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Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59

Rule 29.02(1)

Affidavit

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

Affidavit of: **Tootsie Daniel**

Address: 3 Burrup Road, Roebourne, Western Australia,

Occupation: Pensioner

Date: 24 February 2023



24th F.D. K.

Filed on behalf of the Applicant
Prepared by Simon Blackshield
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Level 28, AMP Tower, 140 St Georges Terrace PERTH WA 6000

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Document number	Details	Paragraph	Page
1	Affidavit of Tootsie Daniel in support of Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721) sworn on 23 February 2023	1-45	1-14
2	Annexure "TD-1", being a copy of a thumb drive of a video of a meeting held on 21 December 2010.	14	14

I, Tootsie Daniel, of 3 Burrup Road, Roebourne WA, Pensioner on oath:

1. I have been on the board of the Yindjibarndi Aboriginal Corporation (YAC) since 2010, I am on the Juluwarlu board, Ngaarda Media board, I am a member of the Murujuga circle of elders, I am on the consultation committee with the Karratha Shire Council, when it first started I was on the consultation committee for the new Roebourne District High School, along with my late husband. I was also on the Ngarluma Yindjibarndi Foundation Ltd (NYFL) board when it was first was set up. I also named the Minurmaghalii Mia (learning centre).
2. This affidavit is true based on my own knowledge, information and belief..

Background

3. My name is Tootsie Daniel (nee Moses). I was born on 2 October 1953 at Yarraloola Station. I am a Yindjibarndi woman of Burungu skin. I gave evidence in 2015 in the Yindjibarndi #1 native title claim. I refer to my witness statement from 2015 that I made in the Yindjibarndi #1 proceedings. I am a common law native title holder.
4. I also gave evidence in the Ngarluma-Yindjibarndi native title determination hearing in 1999. Along with other women, I did a dance for Judge Nicholson when he visited Roebourne for the claim in 1999 at the 50 Cent Hall in Roebourne.
5. My *nhangka* (mother) was *Dart* (Doris) Lockyer Moses. She was a Yindjibarndi woman from Millstream. My *babu* (biological father) was Maurice Jacob who was Karriyarra. I was grown up raised by another father who was Jack (Banbaring) Moses. Jack Moses was a Yindjibarndi man from Millstream. His *babu* was Old Moses (Wadrayul). His *nhangka* (mother) was Jinni from Millstream as well.

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6. I was married to David Daniel (now deceased) he was the first named Applicant in the Ngarluma Yindjibarndi claim. He was a Ngarluma man of Banaga skin. Our children include Delores (deceased), Bradley (deceased), Regina, Kaylene, Garry (deceased) Cleo and Esther. I have many grandchildren and great grandchildren.
7. Kaylene, her husband, my grandson Bradley (Regina's son) and Zach live with me. I helped raise the kids up including Jennifer. Jennifer is my son ~~Bradley~~'s daughter and she is in Roebourne and has three children. Regina is coming back from hospital in Perth soon and she will live with me.

Financial


8. I get a pension which goes on to pay rent, water and electricity. My children buy the food and if we do not have any money we get a food voucher from NYFL. I do not have a motor car but even if I had a car I could not afford to put petrol in it and put tyres on it on the pension. I wish I had a car because I could then get to Port Hedland for my dialysis, take the kids out on country and I could go out fishing. When I have money in my account I will put a \$30 credit on my phone. I had WIFI in the house and Davina (Delores' daughter) was paying for it and she moved to Geraldton so we stopped paying for it because it was too expensive.
9. My kids Kaylene (part time) and Bradley both work for NYFL. I volunteer for Ngaarda Media to give back to the Yindjibarndi community. It is our radio station. I teach the Ngaarda Media people about culture and country and that was taught to me by my old people.
10. I tell my kids not to forget Yindjibarndi law because the traditional customs are always there for them, so they must follow Yindjibarndi law. When I was young on holidays from school I would go and visit my parents and work at the stations for tobacco, soap, clothes and blankets. They would not pay me money.
11. In the early 1970s, when I was still a teenager, I moved from Onslow to Roebourne on my own. When I first came to Roebourne, I worked at Weeriyana Hostel for about 2 years doing domestic work. The managers were David and Margaret Stevens at the time. I stayed working there until I married my late husband. I know that man (Andrew

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Forrest), we were in Onslow together at school. He was younger than me and would come to school in a helicopter. He could not speak Aboriginal language at school because none of us were allowed to speak Aboriginal language at school. The teachers would rouse on us if we did.

