

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



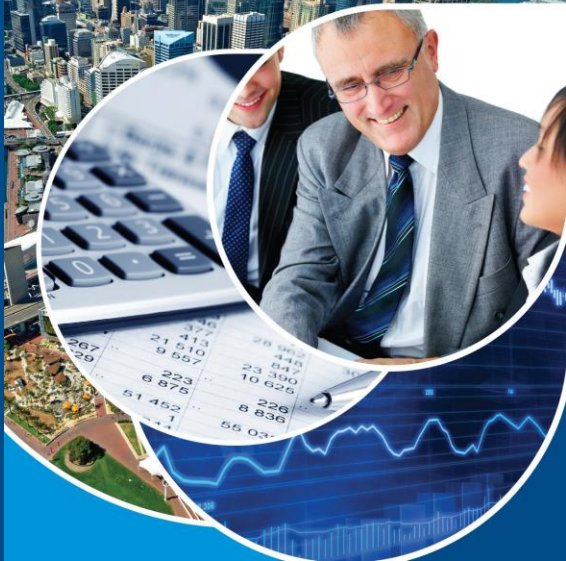
Deborah Lockhart, LLB  
CEO | Australian Disputes Centre

# Australian Disputes Centre

- Not-for-profit company
- 35<sup>th</sup> Anniversary, 2021
- Patron, The Hon. Robert French AC
- Experts in:
  - Negotiation
  - Conflict Management/De-escalation
  - Facilitation/Mediation/Arbitration
  - Soft Skills + Frameworks



## Early Resolution of Financial Services Disputes



## Mediating in the Headlights of Litigation and Arbitration

Practical training in mediating  
complex commercial disputes

**In-Person  
& Online**

**Cocktail  
Party**

### CAPABILITY STATEMENT

## Mediate with Confidence

Mediation uses a flexible framework for respectful dialogue, self-determination and collaborative decision-making to help businesses and communities thrive.

#### Company overview

Established in 1986, the Australian Disputes Centre (ADC) is Australia's leading, not-for-profit dedicated to advancing Alternative Dispute Resolution (ADR) processes, including mediation. Mediation is increasingly being used in the efficient running of NGO's and corporations. It is a process grounded in respectful dialogue, confidentiality, interest-based negotiation and self-determined outcomes. It saves time, money, relationships and reputations. ADC brings a wealth of ADR experience to a broad range of settings, including Aboriginal and Torres Strait Islander organisations.

#### Differentiators

**Proven land council and PBC training programs** empowering leaders in their commercial and personal lives.

Australia's first, **First Nations' Mediator Panel**, designed to meet indigenous and cross-cultural dispute resolution needs.

Empowering outstanding individuals to help others, through our **TSI Mediation Training Scholarship Program**.

Helping young Aboriginal people find their voice and develop cross-cultural networks through ADC's unique **Schools Debating Competition**.

#### Core Competencies

**Communication** – specialists in the art of communicating

**Dynamic** – Always adaptive, refining and improving

**Effective** – delivering great value

**Engaged** – respectful and committed to quality customer service

**Creative** – established, credible and serious, but always accessible

**Leaders** – in the field of Alternative Dispute Resolution

**Thoughtful** – Professional, careful thinkers, we care about our clients' success

**Progressive** – highly responsive, agile and energetic

**Reliable** – respected, trustworthy and responsible

#### Services Offered

**Public & In-house ADR Training** – teaching people in all sectors, and at all levels, how to resolve disputes, how to facilitate difficult discussions and how to negotiate to ensure creative, realistic and lasting outcomes.

**Appointment of ADR Specialists** – ADC is named in commercial contracts across Australia and appoints qualified professionals from its prestigious panels of mediators, arbitrators and experts to assist parties resolve their disputes.

