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No. WAD37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721)

Applicant

STATE OF WESTERN AUSTRALIA

Respondent

**AMENDED SUPPLEMENTARY EXPERT PSYCHOLOGICAL REPORT OF DR
JEFFREY NELSON**

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Introduction

1. I write in response to the Yindjibarndi Ngurra Aboriginal Corporation's (**YNAC**) request for an additional report to supplement my Expert Report dated 22nd March 2023 (**First Report**) with specific focus on providing any qualifications that have arisen from my observations of the Federal Court of Australia hearings conducted in Roebourne on 7th to 11th August 2023, at the Solomon Hub Project Mine (the **Mine**) on the 14th August 2023, and at Bangkangarra on 15th to 17th August 2023. The brief is **Attachment A** to this report, and contains the questions I was asked to address.
2. Consistent with the First Report, I provide material in this supplementary report in a manner designed to render it admissible in Federal Court proceedings. Consequently, this supplementary report has been written to the best of my abilities to be consistent with the requirements of the Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**).¹ I acknowledge that I have read, understood, and complied with the Practice Note.
3. Paragraphs [6]-[11] of the First Report outline the particulars of my training, study and experience, by which I have acquired my specialised knowledge as a psychologist. I acknowledge that my opinions are based wholly or substantially on this specialised knowledge.
4. As requested, the focus of this supplementary report is on the impacts of mining and disagreements within the community about this activity and the behaviour of Fortescue Metals Group (**FMG**) staff throughout the process. In the preparation of the supplementary report, I have drawn on both my further discussions with Yindjibarndi informants² and on my observations of the Yindjibarndi witnesses giving their evidence. I have also had regard to transcripts of the hearings, witness statements, and maps.
5. The fundamentals of my previously stated professional opinions have not changed in relation to the nature of the psychological effects of FMG's engagement with the Yindjibarndi people, the granting of the mining leases, or the effects of mining operations

¹ 'Expert Evidence Practice Note (GPN-EXPT)' (J L B Allsop, Chief Justice, 25 October 2016) and 'Harmonised Expert Witness Code of Conduct'.

² Dr Nelson Interview Notes (E.08.001.002) pp. 31 (conversation with Michael Woodley 16 August 2023), 32 (conversation with Allery Sandy 23 August 2023), 33 (conversation with Wimiya Woodley 15 August 2023).

on their country. I do take this opportunity however to expand on the First Report ~~and include new information provided in conversations which occurred during August and September 2023.~~

6. Paragraphs 49 and 50 of the First Report provided an overview of my opinion about the impacts of FMG's engagement with the community. These two paragraphs have been copied into the current report and I invite readers to re-familiarise themselves with the content. I take this opportunity to further endorse my original conclusions.

***Paragraph 49:** It is clear in the evidence presented that each of the four domains of potential harm referred to in [46] has had a widespread, deeply felt, and ongoing impact for individuals and for the community as a whole. It is clear to me that the psychological injury caused by those factors involves damage to individual wellbeing as well as the wellbeing of community, culture, and Country - the three foundational pillars of wellbeing for the Yindjibarndi community. In combination, these factors have further disrupted a longstanding way of living and longstanding relationships between and within families. It has further potentiated preexisting challenges faced by the community - a knowable outcome of adding stressors to an already vulnerable community with a history of trauma and the impacts of colonisation, geographic dislocation, the introduction of alcohol and other events.*

***Paragraph 50:** In terms of the extent of impact, it was deeply concerning that all persons interviewed, across age groups, showed signs of trauma and mental distress, irrespective of which side of the FMG debate they fell. Impacts include distress about events past, about current circumstances and, perhaps equally concerning about likely future events still to be caused by ongoing mining and associate growing fractures in the community. These impacts include current evidence of intergenerational trauma and likely future intergenerational transmission of the effects of these events. There is ongoing trauma and psychological injury being experienced by current community members due to the ongoing nature of the mining events and the now more tangible understanding of irretrievable impact on Country and Culture. Community members have shared that they hold no hope that they have the power to overturn the mining rights on their land and a sense of helplessness and hopelessness about the future of the community.*

7. This supplementary report will expand on the First Report with further content, qualification of opinions, and predictions, and related thoughts on how the Yindjibarndi people could draw on potential compensatory payments to:

- a. arrest what I consider to be the current rapid and catastrophic decline in community functioning; and
 - b. to regroup and to stabilise the community to a more viable ‘new normal’, albeit one that exists in the shadow of irreversible harms to Country; specifically, to work toward improved personal and community stabilisation, recovery, wellbeing and psychological health.
8. ~~The opportunity to observe the on country hearings strengthened my perhaps naïve assumption that there is agreement that there will be a decision in favour of financial compensation but that the levels of compensation and the reasons for its provision will be strongly contested.~~
9. The focus of the supplementary report is on the non-economic psychological injuries expressed in terms of cultural and/or spiritual loss and its effects on the Yindjibarndi’s spiritual connection to country, capacity to adhere to cultural and familial expectations, and to restore the community back to its previous state. Mr Ranson SC provided the following overview while addressing the Court in Roebourne:

So, it’s not, for example, an award in the nature of a solatium for mental distress caused by mining, by the grant of the Claimed Compensable Acts or for the circumstances in which those grants were made. It’s not (b) payable for a breach of traditional law and custom unless it is also demonstrated that the breach resulted from mining and gives rise to a sense of loss of spiritual connection. So, evidence of those things, to the extent that they can be shown to result and arise from mining might be relevant to cultural loss but only to the extent that they demonstrate a loss of spiritual connection with the land and the extent of that loss of spiritual connection. (WAD37/2022, 08.08.23, P-105)

Nature of ownership and property in Yindjibarndi

10. On the further evidence and data mentioned above, the Yindjibarndi people’s ways of interacting with the land, people (Yindjibarndi and other), flora and fauna, and material possessions were established many generations ago and are governed by enforceable cultural protocols that have been embedded across generations. While there are too many to include in the current report, it is worth touching on the constructs most discussed by

informants during the proceedings ~~and associated interviews~~. They include the *Wirrard* (or spirit), the *Nyinyaard* (universal ways of sharing, reciprocity, and care), the *Galharra* (a kinship system that governs interpersonal relations and communication, marriage, and cohesion within the community), and the *Birdarra* law (the process that connects the Yindjibarndi people to their country through the *Bundut* songs and formal ceremony).