Adulthood

12. My late husband was Ngarluma and we got married in the tribal way at Roebourne. I was in town and saw him and he fell in love with me. My late husband got a job at Mt Welcome Station. I didn't have my first child until after we had left the Old Reserve in Roebourne. After Mt Welcome we moved to Cherratta Station where we both worked.
13. After that, we went back to the Old Reserve. My late husband did fencing contract work at the Warrambie Station. We stayed at the Old Reserve until it was closed down. Everyone was happy in the Yindjibarndi camp in the Old Reserve. The younger ones like us looked after the elders. People worked at the Bakery, hotel, or as nannies, everyone had to have a job. Ngarluma and Yindjibarndi would come together for ceremonies, but it was awkward for Yindjibarndi to be on Ngarluma land, even though the Ngarluma people welcomed them. Everyone in Roebourne was happy then in the 1960s and 1970s and there were no fighting between those families who are fighting now.
14. When people were moved into houses in the Village in Roebourne my husband and I moved away with the old people, who didn't want to be coupled up in houses. We moved to the Woolshed at Mt Welcome Station. I already had children at that time, my eldest was about 2 years old. This was around 1972-1974.
15. The old people wanted to live a free life there. The elders saw that my husband and I would become elders in the future so, they used to say, "come on everyone we're having a meeting – come on young people come to the meeting and listen." They wanted us to learn. Now I tell my kids, "you are the next leaders, you got to come, learn about country, learn about culture."
16. This fight with FMG is not the Yindjibarndi's first fight. I can remember when the elders were opposing the Harding River Dam (HRD). They wanted my help because

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they could not read and write. The HRD dam was finished in 1984. Long Mac (Angus Mack's father) attempted suicide because of the HRD. He was protecting a rain making site, which was his personal site. When the government said the HRD would go ahead he shot himself, but he didn't die then. The HRD was very upsetting for the old Yindjibarndi people. Even though the HRD was so difficult for us Yindjibarndi People, everyone was still getting along well.

17. We then fought for native title in the Ngarluma Yindjibarndi case around Roebourne in the late 1990s and early 2000s. Everyone was still getting along well when the Ngarluma Yindjibarndi case was going on.

Arrival of FMG in Roebourne and native title meetings

18. When FMG came to town, and everyone was getting on well. There was no split in the Yindjibarndi community then.
19. I can remember that FMG came to town in 2007. Sometimes FMG came to Yindjibarndi meetings. Andrew Forrest was at two meetings. I can remember FMG destroyed a spring and then sent an apology letter to YAC. Before that I remember Andrew Forrest went to the TAFE at Roebourne and he invited some Yindjibarndi People to go along. He talked about something to do with improving the TAFE.

YAC Meeting attended by Andrew Forrest

20. The first meeting with FMG that Andrew Forrest attended was in 2008. I sat up the back telling people not to trust him. I was calling out "ja ja" which means "no good" in Yindjibarndi. I can remember Andrew Forrest was walking around shaking hands with everyone and trying to make friends with the Yindjibarndi People. I just told him 'no' and kept calling out "ja ja". My Nidi [YAC CEO] and Stanley Warrie heard me and knew what I was saying and why I was saying it. He was offering \$3 million at that stage. But he never told us about how big the mine was going to be and how long he would mine the country for. I didn't think it was a very good offer and I wasn't going to say 'yes' until I heard all the detail.
21. The Wirilu-Murra Mob who were there and sitting on the side of the hall near Mr Forrest included:

(a) Allery Sandy;



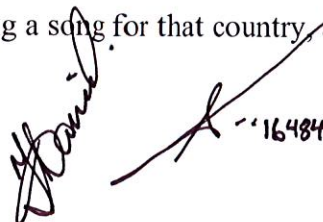
- (b) Bruce Mondadee;
- (c) Aileen Sandy;
- (d) Maudie Jerrold;
- (e) May Adams;
- (f) Sylvia Allen (passed);
- (g) All Pats;
- (h) Vince, Rodney and Michelle Adams; and
- (i) John and Ken Sandy.

