipients to share resources, and also on Gumala to expand the criteria of ‘elder’ to accommodate ceremonially senior people who were younger than the designated age bracket. Consequently the numbers of aged and infirm grew from 50 people in the 1997–98 financial year to 95 individuals in the 2001–02 financial year (Hoffmeister 2002).

Apart from the elderly and infirm, at the time of fieldwork no members of the Gumala Aboriginal Corporation have received cash assistance. Some of the Gumala membership maintains that retention of the funds for community purposes prevents the possibility of individuals accessing funds to the detriment of others. Others believe that lack of access to the funds denies autonomy and freedom of choice. However, it would seem that mechanisms in the YLUA to minimise unfair advantage of one group over another have the potential to reduce the capacity of all groups to access benefits, which contributes to the early perceptions that the YLUA had not been as successful as hoped in meeting the needs of the Indigenous parties to it. A comparison can be drawn with Levitus’ observation of the Gagudju Association that in ‘attempting to be an organisation for everyone, it ultimately was an organisation for no one’ (see Chapter 4). A Banyjima man who was taken from his family as a young child and raised in a mission, and who currently operates a family owned long-haul trucking company called Bunjima Transport, highlights the obstacles of race relations in the Pilbara to mainstream economic engagement. In an article
profiling his successful business he alludes to the general perception that his success arises from assistance from government or Indigenous organisations (Honeywill 2002: 8). However he stated:

I’ve tried to use the organisations but have always come up against a brick wall so I’ve gone out, like ordinary white people do, on the open market and presented myself and try to get finance where I can.

His experience reflects the diverse life experiences and life histories of Indigenous people in the Pilbara, and the subsequent variability of skills and aspirations that exist across the Indigenous polity.

Given this diversity, there is a clear desire within Gumala not to utilise the capital base to duplicate state services, but at the same time this limits the types of assistance that can be provided from the organisation and remain within the bounds of providing a ‘community benefit’. One of the non-Indigenous dual board members of Gumala and the IBN Corporation at the time commented in relation to the extent of the Gumala trusts that ‘it is an indictment that they are holding so much money whilst the membership is so clearly impoverished’ (interview, 1 September 2003). In 2005 Gumala had signed a memorandum of understanding with the Western Australian Government to provide the Gumala membership with low cost housing loans, presumably based on the financial capital base of Gumala (Department of Housing and Works 2005). Such a scheme is consistent with the national policy approach of the time of promoting home ownership as a means of overcoming economic disadvantage, and a greater emphasis on the role of the private sector in overcoming the backlog of state servicing to Indigenous people (see Chapter 1). However, as with programs of employment and training, socioeconomic obstacles combined with the escalating cost of real estate, and the extremely limited housing pool due to industry demand in the Pilbara mean that realistically, access to such a scheme will be limited.

**Socioeconomic status of Indigenous people in the Pilbara**

The socioeconomic status of Indigenous people in the Pilbara against standard social indicator indices provides a stark picture of the obstacles to mainstream economic engagement. The picture is even starker when considered against the scale and economic value of the Pilbara mining industry. At October 2006 capital expansion of advanced metal mining projects nationally had an estimated value of $14.7 billion (ABARE 2006c: 722). Western Australian projects comprised 80 per cent of this value, or $11.8 billion. Capital expansion of existing operations
in the Pilbara had an estimated value of $5.3 billion, with the majority of associated development occurring in the central Pilbara (ABARE 2006c: 722). Projects included: BHP’s ‘Iron Ore Rapid Growth Project 3’, which entails expansion of the Area C mine and increased rail and port capacity costing $2 billion; a similar $710 million expansion at Pilbara Iron’s Yandiccogina mine, and $388 million expansions at Tom Price and Marandoo; and the $1.3 billion development of the Hope Downs mine by Rio Tinto and Hancock Prospecting (ABARE 2006c: 722). Pilbara Iron’s associated rail and port upgrades had a capital value of $924 million. Recently completed projects included BHP’s ‘Iron Ore Rapid Growth Project 2’ at a value of $770 million involving the development of the Orebody 18 mine in the central Pilbara; and a $268 million rail infrastructure by Pilbara Iron (ABARE 2006c: 719). In addition there were significant oil and natural gas projects, including the $2.4 billion North West Shelf Extension (ABARE 2006c: 20).