11. It was difficult to participate in an interview or read a statement that did not feature references to one or more of these important cultural concepts. I have worked as a psychologist with many Indigenous communities, and I can say that in my experience this would not be true in all Indigenous communities and is an indication of how strong the traditional cultural connection has been for the Yindjibarndi people. Unfortunately, informants believed it as important to share that their *Wirrard* was broken or sad, that the *Nyinyaard* and *Galharra* were lost, and that there would be a great cost to bear because of their inability to retain these most important laws of existence.³
12. All informants independently shared feelings of failure and despair as well as frustration about being prevented from meeting their cultural obligations by the *manjangu*. ~~There is consensus that *manjangu* did not ask permission from the Yindjibarndi to commence mining; were not given valid permission to destroy important cultural sites; treated respected Yindjibarndi elders with disrespect; and failed to share what they have taken from the country.~~
13. In my opinion, it is noteworthy that after the tenements were granted ~~even when the Yindjibarndi people's rights to their country were disregarded and the Government gave permission for FMG to mine, and when it was not in their interests and even in the face of non-reciprocation,~~ Yindjibarndi people's commitment to *nyinyaard* remained and there was a want for sharing to be fair and reasonable.
14. A conversation conducted with Ms Lyn Cheedy⁴ in February provided what I consider to be an important insight into the dilemma being faced within the Yindjibarndi. The

³ Witness Statement of Kevin Guinness filed 4 May 2023 at [31]-[33], [71]; transcript Day Eight at Bangkangarra, 9:21am 16 August 2023 at T653.31.

⁴ E.08.001.002 p. 16 (conversation with Ms Lyn Cheedy 1440hrs 15 February 2024).

conversation was originally intended to provide further information about the uptake of tertiary education in members of the younger Yindjibarndi generations.⁵

15. When speaking about the impact of mining on the survival of the culture, Ms Cheedy spoke about the mining-related loss of important sites that are featured in the songlines and the impossibility of the young to now truly experience their significance. Ms Lyn Cheedy spoke of participating in surveys and having the opportunity to be at sites named in the songs and the physiological effects she experienced. She spoke of her hair standing on end, or having her body tingle, and of having a warm feeling that was difficult to accurately describe. She believes that the spirits of these sites were embodied and that her sensations came from within. The *jowi* (songs) were given by the spirits and cannot be adapted to accommodate the loss of these important sites.⁶

16. Ms. Cheedy explained how the elders do their best to describe the sites that have been lost so that the young people can build visual representations in their heads so that the meaning of the songs are not lost. Ms Cheedy agreed that this practice was not ideal and that it was not as if they were given an opportunity by FMG to take photos of the sites (before they were destroyed) that could be used to better inform the young people.⁷

17. Mr Kevin Guinness⁸ spoke with sadness of the loss of the *nguga nulli*, (little spirits that look after country) when the caves they lived in were destroyed and impact of those losses on the continuation of culture and their existence. He stated that the “country is broken forever.... it can never be fixed”. He and others suspect that the country is angry about its custodians not meeting their obligations and believe that punishment will come. Mr Angus Mack attributed his father’s passing to him being punished for his ‘inability’ to protect the country from actions of the government. Ms Lorraine Coppin shared the following in her statement:

⁵ E.08.001.002 p. 16 (conversation with Ms Lyn Cheedy 1440hrs 15 February 2024).

⁶ E.08.001.002 p. 18 (conversation with Ms Lyn Cheedy 1440hrs 15 February 2024).

⁷ E.08.001.002 p. 17 (conversation with Ms Lyn Cheedy 1440hrs 15 February 2024).

⁸ Witness Statement of Mr Kevin Guinness filed 4 May 2023 at [31].

*FMG has never been given permission from the Yindjibarndi. I feel hopeless. I can't do anything about this. I get so hurt. I have this responsibility and obligations and I am being punished by the country for not fulfilling these responsibilities and obligations.*⁹

18. In my opinion, the Yindjibarndi people's continued opposition to the mining on their land, continued questioning of their rights to the land, and their need to protect significant aspects of their culture and identity, has had a significant negative impact on the mental health of the group. The prevalence of acute hypervigilance, mistrust, helplessness, and emotional dysregulation observed in informants was abnormally high even when compared to other similar communities that I have worked with over more than 30 years – this is extremely clinically concerning, especially in the context of high rates of suicide, and harm to self and others, in distressed remote communities.¹⁰ In my opinion, the levels are however understandable when regard is had to the traumatic perceptions of failure to protect and care for their country; failure in meeting expectations for unconditionally caring for and supporting each other; failure in practicing respect and reciprocity; and failure in adhering to the entirety of their cultural obligations.