22. I was against the deal with Andrew Forrest and FMG because I didn't trust him. I also didn't want the mine. I wanted the country not to be disturbed as I knew it would harm the ancestor spirits and we needed our resources (food, bush medicine, wood, water and other things) for the future. I would always choose country over money, but it's too late now.
23. Some places are the only place you can go to get a certain resource. For example, Galawinji was the main place for the emu. Our people used to get the emu eggs every season in April (when the emu sits down on the eggs in the sky). That emu's nesting ground is gone. There are no kangaroos for hunting at Galawinji now. FMG took our "west farmers" (our supermarket) and turned it into a mine. We should be able to take our children there to collect food and bush medicines. We can't do that anymore. FMG gets money for nothing and has taken away our way of life, camping, food like our bush onions and our special places like the caves and *jinbi* springs.
24. If anyone does anything to country it hurts Yindjibarndi People. Our *wirrard wardchi* is damaged and we will die of a broken heart. FMG won't listen as they just want the land. The water system runs into Millstream underneath the ground from the Fortescue Marsh. The old people would say, like Fred Moses and Jack Moses (my Dad), if you look for water you can dig deep beneath the ground and you can find it. You dig a hole in the *youramar* (water soak), let it settle and clean it out. You can get beautiful fresh water. It is part of the dreaming story that the water travels from the Fortescue Marsh to Millstream but I cannot talk about that only the mens can talk about those stories.

David
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The Solomon Hub Mine

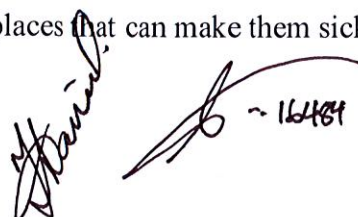
25. I worry that the ancestor spirits are disturbed by the mine. I believe it's the spirits in the country that have caused the industrial deaths in the mine. I tell my relatives not to work there because it is dangerous. They could get punished by the spirits.
26. In Yindjibarndi law, each part of Yindjibarndi country belongs to particular Yindjibarndi ancestors, the country is that ancestor's *ngurra* or home country. These country areas all have names. The area the Solomon Hub Project mine is in is called Garliwinyjinha. My *ngurra* is Jirndawurrunha (Millstream). Both those places are connected by the water that flows under the ground to Jirndawurrunha. I talked about that above at [24] above.
27. The Sandy's are not people to speak for the Solomon Hub Project mine country. Their country is near Mt Florance Station, their ancestor, Sandy Andrew, is from that way. Allery and Sylvia can't do clearances without the right senior men with them that know the country. That's wrong, they have been doing the wrong thing, going on heritage clearances on country they do not really know about. The Yindjibarndi rules are that the men have to speak up for the sites on our *ngurra*. Before the YAC senior law men go on their survey they sing out to the country and sing a *jawi* song. The spirits then show them the country and the places they need to protect. The men go first, and the ladies go after. Ladies have to have the ground made safe for them before they go through. They let the men go first. Even when the Sandy and Adams ladies go with Ken and John Sandy it's not right because those men don't know that country.
28. The right people for Garliwinyjinha, are Woodley King's family, Stanley Warrie's family and Kenny Jerrold's family. It belonged to old Wimia. He was a quiet old man. I knew him when he was an old man not long before he died.
29. I wouldn't talk for that area, but I stand up for it. I back up the rightful people for that area. That's what I've been taught.
30. Before 1999 I went to where Solomon Mine is now with (all deceased) my late husband, Kenny Jerrold, my dad Jack Moses, and Woodley King. We went there for the day to look at the *ngurra*. The old people all said this is our *ngurra*. It is Yindjibarndi country. It was a very special place for them. They sang a song for that country, a *jawi* song. It



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was a beautiful song and it brought tears to my eyes. The flowers were in bloom, and it was during the cold time. A *jawi* is a traditional song given to man or woman when they are visiting on country. A *jawi* is given to them by the spirits of the *ngurra* who are happy to see the people are back on country. At a plain near Bangkangarra we stopped on the way back and we got a turkey, a plainy (plains kangaroo) and a hill kangaroo. We took them back to Roebourne and shared them out amongst the families. The *jawi* are now all gone from the Solomon Hub Project area because the *ngurra* has been taken away. If you don't have the spirits, you can't get a *jawi*. I talked about this trip and their song in my 2015 witness statement at [62]-[63].