The following statistical data is derived from the 2001 Census, five years after the signing of the YLUA. Whilst the approximately 430 Yinhawangka, Banyjima and Nyiyaparli people are contained within the description below, it is impossible to distinguish from such statistics the impact that the YLUA has, or has not had on the socioeconomic status of these groups specifically. However, the YLUA is one of many such agreements between Indigenous people in the Pilbara and the resources sector, and it is therefore possible to draw a palpable conclusion that mining agreements have contributed little to the overall improvement of the socioeconomic status of Indigenous people in the Pilbara. Rowse (2006) highlights the value of statistical data in acting as a measure of outcomes of practical reconciliation, the efforts for attaining statistical equality, and as a means for critiquing such efforts (see Chapter 1). They also identify under-development, and as such, the obstacles to mainstream economic development initiatives.

Labour force participation of Indigenous people across all sectors in the Pilbara is 42.5 per cent (including CDEP),\(^{26}\) and at the time of fieldwork had remained almost static since 1971. In 1996 Indigenous people comprised only 2 per cent of employment in the Pilbara mining industry (Taylor and Scambary 2005: 45). At the time of fieldwork Pilbara Iron was employing 160\(^{27}\) Indigenous people, or 4.5 per cent of its total workforce of 3 555. In light of the resource boom in the Pilbara, and the consequent expanding agreement framework, major companies have resolved to increase Indigenous employment within their operations. Pilbara Iron has set a target of 15 per cent Indigenous employment by 2013, and

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\(^{26}\) The CDEP program is essentially a ‘work for the dole’ scheme for Indigenous people in operation from 1977 until 2007. Not including CDEP participants, the employment rate for Indigenous people in the Pilbara is 30.2%.

\(^{27}\) This figure is a combination of 97 people in a direct employment or training relationship with Pilbara Iron, and 63 people employed by contractors to Pilbara Iron.
BHP Billiton, which claims a current employment rate in the vicinity of 8–10 per cent, is targeting 12 per cent by 2010 (Taylor and Scambary 2005: 46, 51). Together this represents an employment target in the vicinity of 660 additional Indigenous employees by 2011.

However, the 2005 Indigenous population of the Pilbara is 7 141, and is anticipated to increase by 1 374 people to a total of 8 515 in 2015—and is likely to double by the year 2040. This represents a growth rate of 19 per cent compared to just 6 per cent for the non-Indigenous population (Taylor and Scambary 2005: 18–25). Of importance in these estimates is the age profile of the Indigenous population, which indicates that accompanying population growth there will be an increase in the numbers of working age people in the next few decades. With such growth an additional 553 jobs will be required by 2016 just to maintain the current employment rates across all sectors, suggesting that the employment targets of Pilbara Iron and BHP Billiton:

... will only manage to keep pace with the extra numbers entering the working-age group. Thus, in terms of improving Indigenous labour force status to anything even approaching the norm for non-Indigenous residents of the Pilbara, this task is way beyond any impact that could emanate from planned mining employment (Taylor and Scambary 2005: 56).

The study highlights that there are also significant obstacles to maintaining the status quo. Only 59 per cent of Indigenous students complete school to Year 10, with 25 per cent completing beyond Year 10 compared to 88 per cent and 54 per cent respectively for non-Indigenous students. Health status is worse for Indigenous people than for non-Indigenous, with life expectancy for Indigenous males in the Pilbara being 52–55 years, and for women 60–63 years, and rates of mortality higher than the average Western Australian Indigenous mortality rate, and three times higher than the non-Indigenous mortality rate (Taylor and Scambary 2005: 113–4). Almost half of all hospital stays for the Pilbara are Indigenous people, and the main causes of illness and death—being heart disease, respiratory disease, injury and diabetes—could be reduced through preventative health measures. A conservative estimate of the incidence of diabetes in the Pilbara is that there are approximately 1 016 sufferers. Approximately 1 020 Indigenous people in the Pilbara have some form of disability, with over half of these not in the workforce.