19. This harm to the Yindjibarndi people is caused against the backdrop of a community known to be vulnerable due to previous traumatic interactions with government and industry (pearling, cattle, mining) as captured in Noel Olive's publication *Enough is Enough: A History of the Pilbara Mob*, Fremantle Arts Centre Press, 2007. Mr Michael Woodley believes that everyone who had been in the region for a reasonable period, including Mr Andrew Forrest who grew up in and around the Pilbara, would be aware of their history and would be unsurprised if advised of the prevalence of trauma-related injury within the population.¹¹

20. Mr Michael Woodley also believes that what he describes as Mr Andrew Forrest and FMG's splitting behaviours¹² in the earliest stages of negotiation were prioritised due to

⁹ Witness Statement of Ms Lorraine Coppin filed 27 April 2023 at [16].

¹⁰ The current author has worked extensively in discrete Aboriginal communities across three Australian states for decades and has had opportunity to clinically observe the prevalence of behavioural indicators of trauma-related symptomology in several higher-profile communities.

¹¹ Audio recording of conversation with Michael Woodley 5 January 2024.

¹² There are consistent allegations that FMG undertook a process of favouring selected families (through purchasing groceries, ferrying people around, and generally providing material advantage) and disregarding others

his belief that they were a vulnerable population that could be effortlessly divided and defeated.¹³ Stanley Warrie provided the following in a conversation about the Yindjibarndi/FMG relationship and showed some compassion for the role of the WiriluMurra Yindjibarndi Aboriginal Corporation (WMYAC) in this situation:

*Andrew Forrest is a **joona** (evil spirit) and the WYAC are **nanji** (law breaker and wanted men) and are being used by the joona. The joona are the visitors who are looking for the nanji. The joona get the nanji to do their bad deeds, this is called **marlueegay**. The joona is a **marban** man and can control people and urge them to go wild and he is in the background suggesting what they should do. Everyone is blaming WYAC, but it is really FMG who wants all the people to fight each other, and we will destroy each other. The WYAC are suffering too.¹⁴*

21. History now confirms this concern that FMG actions have divided the Yindjibarndi people, and has, in my opinion, triggered trauma-responses in some and cause major distress in others, destabilising a substantial proportion of the population. The levels of mistrust that this action has caused is difficult to adequately describe. There is acute mistrust and hypervigilance across the divide, within YAC and the WMYAC, within and across biological and cultural family ties, of lawyers and others committed to finalising this dispute, and likely those employed now, and in the future, to assist in the recovery of those whose mental health has been injured. There are those within the factions that question the wisdom of this dispute when they have witnessed the injury that it has caused (and is likely to continue causing) to significant people within their lives.
22. This ongoing fallout and the seeds for intergenerational transmission of trauma are described in some detail below.

Impact on elders: the need for perseverance

23. While walking back to the main camp after the men's session at Bangkangarra (16th August 2023) I had an opportunity to speak with Mr Michael Woodley.¹⁵ Specifically, my interest was to better understand the nature of his intrinsic motivation. The first is that

with the intention of creating a division and weakening the power of those who opposed FMG financial proposition. See E.08.001.002 p. 27 (conversation with Stanley Warrie and Middleton Cheedy 17 February 2023).

¹³ Audio recording of conversation with Michael Woodley 5 January 2024.

¹⁴ Witness Statement of Stanley Warrie filed 28 April 2023 at [53].

¹⁵ E.08.001.002 p. 31 (conversation with Michael Woodley 16 August 2023).

he has a duty to his community, and those that preceded them, to do as much as he can to protect the material and spiritual integrity of the land. The second is that he fears that if he does not lead this battle and be seen to be giving everything he can, he would have failed his country and his people, and that there would be retribution from the spirits at his time of reckoning. Mr Michael Woodley believes that mining could have proceeded profitably on Yindjibarndi country without the destruction of sacred sites, without interruption to important cultural practices, and in a way that benefitted FMG and Yindjibarndi people equally.

24. This conversation was an extension of one that was had much earlier in which Mr Michael Woodley struggled to manage his sadness and his fear that he had not done enough for his people. His emotion was deep and genuine, and perhaps best understood in the contexts of his sense of personal failure, sadness about the destruction that he could not prevent, and despair about the then current state of his country and the Yindjibarndi community.¹⁶
25. Mr Michael Woodley is acutely aware that his efforts have led to him being disliked and ostracised within his own community and even, to an extent, amongst those true to the Yindjibarndi Aboriginal Corporation (YAC). He also regrets that his focus has put incredible strain on his relationships with his partner and his children.¹⁷ Mr Wimiya Woodley (his son) shared that the fight and division within the community had left a darkness over his parents and that his parents' turmoil causes him great distress. He recalls the physical fighting that he was reluctantly dragged into; the sight of his parents (Mr Michael Woodley and Ms Lorraine Coppin) being physically assaulted and sustaining injuries, and seeing family and others that he grew up beside fighting with his parents.¹⁸
26. It is my opinion that Mr Wimiya Woodley is just one of many younger Yindjibarndi people who have been emotionally destabilised and traumatised by the breakdown of Yindjibarndi ways that are attributable to FMG's mining operations and the nature of their engagement.

¹⁶ E.08.001.002 pp. 19-20 (conversation with Michael Woodley 18 February 2023).

¹⁷ E.08.001.002 pp. 19-21 (conversation with Lorraine Coppin and Michael Woodley 18 February 2023).

¹⁸ E.08.001.002 p. 33 (conversation with Wimiya Woodley 15 August 2023).

Is it a community in name only?

