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**FMG Respondents' outstanding objections and evidence subject to limitations under the *Evidence Act 1995* (Cth) (EA)**

**Witness Statement of Ricky Smith**

<b>Paragraph / Part of Paragraph</b>	<b>Objection</b>	<b>Applicant's response</b>	<b>Resolution/ Ruling required</b>
[20]-[31]	Relevance (Social disharmony)		Resolution: the parties have agreed that the ruling on this objection is appropriately dealt with when judgment is delivered because whether social disharmony is compensable under Part 2, Division 5 of the NTA is a matter in issue between the parties.

## NOTICE OF FILING

### Details of Filing

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Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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## WITNESS STATEMENT OF RICKY SMITH

Federal Court of Australia

District Registry: Western Australia

Division: General

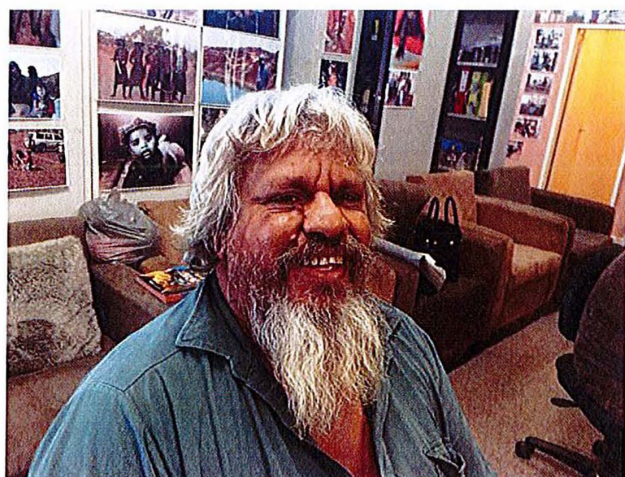
No: WAD 37/2022

**YINDJIBARNDI NGURRA ABORIGINAL  
CORPORATION RNTBC (ICN 8721)**

Applicant

**STATE OF WESTERN AUSTRALIA and others**

Respondent



### Background

1. My name is Ricky Smith. I **have lived** at Ngurrawaana Community for 40 years. I was born on 14 March 1967 at Roebourne Hospital. I am a common law native title holder as recognised by the Determination of the Federal Court in *Daniel v State of Western Australia* [2005] FCA 536 (**Daniel**), and was upheld by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78

**(Ngarluma Yindjibarndi claim).** I am a Ngarluma man through my father, Tommy Smith and my mother, Mary True. I am a Ngarluma elder and a member of the Ngarluma Aboriginal Corporation. I make this witness statement for the Yindjibarndi Ngurra Aboriginal Corporation (**YNAC**) in this proceeding.

2. I lived at Sherlock Station until I was six when I moved to Roebourne for school. I went to school at Roebourne Primary School and Karratha High School with Yindjibarndi kids and knew a lot of Yindjibarndi families.
3. My wife was Yindjibarndi. She passed away in 2018. In 1982, my wife's father, Woodley King, started the Ngurrawaana community, and my wife and I moved there in 1983.
4. I moved to Karratha for about three years in 1993. I went back to Ngurrawaana Community in 1997 and have lived there ever since.
5. From my experience of growing up and going to school with and knowing people in Roebourne who are Yindjibarndi I know most of the Yindjibarndi families. The Yindjibarndi families are the Woodleys, Warriess, Jerrols, Allans, Sandys, Cheedys, Pats, Macks, Wallys, Adams, Coppins, Guinnesses, Walkers and Old TJ's (Thomas Jacobs) family. My mother-in-law is a well-known Yindjibarndi woman but I cannot name her and I am not allowed to talk to her.
6. I continue to associate and spend time with Yindjibarndi people involved with the Ngurrawaana Community, Juluwarlu Aboriginal Corporation (**JAC**), the Yindjibarndi Aboriginal Corporation (**YAC**) and the Wiru-murra Yindjibarndi Aboriginal Corporation (**WYAC**).
7. I had two dogging contracts with the Agriculture Board from 2002 to 2003 and 2007 to 2010. When I was dogging I went all around areas in the Yindjibarndi #1 determination area with my wife, including Mount Florance, Coolawanyah, Mulga Downs, Hooley, Bangkangarra, Ganjingaringunha, Yitimanara, Winyjuwarranha, Roy Parson's Gorge and near Garliwinjinha. During the school holidays, we would take our grandkids with us.