There is an accepted correlation between poor health and overcrowded and poor housing (Pholeros, Rainow and Torzillo 1993). Indigenous households have an average occupancy of 4.9 people across the Pilbara, which is 44 per cent higher than non-Indigenous households (Taylor and Scambary 2005: 98). The average occupancy rate in discrete Indigenous communities in the region is 7.1 people per household, with some dwellings having as many as 30 residents (Taylor and
Indigenous income in the Pilbara accounts for just 5 per cent of all regional income. A total of 36 per cent (including CDEP)\(^{28}\) of all Indigenous income is derived from welfare payments. Indigenous income derived from mainstream employment accounts for just 3 per cent of all mainstream income in the Pilbara; 78 per cent of Indigenous incomes are less than $500 per week, whilst 68 per cent of non-Indigenous incomes are above $500 per week and 36 per cent are above $1,000 per week (Taylor and Scambary 2005: 64).

Edmunds’ (1989: Chapter 5) study of Roebourne notes the visibility of Indigenous people to, and the constant intervention in people’s lives by law enforcement agencies. Her study was conducted shortly after the death of John Pat whilst in custody at the Roebourne police station in 1983 (Grabosky 1989: 82). The John Pat case, as the first recognised death in custody, sparked a national controversy, and ‘became for Aboriginal people a symbol of injustice and oppression’ (Human Rights and Equal Opportunity Commission 2000). Ultimately John Pat’s death was investigated by the Royal Commission into Aboriginal Deaths in Custody, a key finding of that inquiry being the correlation of the number of deaths in custody with the sheer numbers of Indigenous people incarcerated. Today interaction with the criminal justice system is still ‘a pervasive element of Indigenous social and economic life in the Pilbara region’ (Taylor and Scambary 2005: 131). In 2003 a total of 1,740 Indigenous arrests were made in the Pilbara, representing 60 per cent of all arrests in the region. The number of Indigenous arrests ‘is almost equivalent to the total number of Indigenous people aged 15–54 estimated to be employed in the regional mainstream labour market’ (Taylor and Scambary 2005: 136). This indicates that involvement in the criminal justice system is a major barrier to mainstream economic participation. An examination of the types of offence committed and heard before the court system indicates that ‘road traffic and motor vehicle regulatory offences predominate followed by public order offences and offences against justice procedures’ (Taylor and Scambary 2005: 138). Such offences include driving without a licence, driving an unregistered car, drunk and disorderly, unpaid fines and failing to turn up to court, and constitute 55 per cent of court appearances. At any one time 310 Indigenous adults are in custody, with actual numbers that experience custody in any given year being much higher. Almost 18 per cent of those not in the labour force are under custodial and non-custodial sentences.

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28 If CDEP is not included, 28%. The category of CDEP falls into a grey area as CDEP participants perform paid work, but a significant proportion of the wages they are paid are derived from welfare sources.
The socioeconomic status of Indigenous people in the Pilbara and the impacts that such status has on participation in the mainstream labour force are summarised in Table 5.1.

Table 5.1 Indicators of labour force exclusion, Pilbara, 2005

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous adult population (15 +)</td>
<td>4 759</td>
</tr>
<tr>
<td>Not in the labour force</td>
<td>2 190</td>
</tr>
<tr>
<td>Without a year 12 certificate</td>
<td>4 200</td>
</tr>
<tr>
<td>With no post-school qualification</td>
<td>4 200</td>
</tr>
<tr>
<td>Hospitalised each year (total pop.)</td>
<td>2 800</td>
</tr>
<tr>
<td>Has diabetes (25 years and over)</td>
<td>1 016</td>
</tr>
<tr>
<td>Has a disability</td>
<td>1 020</td>
</tr>
<tr>
<td>Arrested each year</td>
<td>980</td>
</tr>
<tr>
<td>In custody/service order on any given day</td>
<td>310</td>
</tr>
</tbody>
</table>