27. The visit to the Mine on 14th August 2023 provided an opportunity to appreciate the severity of the impact of mining operations on the country and on elders who are responsible for its care and protection, the ways that Yindjibarndi connect with country and the spirits which they believe it hosts, and sighting of archaeological evidence of more than 50 thousand years of continuous occupation by the Yindjibarndi people.
28. I observed Yindjibarndi people I travelled with on the FMG bus demonstrated significant distress when confronted with the vision of the mine. Those present appeared connected as one in their outpouring of grief and sadness and were genuinely shocked by what they were witnessing. It was in this context, that I was provided with my first appreciation of how strong the Yindjibarndi people's connection is to their country. It was also in this context that I saw a level of connection and compassion between the people that I had not previously appreciated.
29. My previous interactions with the Yindjibarndi people were predominantly focused on better understanding the spiritual and cultural impacts of mining and mining-related activities on the people, and the nature, if any, of its impact on their individual and collective psychological wellbeing. My observance of clinically relevant levels of mistrust, hypervigilance, and emotional dysregulation throughout the group, led me to believe that the alliances between the people aligned with the YAC group were conditional and cautious, and that displays of friendship and respect were sometimes more strategic than authentic. In my professional experience, these observations are common in Indigenous populations where there is a high prevalence and incidence of trauma-related pathology.
30. The process of drafting the First Report ~~and this supplementary report~~ for the Court has required speaking with a range of Yindjibarndi informants as well as others who are considered relevant to the proceedings. I was provided opinion and accounts from representatives of the Yindjibarndi people supportive of the YAC and the WMYAC, from across three generations, from men and women, and from non-Indigenous men and women who had knowledge of and had observed the trajectory of the dispute. I observed

informants' body language and facial gestures; looked for potential inconsistencies in the narrative across and within the informants; considered informants' presentations from a clinical perspective; and was able to respectfully challenge when confronted with what I believed to be inconsistency between what was being said and what their body language was indicating. We spoke about 'best outcomes', the emotional cost of the prolonged battle, levels of investment/engagement in the dispute, and thoughts about whether the dispute had caused injury to mental health at a personal and community levels.

31. These were difficult conversations for some to have, and it became clear (in my thinking) that most informants resented the imposition of mining and that the informants were physically and emotionally exhausted. I formed the same opinion ~~took the same feeling away~~ from a conversation with Ms Allery Sandy (WMYAC member),¹⁹ and to a much lesser extent, a feeling of discomfort from the conversation with Messrs Rodney Adams and John Sandy, but a universal sadness about the then current state of the community disharmony.²⁰
32. One of the most sensitive areas to navigate in these discussions is the nature and persistence of the schism between members of the YAC and WMYAC. In my opinion, the demand characteristics of the situation and the potentially extensive cultural impact of a permanent community split is reflected in oscillation between narratives depending on the audience and the context. I observed that in some public contexts there seemed to be statements indicating that the Yindjibarndi people are positively connected and are 'as one', regardless of whether they are affiliated with YAC, WMYAC, or both.²¹ This premise appeared inconsistent with everything that was observed and disclosed in private conversations that revealed an extent of extreme mistrust within YAC²² and the levels of resentment between members of the two corporations.
33. When I put to the informants the proposition that the division is permanent and that there are now two separate Yindjibarndi sub-populations I received spirited denials,

¹⁹ E.08.001.002 p. 32 (conversation with Allery Sandy 23 August 2023).

²⁰ E.08.001.002 pp. 24 (conversation with John Sandy and Rodney Adams 23 August 2023), 32 (conversation with Allery Sandy 23 August 2023).

²¹ Being affiliated with both corporations allows members to be considered as opposed to mining and the behaviours of FMG and to share in the resources provided through WMYAC and their contracts with FMG.

²² Due to the low numbers of informants from WMYAC, similar levels of mistrust were not observed.

expressions of disbelief, and assertions of unity.²³ It is my assertion that this inconsistency is not presented as evidence of intentional dishonesty by all, but perhaps an indicator of the current levels of distress and the effects of a social desirability bias, unrealistic optimism or pessimism about self and others, recency effects, and social/cultural obligation. The opinion shared within the Yindjibarndi informants to whom I spoke is that FMG staff members intentionally created the community division in efforts to weaken anticipated opposition to the financial arrangement they were seeking.

34. I observed that the level, and prevalence, of mistrust within the Yindjibarndi people is high, attributable to the psychological impacts of past and present experiences, and it is my opinion based on extensive experience working with, and in, traumatised Aboriginal Communities, likely difficult to resolve. The Yindjibarndi is a community where those aligned with the YAC and WMYAC do not trust each other, where factions within the YAC do not trust each other,²⁴ where members of younger generations do not trust those of the older generation, and where there is an almost universal mistrust of FMG (and Mr Andrew Forrest specifically) and the West Australian Government.²⁵
35. It is my experience that the level of psychological injury and the persistence of its effect by this level of disharmony is exacerbated in Aboriginal and Torres Strait Islander peoples living in discrete communities with high cultural identification. The disagreement about mining and the disharmony it has caused has contributed to estrangements within biological families, breakdowns in relationships formed through the *Bidarra Law* ceremonies and to YAC and WMYAC ceremonies now being held separately, interference into established courtship practices, and acknowledgement that maintaining the dispute requires contravening the obligations of the *Nyinyaard* and *Galharra* and weakens the culture and the *Wirrard*.

²³ E.08.001.002 p. 20 (conversation with Michael Woodley 18 February 2023).

²⁴ I am unable to comment about levels of mistrust within WMYAC as the number of informants from this group was limited and there was no mention of concern within the group.

²⁵ E.08.001.002 pp. 5 (conversation with Estelle Guinness 21 February 2023), 20 (conversation with Michael Woodley 18 February 2023).