31. I get a tear in my heart just thinking about the mine destroying the country. Our ancestor spirits are being transferred into the train carriages. They were in the earth looking after our country. Now they are crying going to another country. They are crying to us. They are sacred. FMG shouldn't be touching our *ngurra*. The spirits are crying to be home on their Yindjibarndi *ngurra*. They should be left alone.
32. I have not seen the mine in person. It worries me how upset I will be when I see it. I didn't understand how large the mine would be. They can't replace the country when the mine is finished. They have taken away the spirits that are still crying. FMG did not ask Yindjibarndi people for permission. They shouldn't have cut it up, they should have just left it. The waters are broken up and are pumping it from the ground.
33. In that country, Garliwinyji, there are strong spirits and lots of caves. Those caves have all been destroyed (I have seen photos) and those caves were the homes of the little *nguga nulli* and the old people spirits. Once country gets damaged, the spirits go live in another home.
34. My late husband was asleep one night. I was sick at the time and when I moved, I could feel a little hand touch me. I saw him jump over my husband's tummy. I thought "that must be a little friend". The next morning, I got up and I was better. They are all around our country. We call them *nguga nulli*. They belong to the country and look out for the country. They look after us and the country. When you look after country they look after you. They are very spiritual little beings. It makes me really sad. The country is home for them. When we are on country, we tell the children be careful where they are walking. We do not want them to be treading in places that can make them sick. When

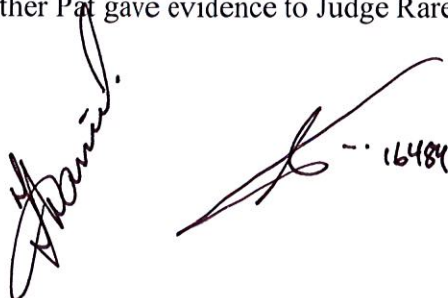


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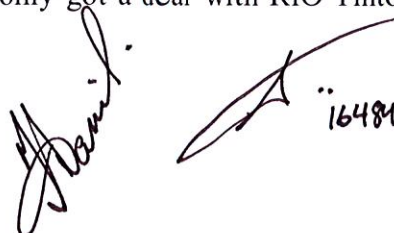
- I am on country I sometimes get this funny feeling. I have a look on the ground to make sure I am avoiding anything like a site I could step on. If I don't I might get sick.
35. I have heard that when the miners go to the Solomon Hub accommodation, they see the little people. It bothers them. They come and see Yindjibarndi People for healing. I heard this happens a lot. Sometimes the workers can't sleep. This is because they are disturbing our *ngurra*.
36. It is the Yindjibarndi law that *manjangu* (strangers) have to ask permission to come on to Yindjibarndi country. *Manjangu* cannot build a mine without the permission of the Yindjibarndi. If they want to collect timber to make artifacts, then they have to call Yindjibarndi men for permission to do that. If they don't get permission from the Yindjibarndi then they will get punished. The country is very valuable to us, its got bush tucker and medicine. It is rich country and provides us with a lot of good things.
37. There is a special way of getting and receiving *jawi* songs from the dreamtime. The country reveals the *jawi* like you are standing there watching a movie showing you important places. Then the old people will dream about the song. Now they may get a *jawi* about the mine, and it could be about the mine swallowing up the people and falling down holes.
38. FMG have not paid the Yindjibarndi People for taking our country. FMG have disrespected the Yindjibarndi People and our *ngurra*. They should have asked us for permission. They don't know the *ngurra* or the spirits in the *ngurra*. Only Yindjibarndi people can give permission and greet the spirits.

The Split

39. Before 2010 both the Pats and the Sandy families were part of the Wirilu-Murra mob. Both are families from two brothers Sandy Andrews and Old Yalgie Pat who lived and worked on Mt Florance Station. Elsie and Sylvia Adams' mother was their sister. The Pats came back to be together with the broader Yindjibarndi group and YAC prior to the Yindjibarndi #1 native title hearing when the Judge Rares came to Ganyjingarringunha in 2015. Mavis and Esther Pat gave evidence to Judge Rares.



