

TOOL 11

Working to obtain consent: a suggested process across corporate engagement

This tool provides guidance to companies on the process of obtaining consent from indigenous communities, or to support such processes when led by the government in accordance with domestic laws to commence mining activities, or make significant changes to activities, on lands for which they have traditional ownership or customary use rights. It provides a summary of key elements companies could consider during this process and some common challenges that may arise (see Box 6).

Understanding what consent means

The phrase “work to obtain consent” means that all reasonable steps should be taken to secure the FPIC of significantly and adversely impacted indigenous communities regarding the basis on which the project, or modification of a project, will go ahead. Working to obtain consent should be done according to an agreed process, and acting consistently with the principles of good faith negotiation outlined in **TOOL 10**.

When working to obtain consent, companies should ensure that:

- the process of seeking consent is consistent with that agreed within the engagement plan, and initiated prior to the community/communities in question being exposed to any significant adverse impacts from the project or modification of the project

- the community is not subject to coercion, intimidation, manipulation, bribery or undue time pressure over the course of this process
- appropriate measures are taken to ensure that the community was fully informed about the scale and nature of the proposed project (or modification) and its potential impacts and benefits as identified by previous due diligence.

When obtaining consent from indigenous communities, a company’s primary focus should not be on the giving of a simple “yes” or “no” to the project. Rather, companies should aim to reach agreement on the terms under which the project should proceed. It is important to remember that companies should not agree to aspects that they cannot control (such as matters requiring a change in government policy or law).

Box 6

Traditional decision-making structures

It is possible that a company may confront a situation where an indigenous group indicates that it does not wish to enter into discussions or negotiations with a prospective developer or provide even a preliminary level of access. This could happen, for example, in areas where there have been past negative experiences of mining, or where mining is an unfamiliar activity and there is a high level of concern about possible social and environmental impacts. In these cases, a company could consider making an approach through an accepted intermediary (such as a land council in Australia), seeking permission to meet with community representatives and provide them with information about proposed consultation and engagement processes. If that does not open up a dialogue, a company would then have to consider carefully whether it should continue to seek access, and the risks involved in doing so.