36. In my opinion, the view shared by the YAC-aligned informants that the WMYAC members traded their responsibilities to their culture and country for an inadequate level of financial remuneration, and that they were complicit in the loss of significant cultural sites, will make it difficult for the opposing sides to come back as one – and to allow a trusting relationship to return.

Intergenerational effects on Youth

37. Mr Wimiya Woodley is a young man who has spent the last few years living and working both in Sydney and on his own country. I had the opportunity to speak with Mr Wimiya Woodley at Bangkangarra (15th August 2023) to better understand the effects of mining on people from his generation. He acknowledged very early on that his experience was comparatively worse than most others due to the fact that he was Mr Michael Woodley's son and that those aligned with the WMYAC specifically targeted Mr Michael Woodley and members of his family.²⁶ Mr Wimiya Woodley's statement makes for sobering reading.²⁷
38. Mr Wimiya Woodley was raised in a family that is immersed in cultural practice, knowledge, and advocacy, and in the belief that the laws and expectations of culture are central to one's identity and are not negotiable. To lose or disregard one's culture is to lose oneself. I observed a comparatively reflective young man who thinks deeply and internalises distress, his memories of witnessing and later participating in the abhorrent behaviour and violence that crippled the community remain overwhelming at times for him. Mr Wimiya Woodley provided not only an extensive list of the behaviours, and ways of being, that he found distressing but also provided me with a clear understanding of how inconsistent they were with cultural expectations and obligations. He fears for his culture and the future cohesion of his people.
39. Mr Wimiya Woodley spoke directly about how the FMG-related split within the community had weakened the community and his belief that FMG had divided and conquered the Yindjibarndi people. He spoke of the weakening of the *Bundut* ceremony

²⁶ Witness Statement of Mr Wimiya Woodley filed 28 April 2023 at [88]-[92].

²⁷ Witness Statement of Mr Wimiya Woodley filed 28 April 2023 at [84]-[100].

due to the current practice of the YAC and WMYAC not celebrating the ceremony together. He spoke of his suicidal thoughts and the disclosures by his two brothers of their contemplation of suicide, but also of hope and his “desire to get rid of the division and bring everyone together”. Mr Wimiya Woodley spoke of friendships that he had maintained across the divide and the realisation that while most of those in his cohort reported similar unhealthy experiences growing up, they appeared less welded to the division and wanted a resolution. He told me that some have argued that a resolution is nothing more than a ‘pipe dream’ (an idea or plan that is not practical or possible) but hope is important, especially when it is expressed by someone as well versed in culture and contemporary thinking as Mr Wimiya Woodley is.²⁸

40. Mr Wimiya Woodley was open, albeit cautiously, to the idea of facilitating a forum that invited young people from all families and sides of the division to come together and discuss how they could strategically facilitate a process of reintegration.²⁹ He passed on contacts to me for further conversation about this topic. Mr Wimiya Woodley suggested that such a forum could be facilitated in Bali in a resort focusing on mindfulness and meditation. He argued that young people need to be removed from the current environment and be encouraged to free their mind of the hostility that has become the daily default for most of those who reside in the Roebourne and Karratha region.³⁰
41. In my opinion, this suggestion did not seem to be an attempt to needlessly waste resources rather it felt considered and genuine, reflecting on the scale of the task and the overwhelming constraints of the local geographical context for engaging in reality-based problem-solving rather than continuing to be entangled in the deeply rooted conflict and violence surrounding this issue.³¹

Lack of tertiary education

42. I recently called Ms Lyn Cheedy as I knew her to be a person who was knowledgeable about the Yindjibarndi community and younger generations.³² I asked her if she knew of

²⁸ [E.08.001.002 p. 33 \(conversation with Wimiya Woodley 15 August 2023\).](#)

²⁹ [E.08.001.002 p. 33 \(conversation with Mr Wimiya Woodley 15 August 2023\).](#)

³⁰ [E.08.001.002 p. 33 \(conversation with Wimiya Woodley 15 August 2023\).](#)

³¹ [E.08.001.002 p. 33 \(conversation with Wimiya Woodley 15 August 2023\).](#)

³² [E.08.001.002 p. 16 \(conversation with Ms Lyn Cheedy 1440hrs 15 February 2024\).](#)

any Yindjibarndi people who had completed tertiary education and she said that she could only think of Ms Bigali Hanlon's grandchildren, being Ms Tilly Milroy, Mr Brendan Charlton, and Mr Bevan Broun. She said that her granddaughter Ms Aaralyn Lockyer was in her 3rd year of a psychology degree at Edith Cowan University. Other than that, she recalled that some middle-aged people and younger generations who had obtained apprenticeships had undertaken TAFE courses.

43. It is my opinion that long-term trauma in the community has had an effect on the robustness of the younger generations to undertake tertiary education. In my experience, working with communities that have had traumatic events, there is a psychological impact on the younger generations in leaving their family to go to strange and urban locations to study and their early traumas do not allow them to have the resilience for them to move to a strange place away from their families and stay the distance in completing a tertiary education. For example, Mr Michael Woodley informed me that his oldest son Mr Hayden Woodley, who had shown great academic promise at high school, had not been able to complete a tertiary degree in Perth and had returned home to Roebourne.