Source: Taylor and Scambary 2005: 153

Key conclusions arising from the study are that the Pilbara has a serious economic development problem that is likely to worsen because of rapid population growth. Economic exclusion identified by the data highlight the inadequacy of current government resourcing (and by the private sector in terms of the objectives of agreements and their intended outcomes) to meet the backlog of disadvantage that has accumulated over the past 40 years (Taylor and Scambary 2005). In addition, the study highlights the challenges associated with the implementation of community benefit packages associated with agreements such as the YLUA, particularly initiatives that rely on employment and training as a key community benefit. It is apparent that there is an emerging gulf between the capacity of Indigenous people and the targeted programs associated with such agreements, particularly those focusing on employment and training. Significant numbers of Indigenous people in the Pilbara are precluded from engaging in such programs because of poor health, lack of education, or the nature of their criminal records. Also, amongst the regional Indigenous polity there is clear evidence of ‘ambivalent responses to the potential cultural assimilation implied by their increasing integration into a market economy and its monetisation of many aspects of social life’ (Taylor and Scambary 2005: 1). Such ambivalence is not confined to those who can’t engage with the industry, but is an attitude held by many Indigenous people who possess the necessary prerequisites but who elect to dedicate themselves to employment or activities that are focused on the maintenance of customary institutions, or at least outside the mine economy. Importantly, however, there is a corollary to the dismal picture of Indigenous capacity provided by the statistical analysis above. Many Indigenous people still possess and practice diverse skills and knowledge associated with the customary economy that is not accounted for in any measurement of social indices.
Altman, Buchanan and Biddle (2006: 152), for example, have outlined the extent of hunting, fishing, art and craft production and the contributions that such activities make ‘to Indigenous people’s livelihoods that are not reflected in standard statistical collections’. Such activities have tangible economic outcomes, and are integrally associated with social phenomena in the realm of producing identity and distinctiveness. The desire to maintain and enhance customary livelihood practices, and the skills, capacity and knowledge that they entail is a critical Indigenous aspiration that arises in the Pilbara, and across the three field sites of this study. Such aspirations reflect an understanding of the historical and contemporary experience of mainstream economic exclusion, and positively prioritise the known strategies for surmounting the scarcity that such exclusion creates. In the Pilbara the desire to access mining agreement derived resources to support these strategies, in combination with access to mainstream economic opportunities, and citizenship rights, is suggestive of a deeper understanding of a sustainable future than currently accommodated in standard mining agreements such as the YLUA.

Conclusion

This chapter has outlined the main political alliances amongst the Yinhawangka, Banyjima and Nyiyaparli people in the context of the YLUA. Discussion of social and political organisation within these groups highlights the difficulty of assuming that a unity of interests exists for the purpose of delivering community benefits at the level of language group or in the coalition of the Yinhawangka, Banyjima and Nyiyaparli. An ideological tension in the YLUA is identified between its intent to promote the market integration of Indigenous people and the restrictions that the management of trusts place on individual agency. Such tension contributes to the tendency towards splintering and disaggregation of defined social groups associated with the YLUA, and the emergence of new mining-agreement based organisations. The emergence of new organisations, as in the case of the IBN Corporation, reflects both political divisions within the three language groups, and a desire to refine the delivery of community benefits. It also threatens to expose the fundamental instability of these organisations. Concerns about equity, land use and access, heritage, the provision of social services, and representation of land interests informs diverse Indigenous action, or ‘cultural politics’ (Trigger and Robinson 2001) in the context of these organisations. A key factor is the intention to influence organisations to support current and future interaction with the mining industry, and also to support aspirations for both mainstream and customary economic development.

A current and worsening development crisis associated with Indigenous disadvantage in the Pilbara restricts the engagement of many Indigenous people in the mainstream economic development intended by the YLUA, notably
employment, training and business enterprise development. Significantly, a key aspiration across the Pilbara is engagement in the mainstream economy to the extent that it will support the pursuit of livelihood activities within the customary sector, and the consequent benefits in terms of the maintenance of cultural identity and distinctiveness. Given the land management skills associated with such livelihood activities, and the current interest of Rio Tinto in biodiversity associated with its extensive land holdings in the Pilbara, there is clear scope for greater integration of customary activities in the mainstream Pilbara economy. As noted in Chapter 4, innovative grass roots initiatives in management of biodiversity are occurring in the Northern Territory (Northern Land Council (NLC) 2006).

In the Pilbara exclusive demarcations of black and white arise as a matter of historical legacy in the relationships associated with mining agreements. The following chapter presents a variation on these themes. Within a similar agreement context, Indigenous people from the southern Gulf of Carpentaria enjoy high rates of employment at the Century mine that coopts the mine as an intercultural space. In contrast to the strict controls on the YLUA trusts, the Gulf Communities Agreement (GCA) applies minimal regulation in the payment of cash components of community benefits. Despite these differences Indigenous people in the Gulf of Carpentaria experience similar poor outcomes from their engagement with the mining industry.