40. Prior to the split, everyone was happy in the community and getting along. Our senior men did law business, putting boys through the law. Since the Split Allery Sandy, who is the Wirlu-Murra Chairperson always screams at YAC meetings and disrupts them.
41. Michelle Adams, Aileen Sandy and Allery Sandy all come to disrupt the YAC and YNAC meetings. It started around the 2011 YAC AGM. Allery Sandy comes and yells, or screeches, at every Yindjibarndi AGM and all the other Yindjibarndi meetings and now is doing it at funerals. In 2021 we had some hope that we would negotiate with FMG for compensation and bring back the Wirlu-Murra. We had a meeting with Elizabeth Gaines who was the CEO of FMG at that time. For the first time Allery Sandy and Michelle Adams were listening and not shouting. John, Ken, Allery, Aileen Sandy were there, and Maudie Jerrold and May Adams were there too. I believe that Elizabeth Gaines was trying to make it good for the Yindjibarndi. She stopped working for FMG for some reason and the agreement did not go ahead. I was disappointed about that, I wanted to hear what she had to say.
42. Lorraine Coppin's family get ganged up on and get bashed by members of the Wirlu-Murra in Roebourne all the time. It like a war zone sometimes. It never used to be this way before FMG arrived and caused the split in the group.
43. There was a lot of fighting that started in Lockyer Street, Roebourne after Andrew Forrest and all the FMG workers came to town. I'm talking about Michael Gallagher and Blair McGlew. They used to all be mixing well with Wirlu-Murra mob. Gallagher gave them vouchers and set up the Wirlu-Murra office on the hill. I saw Michael Gallagher driving Aileen Sandy, Maudie Jerrold and Sylvia Allen around town. I saw him buying them food and tobacco. When Michael Gallagher drove her around Sylvia told me she thought of it like going out on dates. She's my cousin-sister. She told me he took her for fish and chips at Point Sampson. This was when they were setting up Wirlu-Murra.
44. My family doesn't get into fights with Wirlu-Murra. But the Wirlu-Murra have been causing fights with my *Nyidi* (son in law) who is the CEO of YAC. They've been spreading rumours around about my *nyidi* stealing all the money. But we have no money – so there's nothing to steal. We only got a deal with RIO Tinto for its rail

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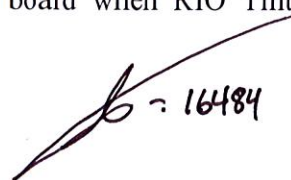
corridor but nothing from FMG. When I hear people talking like that, it upsets me. I know there's no money and it's all lies. I do know that the Wirlu-Murra mob are getting food vouchers and Christmas money. Wirlu-Murra's money is coming from FMG.

Galharra System

45. The Galharra is the skin group. *Mingkala* (our creator) put it there, so we are all connected to each other and to the country. The mine effects everyone from different skins because we are all related, through the Galharra, marriage and/or blood. The CEO's mother is my cousin. I can't be near the CEO and I can't say his name for cultural reasons. Yindjibarndi People follow the direction of the Galharra system. It keeps us in line. We can talk with some people but not others. We must look after some people through the obligations we have under the Galharra system.
46. Women are the ones to talk up for family and the resources and food we can get from our country. Men talk about the sites, songs and the stories for the *ngurra*. The Wirlu-Murra are breaking the rules that should be followed through the Galharra. There are close relationships between people who have the right skins. When Yindjibarndi people have relationships through the Galharra they are linked and have obligations to each other. If you have that relationship you got to look after me and I have to look after you. The Wirlu-Murra are not following those rules. They are supposed to respect their elders, brothers, sisters, mums and dad through the Galharra. They are supposed to look after us and we are supposed to look after them. The split has broken the Galharra between the families.

Wirlu-Murra

47. I first heard of Wirlu-Murra before a meeting on 21 December 2010. I saw at that meeting that Wirlu-Murra wanted to be a separate group and not walk with me and the other Yindjibarndi families. At the end of the meeting I went up to Allery Sandy, Wendy Hubert and Jill Tucker and talked to them about how they were doing the wrong thing trying to talk up for country ahead of the senior law men. I was upset and I said to Allery Sandy "you are not controlling it, I am sorry, I have been taught by my husband. You shouldn't be talking about land. It's the foundation for our kids ... 10 or 20 years down the track. Don't you have a vision... I learnt respect. My husband always respected my language and my culture." Allery Sandy walked off and said, "Meeting is closed". Allery badly wanted to sit on the YAC board when RIO Tinto were

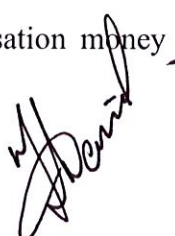



negotiating with us. Allery just wanted to lead the group. When you are going out on the country you have to have a plan and not take too much. You have to think of the future generations. The food on country should be there for the future generations.