Seeing only the tip of the iceberg

44. Court processes are necessarily formal and are structured by rules intended to maximise the likelihood of an unbiased process that provides just and defensible outcomes. Decisions are influenced by precedence, testimony, clarification, direction, and from what is seen, heard, and felt. In the formal courtroom I observed that emotion is often muted by the context and is merely the tip of the iceberg. On-country hearings allow more latitude in the expression of these strong emotions, but even this is curtailed by the considerable demands characteristic of the legal context. This is even more prevalent for groups who have reason to fear the legal system such as Indigenous Australians who have high rates of incarceration and experiences of court in which they feel disempowered. In this context, the power imbalance and educational imbalance are magnified.
45. ~~While I was fortunate to have observed the on-country hearings and the emotions of those who gave evidence, my presence on the bus that toured the Mine (prior to the on-country hearings) confirmed my view that people believe that Court is an environment where~~

~~emotions must be managed, and where the focus is on giving clear and meaningful testimony.~~

46. The show of emotions by the Yindjibarndi elders when they for the first time saw the effect of mining was distressing for all passengers present on the bus; all were crying and looking around for support, most were struggling to get any words out, and those who were not Yindjibarndi either gave support, sat silently (not knowing what to do), or shared their emotional distress with others. The level of emotion I observed on that day was best described as being consistent with intense grief and loss, and the trauma that comes with losing a family member(s). I observed that the impact of sitting with this level of distress was felt more than it is seen or heard. Subsequent conversations uncovered the belief that there are costs to becoming emotional as an Indigenous man in a non-Indigenous context. I was told that if you show anger you are viewed as dangerous, if you show panic or sadness you are viewed as unstable, and if you are assertive, you are considered aggressive.³³ ~~My layman's understanding of courts is that they observe demeanour, note expressions of emotion but focus on cause, effect, and consequence (emotion being an effect).~~
47. My training in and practice of Clinical Psychology means that I alternatively prioritize emotion as an important window to the troubles and impact of significant life events and experiences. In my opinion, the extreme and unsolicited outpourings of emotion at the Mine was not 'for show' but rather, revealed impacts far deeper than can be captured in words or in witness statements.
48. The enormity of the changes to the landscape and the loss of culturally important sites was brought into consciousness with a thud for the elders when visiting the Mine on the formal inspection. While the older men had been advised of the destruction, in my opinion, it took seeing the loss and damage to fully comprehend it and experience the grief that comes with such a realisation.
49. ~~Without direct exposure to the level of disruption that large scale mining has on country (especially when that country is central to one's identity and ways of being), it appears~~

³³ E.08.001.002 p. 31 (conversation with Michael Woodley 16 August 2023).

~~unreasonable to consider that individuals or groups of individuals could, pre-emptively, be capable of making valid decisions about future actions of this magnitude on behalf of others. While it is not within the Court's jurisdiction to change existing processes, it remains relevant to the current process from a psychological perspective due to its likely effect on mistrust within the community, on the Yindjibarndi's current and future mental health, and hypothetically to its impact on the already existing senses of failure to protect country.~~

When Yindjibarndi work in mining on Country

50. I observed that when the Yindjibarndi people talk of 'country' they do so with an unusual mix of passion, respect, and caution: the degree of which varies according to the context and the company. Country is both intrinsic and extrinsic to the Yindjibarndi people, it gives but also takes, and at the end of one's human existence the Yindjibarndi people believe that they must account for how well they engaged with and nurtured that which they have been given to care for. The spirits of the past are believed to reside on country, and it is important that respect is paid each time one ventures into specific areas.
51. The Yindjibarndi people view their relationships with country through a gestalt perspective; that the sum is greater than the combination of its parts. If one of the parts is altered or removed, the entirety of the country is diminished. When multiple parts are altered the country is irretrievably damaged. ~~When thinking about country in this manner, I am curious about the psychological health of Aboriginal people from the Pilbara who work in the mining industry in and around their own country.~~

Intervention

52. In my First Report I was asked to address the question of what psychological and related services are required to treat the division and psychological trauma which now exists within the Yindjibarndi community and what it will cost to provide treatment.³⁴ In my First Report at [53]-[54], I set out four phases of engagement with community, good communication systems and approach, consultation with community, establishing a

³⁴ First Report at [51].

longer-term team of health professionals serving the community, integrated services and a healing centre. I have set out the costs of those four phases at **Attachment B**.

Conclusion

53. The Yindjibarndi people's engagement with FMG and the West Australian Government over mining activities in the Mine has had varied outcomes. Those who have secured employment in the mining industry and/or with WMYAC Enterprises and those who receive support through WMYAC spoke of the benefits of mining on their country. ~~Those who are aligned with the YNAC are open to the idea of mining on their land but angry about how FMG has refused to consult which has resulted in the destruction of sites of high cultural importance, what they see as the destruction of Yindjibarndi community, and substantial increases in rates of addiction, mental illness, and hopelessness.~~
54. The division that exists within the Yindjibarndi community is attributed to the behaviour and attitudes of FMG and the Yindjibarndi people's inability to negotiate an agreement that is palatable within their own community and accepted by FMG. It is interesting to note that when speaking to representatives from both sides of the divide, there was consensus that:
- (1) they would all be better off if mining had not occurred on their land; and
 - (2) that they would like to come together as one but feel that it is almost too late and there has been too much violence for this to occur.³⁵
55. The level of trauma and psychological injury that has been incurred by the Yindjibarndi people is still yet to be accurately assessed. Statements that have been tendered to the Court outline the informants' views about the effect of this impasse on many aspects of their cultural integrity and their spiritual connection to the land. It is clear to me that there is a level and complexity of distress that I have not encountered in many other remote communities and that this is at its strongest in the context of discussions about breaches in cultural obligations to country and to community. It is the genuine view of the elders,

³⁵ E.08.001.002 pp. 4 (conversation with Donelle Ranger 21 February 2023); 13 (conversation with Judith Coppin 17 February 2023), 26-27 (conversation with Stanley Warrie and Middleton Cheedy 17 February 2023); 32 (conversation with Allery Sandy 23 August 2023).