#### Contact details

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#### Clients

Significant client list across all sectors over 33 years. Recent and current clients include:

- International NGO – Cambodia, Myanmar, Laos Land Claims
- Kimberley Land Council
- NSW Aboriginal Land Council
- United Nations and World Bank
- Australian Taxation Office
- Australian Defence Force
- Equal Opportunities Commission, WA
- NSW Ombudsman
- Fiji Human Rights Commission
- Peoples Lawyers, Kiribati
- Ministry of Trade, Solomon Islands
- Thailand Arbitration Centre, Bangkok
- Many large corporates and SME's
- Barristers, Solicitors and Judiciary

#### Management Profile

Chief Executive Officer, Deborah Lockhart LLB, brings 25+ years of government, large multinational consulting and institutional experience as a senior executive, strategic thinker, change agent and dispute resolution specialist.

Deborah is accredited as an advanced mediator and conflict coach. She completed cross-cultural training at Trinity Aboriginal College (1991), and the Mawul Rom Mediation and Leadership Program on Elcho Island where she was adopted into family (2007).

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

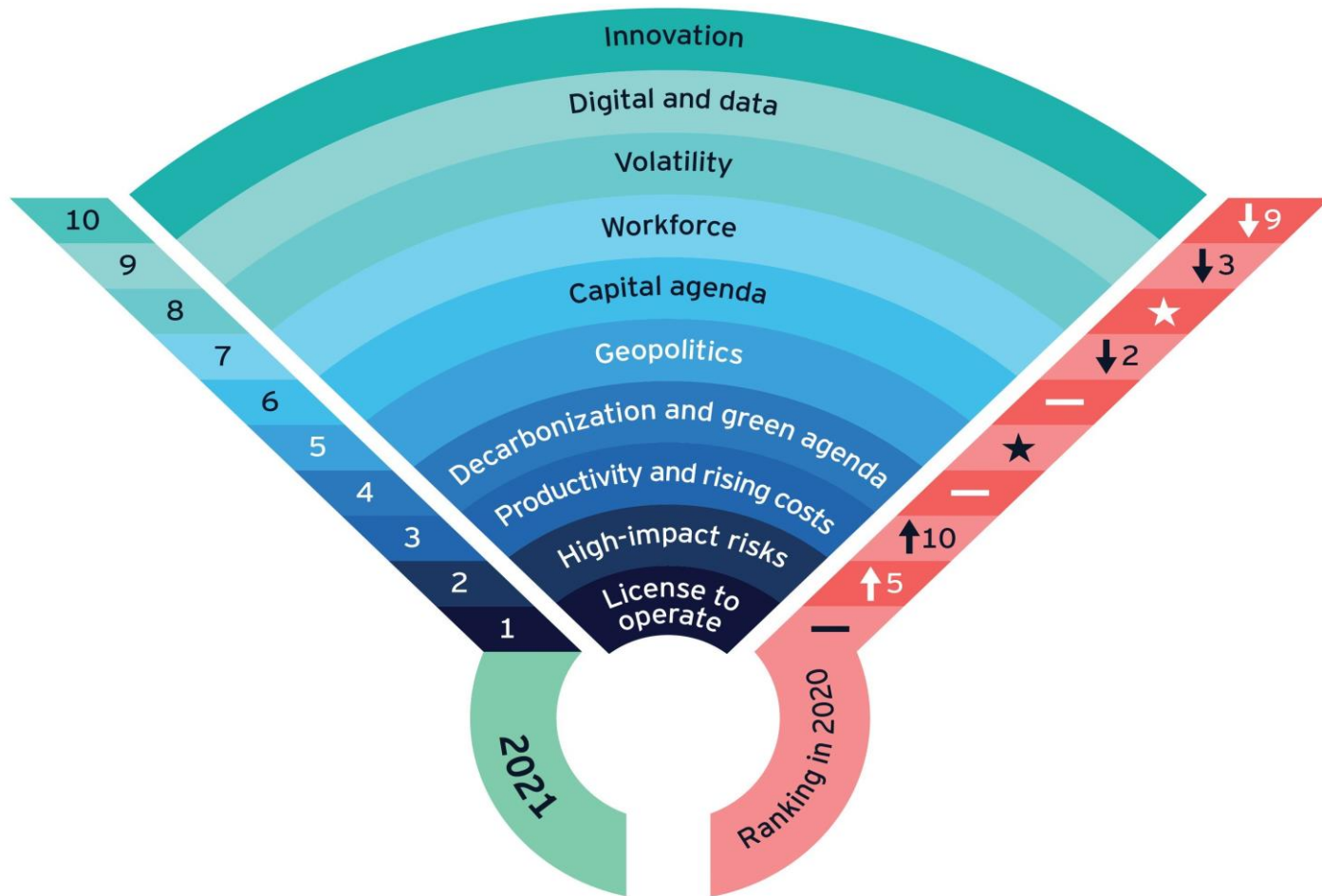
The Hon. Warren Entsch MP

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

Laurence (2020)