48. Annexed hereto and marked **TD-1** is a true copy of a thumb drive of a meeting held on 21 December 2010. I start talking with the Wirlu-Murra ladies at 36 minutes.
49. Wirlu-Murra and FMG also funded the Todd family to apply to be a part of the Yindjibarndi native title claim during our 2015 hearing. Many of the Wirlu-Murra members gave evidence for the Todd family and said they were Yindjibarndi. Judge Rares said they were not Yindjibarndi. The Todds were a big family and would have made up extra numbers for the Wirlu-Murra to try to take control of the YAC and the Yindjibarndi native title claim.
50. Then in June 2015 FMG also funded a meeting to have Rodney Adams, Sylvia Allen, Maudie Jerrold, Francis Phillips, Allery Sandy, Ken Sandy and Diana Smith, elected as applicants to make the decisions for the native title claim. There were cardboard booths for voting and the forms we voted on asked us to vote either 'yes' or 'no'. I went to Carnarvon to vote and talk with Yindjibarndi people in Carnarvon about what the Wirlu-Murra were doing. But they wouldn't listen to me. The people who turned up to support the Wirlu-Murra were given \$400 Woolworth vouchers each.

Elders and compensation money

51. FMG has mined Yindjibarndi country without our permission. Now Andrew Forrest, the executive chairman of FMG, has put us down when talking at a press conference with the ABC that forms annexure 'MRR-3' to the affidavit of Margaret Roslyn Read dated 23 February 2023. When I read the article I felt insulted. He has always put Yindjibarndi People down since we said 'no' to his mining agreement. We are not like the Alice Springs mob. We have always had elders in our community guiding us. The elders counsel our young people for mental illness, drug and alcohol support.
52. If we got compensation money from FMG for the Solomon Hub Project mine we would use the money for dialysis and drug and alcohol counselling. We will not spend money on alcohol, we will spend compensation money on education, health, clothes and

holidays. We will focus on the good things for our children too and we would say, "you are good at school so we will take you to your favourite AFL game". We would encourage the kids to do art and play music. We don't teach our children to drink. We are not dumb. We know how to use money to buy a new motor car and get dialysis machines. People like Andrew Forrest should know about what we go through. It's not about alcohol, it is about dialysis and health problems.

53. Many old people have passed away without receiving any compensation for the Solomon Hub Project. Mavis Pat, had a hard time when her son passed away in Roebourne gaol. Mavis and her daughter, Maisie Pat, and her sister Patricia Pat were alive less than ten years ago and so was Cheedy Ned. They all gone now. I think too much pressure and stress was put on Cheedy Ned and other elders and it made them pass away. Amy Jerrold passed away last week. Others who have passed away are, Joyce Hubert, Elsie Adams, Terry Pat, Calvin Jerrold, Judy Alberts, Henry Jerrold, David Jerrold, John Alberts, Jessie Alberts, Thomas Jacobs, Allum Cheedy, Rosie Cheedy, Guinness Gilbie, Quentin Moses, Alec Ned, Bruce Woodley, Rosemary Woodley, Maria Wilson, Leroy Mack, Wade Woodley, Phillip Jacobs, Sebastian Coffin and Sylvia Allen. Those of my children and grandchildren who have passed away in the last ten years will never see any compensation either. It makes me feel sad that these Yindjibarndi People have all gone without getting compensation. Even the Yindjibarndi #1 native title case has been dragged out by FMG so it took much longer to get our exclusive possession native title and by then some of those people had passed away.

Sworn / Affirmed by the deponent)

at Roebourne)

in Western Australia)

on 23 February 2023)

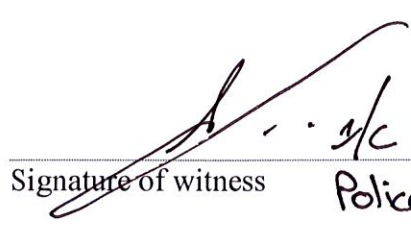
Before me:)



Signature of deponent

Signature of witness

Justice of the Peace

 s/c 16484
Police Officer

Rule 29.02(1)

Affidavit

No. WAD37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

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Applicant

STATE OF WESTERN AUSTRALIA

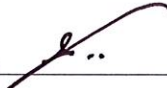
Respondent

Affidavit of: **Tootsie Daniel**


Address: 3 Burrup Road, Roebourne, Western Australia,

Occupation: Pensioner

Date: ~~28~~ February 2023

24th T.D. 

Annexure 'TD-1'

 16484