Stanley Warrie and Middleton Cheedy,³⁶ that this division, conflict, and distress is directly attributable to engagement with FMG and impacts of mining.

56. In my opinion, it is also clear that the extent of mental health issues amongst the Yindjibarndi people are extremely high and that this distress is interconnected with the ongoing community divisions and cultural disconnections that have evolved around the mining issue. As is often the case, the younger Yindjibarndi people feel a little less helplessness and hopelessness than the middle aged and elderly but it is revealing that the scale of the problem is consistently captured in their stories of growing up.
57. All reports must consider the future. There are some aspects of the Yindjibarndi community's situation that are irreparable. For example, what the Yindjibarndi people believe to be their sacred country has been damaged, and more than one generation of close kinship and community relationships have been damaged (with long term effects through disrupted marriage structures and social structures). Moreover, it is my opinion from my experience of working with traumatised Aboriginal communities that the faith/belief system of the Yindjibarndi people which has been the core to their culture and wellbeing for many thousands of years, has been contravened with grave consequences for the physical, mental, and spiritual health and wellbeing of the cultural custodians. There is strong evidence that complex trauma is often carried across generations and so the trauma-impact currently being experienced will also be carried into the future, and its impacts felt on health and wellbeing. Arresting these impacts is a matter of urgency and priority.
58. It is impossible to confidently set timeframes for recovery or arrival at a 'new normal' or to accurately cost such an exercise or pinpoint what the financial cost would be. It would be safer to argue that it will be very costly, and that intervention will be discussed in metrics of generations and not years (as per **Attachment B**).

³⁶ E.08.001.002 pp. 26-27 (conversation with Stanley Warrie and Middleton Cheedy 17 February 2023).

Expert's Declaration

I, Jeffrey Nelson, have made all the inquiries which I believe are desirable and appropriate and no matter of significance which I regard as relevant have, to my knowledge, been withheld from the Court.

Signed

A handwritten signature in black ink, consisting of a circular scribble followed by a long horizontal stroke extending to the right.

Dr. Jeffrey Nelson

9 April 2024 ~~23~~

~~February 2024~~

Attachment A: Brief to Expert

BLACKSHIELD

LAWYERS

28 September 2023

Dr Jeff Nelson

BY EMAIL

Dear Jeff,

**RE: WAD37/2022 in the Federal Court of Australia: Yindjibarndi Ngurra
Aboriginal Corporation RNTBC ICN 8721 vs State of WA & Ors:
Supplementary report**

Thank you for preparing your expert psychological report dated 22 March 2023 in the above proceedings (**expert report**). You will recall that you prepared your expert report pursuant to your brief dated 17 February 2023 duplicated at Appendix 1 of your expert report.

As previously foreshadowed, we now request that you expand your existing brief so as to prepare a supplementary expert psychological report. Your supplementary report should state any qualification to, development of or change of the opinions set out in your expert report taking into account:

- a) your observations of the Federal Court of Australia hearings conducted in Roebourne on **7-11 August 2023**, at the Solomon Hub Project on **14 August 2023** and at Bangkangarra on **15-17 August 2023**;
- b) the transcript of the hearings referred to in paragraph a) which we provided you on **4 September 2023**; and
- c) the statements of the witnesses who gave evidence during the hearings referred to in paragraph a) as well as those which are tendered by the consent of the parties. The parties are currently conferring as to final versions of these statements, taking into account objections ruled on or conceded and amendments or corrections

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made by the witnesses. We will forward you the final versions as they are finalised.

In closing, please note that YNAC must file your supplementary report on or before **8 March 2024**.

Please contact me on **0414 257 435** or Sophie Kilpatrick on **0412 411 023** should you have any queries about this letter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Simon Blackshield', written in a cursive style.

Simon Blackshield
Solicitor

Attachment B: Costing of Intervention:

1. The report to date has provided a strong argument that the Yindjibarndi are a divided community that would benefit from assistance to reduce the impact of trauma on its members and to assist a restoration of the cohesiveness that has supported through a series of significant challenges. It has been made clear through conversation that the current division in the community is considered as a real threat to the future of the Yindjibarndi people as a united entity. The following section outlines a proposed fiveyear structured approach to community rebuilding and individual recovery. It is based on the belief that there will be a desire to bring the community back together and that the community can work collaboratively for the benefit of all its members.

2. Principles that will drive the Intervention:
 - a. Patience and perseverance are necessary, not preferred. With the levels of mistrust and hypervigilance that have been developed over the time of the division, meaningful and sustainable change can only occur as function of patience and perseverance. Actions must be well thought out, implemented optimally, and be allowed enough time to initiate change. Online monitoring and review are important, but premature judgement needs to be avoided.
 - b. Collaboration at all levels of interaction is required, not preferred. Collaboration with the Yindjibarndi people, Government and non-Government agencies, and other interested parties must be encouraged. Collaboration must be non-judgemental and authentic.
 - c. The therapeutic framework must honour Indigenous and non-Indigenous worldviews. In accordance with the United Nations Declaration on Rights of Indigenous Peoples, the Yindjibarndi will have their perspectives, values, and knowledges central to process of community restoration and individual recovery.
 - d. Resources to be made available as required and justified. Initiatives of this magnitude are expensive in terms of funding, time, and energy. The Yindjibarndi cannot be invited to participate in a program that will only support partial recovery. The work must be allowed to reach its natural endpoint.