# In the Headlights of Regulation and Litigation

- **Keystone XL Pipeline**
  - 2008-21 sustained opposition
  - 20 Jan 2021 - Biden - Executive Order - *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*
  - 10 June 2021 – TC Energy Corp officially cancels project
- **Oak Flats – Resolution Copper - Rio Tinto/BHP**
  - 26 Jan 2021 - Biden - Memorandum - *Tribal Consultation and Strengthening Nation-to-Nation Relationships*
- **Royal Dutch Shell**
  - 26 May 2021 District Court, The Hague
  - RDS ordered to reduce CO2 emissions of Shell group by net 45% in 2030 cf. 2019 levels
  - Activities constitute a threat to ‘right to life’



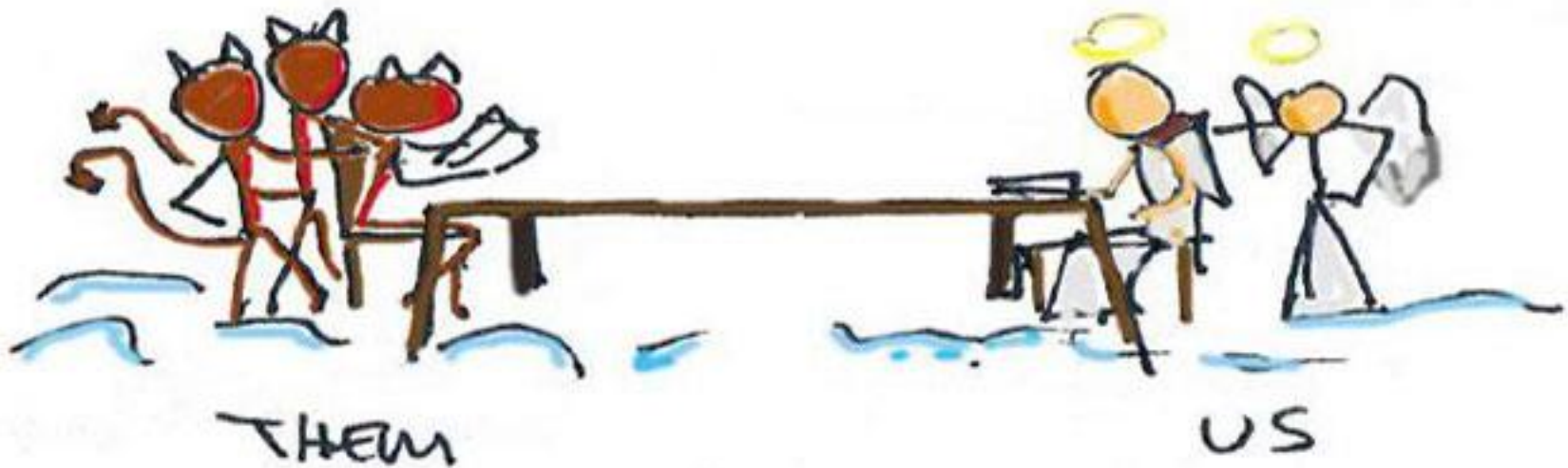
↑ Up from 2020    ↓ Down from 2020    — Same as 2020    ★ New to the radar

*“The **loss we feel** is compounded by **lack of power** we have. By the **fake responsibility** that the **white man’s system** expects us to shoulder. By the **fundamental conflict** that affects each and every Traditional Owner in the Pilbara who is forced to rely on what mining brings to the Pilbara and, each day, is a little more diminished, by what it does to the Pilbara.”*