8. I had visited the above places in the Yindjibarndi #1 determination area about three times before I started the first dogging contract in 2002 and before the Solomon Mine was there. My wife and I would go to have a look at the country, along with people like Michael Woodley, Lorraine Coppin, John Sandy, Mavis Pat, Patricia Pat and Allery Sandy.
9. We took the kids swimming in Bangkangarra and hunted kangaroo in Coolawanyah. We also went to Ganjingaringunha (Kangeenarina Creek) that is now in the Solomon Hub mine area. We would buy a sheep and then divide it up between the Ngurrawaana Community.
10. Ganjingaringunha was a good hunting spot because there were waterholes and springs that attracted animal life. We would get sap from the blood wood tree there and use it as bush medicine. The blood wood tree has light green young leaves, which my wife would boil for a soup. We would make the sap into a cordial and then add it to drinks. The ~~barlarli~~ *badidee* tree has bark that you can boil and chew. Before the mine was built, we would eat bush fruit from this area.

#### **Law Business**

11. I went through the Birdarra Law in Woodbrook. Woodbrook is on Ngarluma country but is shared between Ngarluma and Yindjibarndi People. Both Ngarluma and Yindjibarndi boys go through the Birrdara Law there. Some boys from neighbouring groups come and go through the Law there.
12. Walljingha Law elsewhere is different and is different from Yindjibarndi Birdarra law. Yindjibarndi is the centre for all Pilbara law. Everything in the Law starts at Millstream, which is a very strong place in the songlines in Law business.

#### **Permission**

13. I was taught that before entering another Aboriginal group's country you should speak to an elder who is from the country and ask for permission. You can speak to someone who is not an elder but that person will have to go and speak to an elder later. When you get out onto the country you must talk to the country and explain why you are there and that you have spoken to the elders.



14. An elder may come with me onto the other group's country depending on where I want to go and who the elder is. If I was there for something important, like getting ochre or other significant cultural things for a ceremony, an elder and a few others would come. The more serious the occasion, the more people would go to provide advice, protection and authority.
15. If I were going to Banjima country I would ask a Banjima person for permission to enter the country. I might ask that person to come along and we would talk to the country. It is better for Banjima person to talk to their own country rather than me.
16. If anyone wants to come to my Ngarluma country, they would have to speak with me or another Ngarluma elder. My elders taught me this from the day I was born. I was taught how to approach the country. You should tell the country you are there and ask for permission to be there. If you do not know how to approach the country you can get sick from the spirits in the land, being the *Barri* from the *ngurra*. I have seen this happen to people.
17. Before I went dogging (killing dingos and other vermin which should not be on country) on the Yindjibarndi #1 determination area, I talked to Michael Woodley and John Sandy at the YAC because they were closest to me and they're from that country. Michael Woodley is from Kangeenarina Creek; John Sandy for places like Mount Florance. They were happy for me to go back on country and take my grandkids. It is important to consult with the right people.
18. If you go onto country without seeking permission you may get hurt. You have to ask the spirits of the land otherwise you can get sick. If you go to the wrong place, you can get a headache, nose block or feel like you want be sick.
19. When my wife and I went to Yitimanara Spring (in the east of the Yindjibarndi #1 determination area), for the first time we both got troubled and felt like something big was following us. This is because we did not realise there was a permanent water hole there, and didn't do the proper ceremony for the watering hole that you must do when it is your first time in an area on country. We needed to be properly introduced to those spirits. The second time I went there, it was okay because the spirits knew what we were doing and that we were with an

Yindjibarndi woman who was born there, named Yiti Whalebone (she was named after the site).