First Phase

3. Commissioning an organisation with experience in community-led healing initiatives:
 - a. Commissioning processes may take some time and require appropriate resources to ensure the commissioned organisation is fit for purpose.
 - b. Commissioning for organisations that are culturally responsive for Aboriginal and Torres Strait Islander peoples and are skilled in addressing complex, historical, and compounded trauma.
 - c. Commission for a 5-year strategy that encompasses community and individual recovery and the development of a healing centre.

Estimated cost: **\$340,000 + GST.**

4. Consultation/Engagement with the Yindjibarndi community:
 - a. Collaborate with community leaders in facilitating trustworthy discussions about resourcing, service needs, and psychological recovery.
 - b. Facilitate a network of discussions with groups that are differentiated by family association, age-group, gender, age-group, and specific interest through suggested initiatives.
 - c. Support a series of community meetings (open days) and workshops and invite relevant services to attend and inform the community about the services they can and are prepared to offer.
 - d. Facilitate conversations that deal directly with the issues within community that are causing disharmony and ongoing trauma.
 - e. Support the development of a community wellness plan with particular focus on realisation of strengths, limitations, threats, assessment of current needs, risk management (prevention of exacerbation of symptoms) and strategies, and increase the likelihood of sustained engagement and desired clinical outcomes.
 - f. Seek to establish shared ownership of the concerns, solutions, and outcomes of the therapeutic process.

Estimated cost: **\$460,000 + GST.**

Second Phase

5. Establishing the longer-term team:
 - a. Recruitment and induction³⁷ of health professionals and support workers.
 - b. Establish and maintain an effective service that works with the community to improve health and wellbeing, supports detoxication and rehabilitation services, and liaises with other services to optimise individual and community outcomes.
 - c. Ensure the team is appropriately skilled, has the best gender and age-group balance, are culturally competent, and have advanced skills in working with complex trauma and complicated grief, risk assessment, psychometric assessment and reporting, and ability to work across the lifespan (ages of 0 – 80 years).

Estimated cost: **\$340,000 + GST**.

Third Phase

6. The Yindjibarndi Health and Wellbeing Centre:
 - a. Scoping, consulting with community, and identifying a space to support healing for the community. This environment will be community owned and operated with activities developed by the community.
 - b. The building would be designed and built to sit comfortably within the Ganalili Centre streetscape with a similar façade of stone, tin, and white highlights. The building is likely to occupy a footprint of up to 300m² and be within a landscaped window that includes covered outdoor counselling spaces, and amenities that include toilets, showers, and childcare spaces, an outdoor cooking facility, and breakout areas. The interior of the building would include a reception area, individual and group counselling spaces, rooms for visiting medical practitioners, a programs room, a kitchen and common area, and amenities that include toilets, showers, and childcare spaces.
 - c. Mr. Ian Palmer of Big River Housing (**BRH**) was consulted about costs associated with constructing this premises. Efforts to speak with other suitable building companies were unsuccessful. BRH is a building company that is based in Nauiyu,

³⁷ Induction will ensure that all health practitioners and support staff members will be educated about the history of the mining dispute and the trauma-related nature of community unease. They will also be required to understand and work within a trauma-informed model of care.

which is the Aboriginal community at the Daly River in the Northern Territory. The company has a proven track record in providing houses and other buildings in remote and regional communities and has a skilled and permanent workforce of Aboriginal tradesmen and workers. Mr. Palmer is confident that the build could be completed for a ceiling price of **\$3.3 million + GST**. He would bring his own workforce to Roebourne to avoid the difficulties that come with employing tradesmen in Western Australia.

d. Projected Staffing Requirements:

- i. Practice Manager - **\$140K + Super + Allowances + Accommodation**³⁸
- ii. Clinical Psychologist – Clinical Lead – **\$200K to \$250K + Super + Allowances + Accommodation (1.5 FTE)**³⁹
- iii. Clinical Psychologist – **\$190K + Super + Allowances + Accommodation (2.5 FTE)**
- iv. Alcohol, Tobacco, and Other Drugs Workers – **\$90K + Super + Allowances + Housing Allowance**⁴ (2 FTE)
- v. Administration and Service Support Worker – **\$77K + Super + Allowances + Housing Allowance**⁴⁰ (2.5 FTE)
- vi. Programs Managers – (General/Provisional Psychologist) – **\$90K + Super + Allowances + Housing Allowance**⁴¹ (2 FTE)
- vii. General Tasks and Drivers – **\$77K + Super + Allowances + Housing Allowance (2.5 FTE)**

e. The Healing Centre will also have to engage cleaning services, security systems or services, and secure preferred access to tradespeople responsible for maintenance of computer networks, air conditioning, and essential services.

7. The proposed cost of constructing an appropriate Wellbeing Centre (not allowing for purchase of land) is **\$3.3m + GST**. This cost does not include allowance for purchase of furniture, appliances, computers and office equipment, or formal psychological materials.

³⁸ Mawarnkarra Health Service, Roebourne.

³⁹ Consistent with APS recommended fees and lower than Private Practice remuneration.

⁴ Robe River Kuruma Aboriginal Corporation RNTBC.

⁴⁰ Headspace, Karratha.

⁴¹ Headspace, Karratha.

8. The proposed cost of providing the service as outlined is **\$1.735m** per year (this price does include 11% Superannuation, Other Oncosts, District Allowances, Relocation, or Accommodation⁴²).
9. The service would also be required to purchase or lease vehicles (including Toyota Prados and Minibuses), and provide payments for its Board of Directors.
10. It would be advisable to discuss the potential benefit of establishing a residential and non-residential drug and alcohol service that includes the provision of detoxication and rehabilitation services.

⁴² Karratha (February 2024 – House – \$850 to \$1500 per week).