Ms Sara Slattery

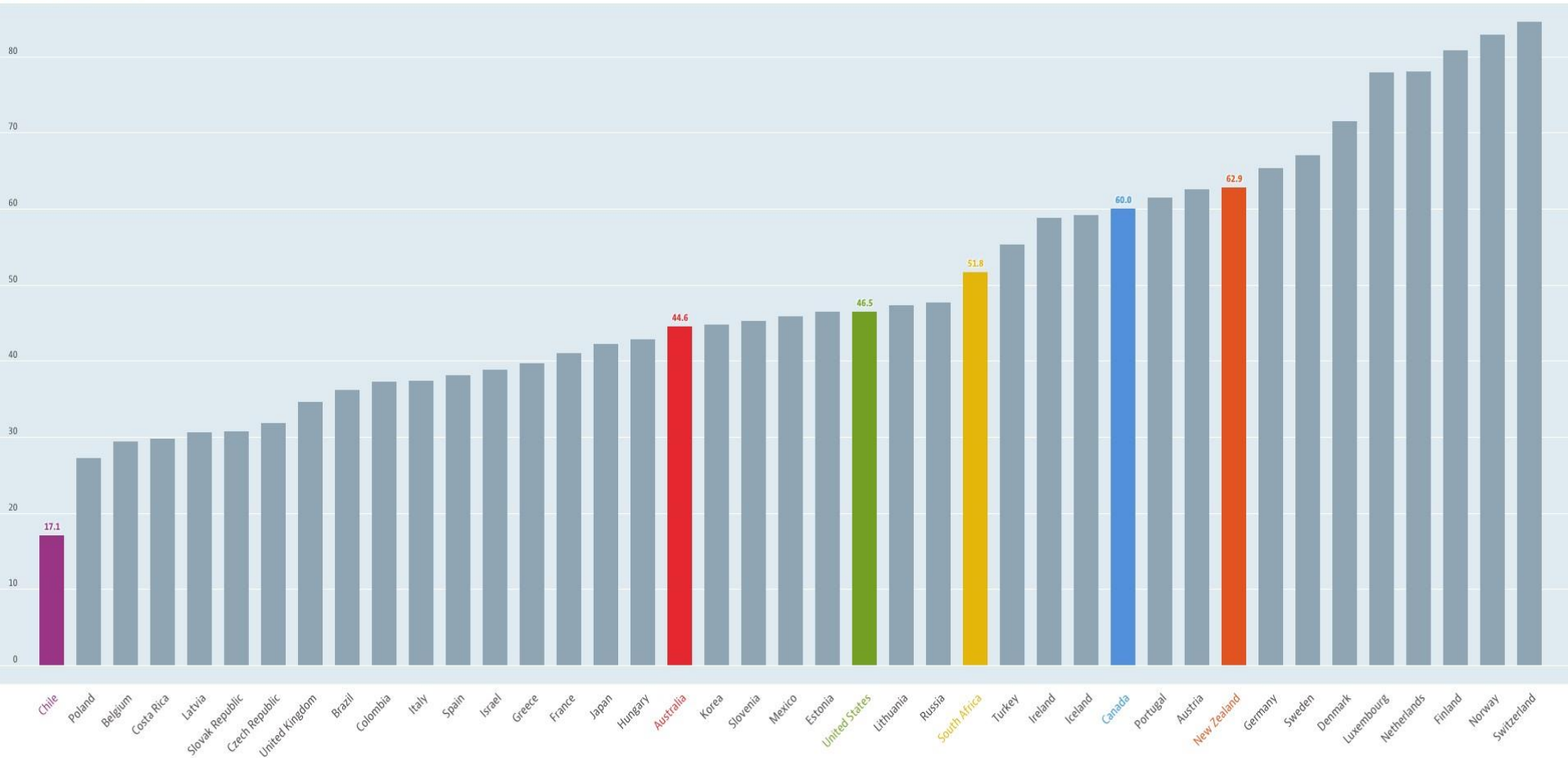


# HOW WE THINK ABOUT NEGOTIATIONS



# Our willingness to trust

Trust in government Total, Percentage, 2020 or latest available



©

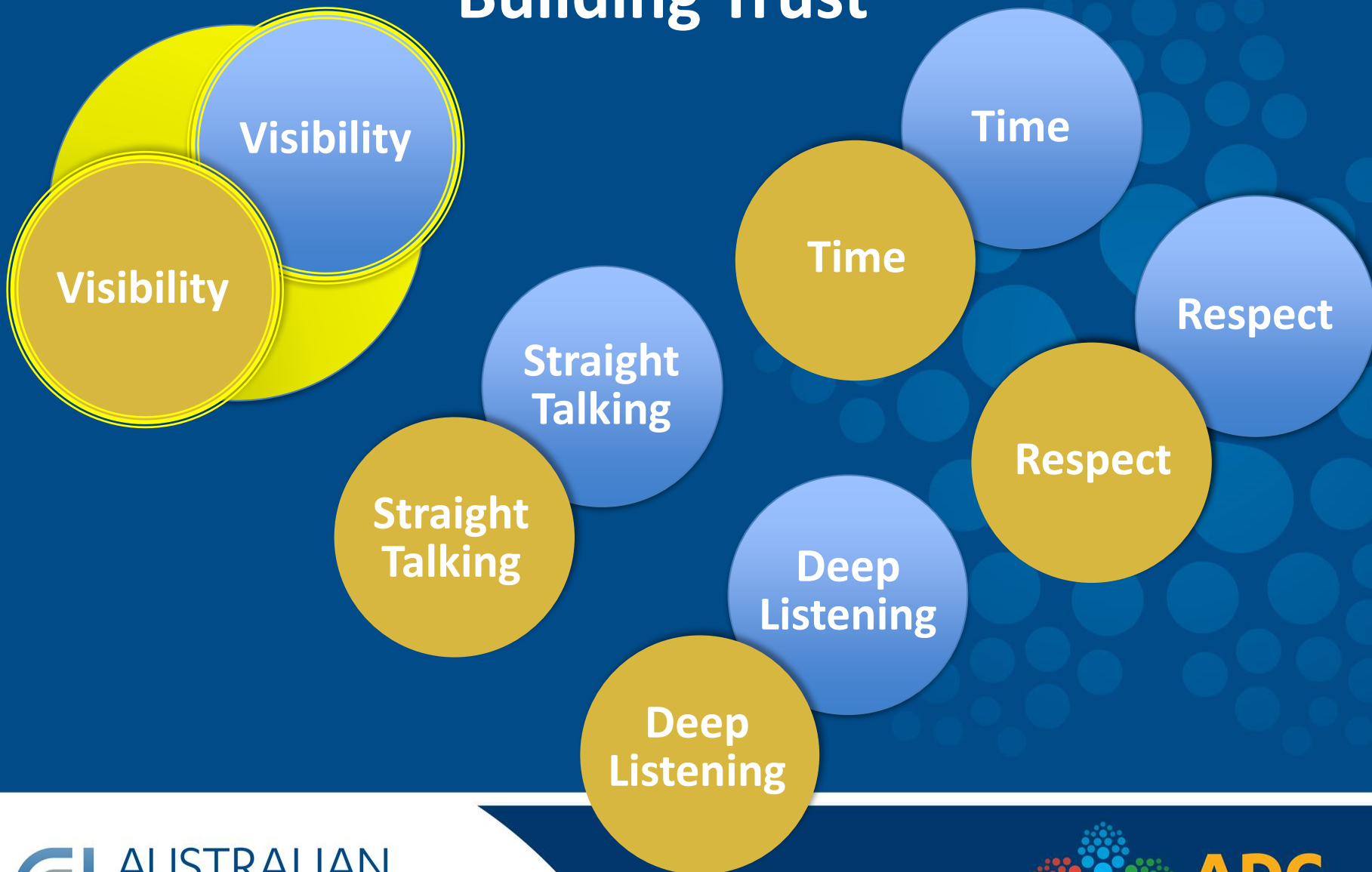
Compare countries on [data.oecd.org](https://data.oecd.org)

**A. What is important to me?**

**B. How do I see this framework working for...**

<b>1. My Immediate Team?</b>	<b>2. My Company?</b>
<b>3. An Indigenous Community?</b>	<b>4. Investors?</b>