### **Roebourne community before *Daniel***

20. When I was growing up around Roebourne, everyone lived happily together. All the tribes were mixed and helping each other. This was before native title came. All the tribes were there, even the Banjima, Ngarluma, Yindjibarndi, Mardudhunera and Guruma. I don't recall seeing or experiencing conflict during this time.

21. The period around the decision of our Ngarluma Yindjibarndi case called *Daniel* was a big time for the Ngarluma and Yindjibarndi people. I remember Justice Nicholson coming to Roebourne and listening to us on country. The Roebourne community was excited to get native title on country and working hard together to achieve this goal.

22. When the State government made the decision to build the Harding River Dam in 1984, there was uproar in the community about the sites (including sacred trees, carvings, engravings and a rain *thalu*) they were going to be destroyed by building the dam. My brother-in-law, Long Mack, was the main elder really fighting for that land, which also included Lockyer's Gorge. He was the one who made the rain *thalu* work. All the Yindjibarndi People followed him. He was heartbroken when they built the dam; so were many others.

23. Even though the dam caused a lot of damage to the community, everyone supported each other through this time. There was no disagreement, just blame towards the government for building the dam. It brought the community together and they were determined to work together to protect sites into the future.

### **Roebourne community after *Daniel***

24. Between 2003 and 2007, although the Ngarluma and Yindjibarndi people were glad to have native title recognised, we were not too happy. We all knew that there were issues with non-exclusive native title and that important areas had

not been included in the Daniel decision. Some of the boundaries were not good. Me and my people are still fighting for the Ngarluma claim today.

25. Despite some problems with the claim the Roebourne community was still united during this time.

The split in the community

26. Around 2009 or 2010, I started hearing about the split in the community. My wife would come back from meetings in Roebourne very sad about the disputes between families in the community. I would ask her about what happened at meetings and she would respond with words to the effect:

"They are still not together. They are still arguing with each other. I'm so upset and sad that this is all happening. I really hope we can get back together."

27.1 have watched the split in the community tear the Yindjibarndi nation in two, and ~~break~~ break the family system which had previously been so closely bonded together.

28. All of a sudden, I would see people arguing on the street like they never had before. Or they would simply keep a distance from each other, avoid talking or interacting. I saw a lot of that when I was in Roebourne. These were all people from families which would spend lots of time together before FMG came to Roebourne. They would hang out together, yarning, carrying out Law at Woodbrook, go to birthday parties, go on surveys and make recordings out on bush. I would join them on some of these trips, before native title started. People like Michael Woodley, the Cheedys, Sandys, Macks, Pats and Adams. We would travel in vehicles together. Then, FMG came, and everyone drifted apart. While some Yindjibarndi and WYAC group members sometimes hang out, they're all mostly still apart to this day. I don't think there is much forgiveness there. I hope all the families can get together and resolve issues and be the lively laughing community again they once were.



29. [REDACTED] It really hurts me because I'm friends with people who are members of both the YAC and the WYAC. They're all family. It makes me feel really bad and hurt. I used to see them together laughing and doing stuff together and now they're hurting each other. I see it hurting the whole Roebourne community.

### **Impact of the split on Law**

30. Since the split, Men's Law has not been the same. When I go to Woodbrook, people come but then go their separate ways. They don't have a yarn about it or be happy about it. Before the split, people would be joyful seeing young people go through the Law and carry out traditional ceremonies. We used to all work together to look after our young men and celebrate our culture. It brought the community together but now people are not happy to do that together.

31. You see people arguing in town about this issue. I see that some young people seem less interested in the *bundut* or are not learning as much because people who are meant to teach law are distracted by all the conflict in town.

Signed:



**Ricky Smith**

Date: 26 April 2023