# Building Trust



# Who is at the table?





# ADC Partnership Process

**A**  
Authority

**C**  
Collaboration

**D**  
Decision Making

Visibility

Straight Talking

Time

Respect

Deep Listening

Creative Options

Interest Based

Mutual Benefit

Red lines



# Community Relations & Development

- Marginalisation of the CRD from the rest of the company
  - social science backgrounds
  - work has less readily observable benefits
- CRD viewed as a cost-burden
- CRD only valued in time of crisis
  - after a risk actually materialises
  - company has to salvage its reputation
- Barriers to communication - mining, business and CRD language/jargon mean that teams might not have the easiest time understanding each other

Kemp and Owen (2013)



# Western African Mine – Rapid Expansion

## Straight Talking

**Increased intra-departmental communication and section-to-section engagement:**

- Instilled culture of ‘speaking up’ on issues of importance
- Deep listening revealed disconnect between CRD and other departments, attributed to differences in terminology.
- CRD staff trained to adopt mining-relevant language; framing in terms of operational risk and cost-benefit analysis, rather than more abstract ‘social value’ terms
- Paving way for creative, interest-based negotiations within and between teams
- Strategic targeting of key internal decision-makers allowed the CRD team to establish new communication channels, promoting greater visibility of the team’s function and relevant community concerns

## Deep Listening

## Creative Solutions

## Visibility

# Royal Dutch Shell – Shifts Gears

## Niger Delta

- Protests from 1990's
- Militant action from 2006
- Oil spills 2008 est. USD \$1Billion
- Damning UN Report 2011
- Class action 2012
- Settlement 2015 worth USD \$83Million + remediation

## Malampaya, Philippines

Time

Respect

Mutual  
Benefit

Collaboration

- 2 Years
- Cost USD \$6M
- Shell benefits = \$50-72M
- Community benefits = multi-faceted

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

# Burrup Peninsula - Woodside

- First Aboriginal underwater artefacts found
- Raises hopes of more to be found
- Discoveries coincided with planned pipeline linking Scarborough to Burrup
- **Woodside's approach:**
  - Creating positive economic, social and cultural outcomes
  - Building respectful relationships
  - Complying with laws and the UN Declaration on the Rights of Indigenous Peoples,
  - Avoiding future damage or disturbance to cultural heritage
  - Consulting and ongoing engagement with Indigenous communities
  - Ensuring Indigenous voices are heard, and supporting their right to self-determination

**A**  
Authority

**D**  
Decision  
Making

**C**  
Collaboration

**ULURU STATEMENT FROM THE HEART**

We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This was a sacred trust, according to the recognition of our culture from the Creation, according to the common law from time immemorial, and according to more than 60,000 years ago.

This sovereignty is a spiritual notion, the ancestral ties between the land, or 'sovereign nation', and the Aboriginal and Torres Strait Islander peoples who were born there, never extinguished there, and must one day return (either to be united with our ancestors. This link is the basis of the sovereignty of the land, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

How could it be otherwise? That people possessed a land for 60,000 years and this sacred link disappears from world history in merely the last two hundred years?

With relative continuity of land usage and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.

Proportionally, we are the most incarcerated people on the planet. We are not as brutally criminal people. Our children are absent from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should have hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the failure of our governance.

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makekata is the older nation of our people. As a young people after a struggle, it captures our aspirations for a fair and useful relationship with the people of a United and a better State for our children based on justice and self-determination.

We seek a Makarata Commission to supervise a process of agreement-making between governments and First Nations and to help shape our history.

In 1967 we were counted, in 2017 we seek to be heard. We listen, listen, listen and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.

*Christine Burns, Yens Koolija, Tjama, Sammy Wilson, yankunytjatjara, Pitjan Tjara, MARUKU*





Most often the objective reasons for conflict are apparent...

Objective facts  
The Law(s)  
Positions

Perceptions  
Emotions  
Interests

Concerns

Misunderstandings

Feelings

Needs

Values  
Fears

Beliefs

...while the 'subjective' issues remain hidden

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