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

Witness Statement of Kaye Warrie

Paragraph / Part of Paragraph	Objection	Applicant's response	Resolution/ Ruling required
[7]-[25]; [27] (4 th sentence); [52]; [55]; [58]-[60]	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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Sia Lagos

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.



WITNESS STATEMENT OF KAYE WARRIE

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

Respondents



Personal background

1. I am a common law native title holder as determined by the Court in the Yindjibarndi #1 claim.
2. I am Yindjibarndi through my father, Yilbi Warrie King. I have four living sisters and two living brothers. They are Doreen, Stanley, Janice, Sharon, Wendy and Kerry. I have another brother who passed away and two sisters who passed away. It is a Yindjibarndi Law that you can't say peoples' names once they have passed away so I have not named them here.

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3. I live in the Cheeditha community near Roebourne which is on Ngarluma country.
4. I have one girl and two boys. Joylene, Daniel and Jayden. Joylene and Daniel are Yindjibarndi. They follow me for country. Jayden is Yindjibarndi but also follows his ancestors from outside Yindjibarndi country.
5. I am a member and a Board member of the Yindjibarndi Aboriginal Corporation (YAC). I have been on the Board since 2021.
6. I can remember and watched some of the Yindjibarndi #1 hearing in 2015 but I didn't give evidence in that hearing.

The split and its impact on the Galharra, nyinyaard and the Yindjibarndi community

7. I am not a member of the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC). I don't really know what that corporation does. As I understand it, it was built by some Yindjibarndi People who thought they were going to get something out of it. I have been told by Janice Sandy, and others who are is a WYAC member, that FMG helped them set them up. Some of their members do get things like food vouchers, money and some work. But to do this, I understand you have to apply for a membership. I have not applied for a membership. I don't really want to. Even though they are my family, I don't want to be a part of it because they have broken away from YAC. The Sandys are my family through their Mum who is my Dad's sister in the Galharra. They are my cousins, my sisters and brothers through the Galharra. The other family members I have are Jill Tucker and Ann Jacob who are my Mum's sisters because they have the same Dad as my Mum.
8. I think they should have just stayed all together with the rest of us Yindjibarndi People and YAC. I think the people who set up WYAC did the wrong thing. But I understand they did it because they thought they would get a deal out of FMG. █

█ I remember Michael Gallagher driving Bruce Monadee, Sylvia Allen, Dianna Smith and Aileen Sandy around town. I saw him buying things for them at the shops like tobacco and food. It was strange. I knew at the time he worked for Andrew Forrest and then for WYAC (once it was set up). █

█ I also saw Blair McGlew come and go from Roebourne.

I knew he worked for FMG. I saw him having meetings with the WYAC families at the Roebourne Diner. I saw this happening in about 2010.

9. I can remember when WYAC was first set up. This was at the end of 2010. I was at a YAC meeting in the 50 Cent Hall and some people (being John Sandy, Allery Sandy, Paul Aubrey, Aileen Sandy, Sylvia Allen, Bruce Monadee, Dianna Smith, Maudie Jerrold, May Adams, Charmaine Adams, Rodney Adams, Vince Adams, Michelle Adams, Ken Sandy and Jill Tucker) said they wanted to go on their own way. They said that they didn't like YAC's CEO saying 'no' to FMG. They wanted to accept a deal with FMG. I also know this from a meeting WYAC called for 21 December 2010 that FMG said they would look after WYAC. I saw a notice for this meeting advertised in the Pilbara News. A copy of this notice is attached to the affidavit of Simon Charles Blackshield affirmed 1 May 2023 (**SCB Affidavit**) at "**SCB-42**". I was very worried about this meeting. I was worried the WYAC mob were going to give FMG what they wanted and lock the YAC members out.
10. I attended a mediation between FMG and YAC run by a man from the National Native Title Tribunal called Graeme Neate in August 2010. A copy of the minutes of this meeting are attached to the SCB Affidavit at "**SCB-43**". At this meeting, it was clear to me from what I saw and heard that Bruce Woodley and Allery Sandy wanted to go their own separate way from YAC. This made me feel worried and sad.
11. WYAC members are my own family. It makes me feel very upset that they have split from us. Especially with John Sandy and Paul Aubrey. That's my own cousins for me and Stanley. Paul Aubrey is our own nephew. His Grandmother and my Dad are brother and sister. To take your own family to Court like Aileen and John Sandy have taken the YAC Directors is disrespectful and not right. This is breaking the *Galharra*. Under the *Galharra*, you should have respect for your older members and they don't have that for me and Stanley. They grew up with us at the old Wool Shed – they were close to us. My own cousin sisters. We were always together. Even Sylvia Allen's sons and daughters were always together with us. Wherever we went, we were always close. I feel very sad about this.

12. Other members and supporters of YAC have close family on the WYAC side too. For example, my uncle TJ was brother to Jill Tucker and Ann Jacob who are WYAC members.
13. Aunty Joyce Hubert/King died from a broken heart as well. I heard her tell the WYAC mob not to help Andrew Forrest make the Solomon Hub Project Mine (the **Mine**) but they just wouldn't listen. She was their elder and the WYAC mob broke the rules. You have to listen to the elders that's an Yindjibarndi rule that was taught to me by my Dad and other elders.
14. I don't really get along with any of the Sandy or Adams families any more. Allery Sandy, John Sandy and Alieen Sandy are grandparents for my grandchildren. We share grandchildren with them but there's tension in the family. It's hard to be in a family situation with them. We even stay separate at funerals. This is different from how Yindjibarndi People behaved at funerals in the past.
15. It's very hard for the young people. They are getting torn in different directions. My grandchildren are 20 and 16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] But it is hard for them. Before the split, no one ever had to choose sides within families – everyone was all together.
16. I still follow the *nyinyaard* (rules about sharing when others ask / are in need) with the Sandys. I take them meat still. Sylvia Allen used to ask me for *mula* (meat) and I always gave it to her even though she hurt us. But others have broken the *nyinyaard*. WYAC break it. They won't share the money they get from FMG. They only share with WYAC members. That's not right. I can't ask for *mula* from Allery Sandy. She doesn't share with anyone unless they are members of WYAC.
17. The split has changed the *Galharra* and how Yindjibarndi follow the Birdarra Law. Only certain members of the families on the WYAC side come to Law time now. Others don't come. They have their own separate ceremonies with Tim Douglas. It is the custom that Yindjibarndi have to be all together at Law to celebrate the boy becoming a man as one community. Having separate ceremonies is

breaking the Law. The split has changed this for us. We were not like this before the split and before FMG turned up. The *Galharra* is broken. This is very upsetting. Yindjibarndi stayed strong and together through all the hard years our old people went through. [REDACTED]

18. Before the split, there weren't really any arguments. People generally got along. I can't remember any arguments before the split. Since the split, there's fighting and arguments all the time. [REDACTED]

[REDACTED]

[REDACTED] The split has broken my heart.

19. I don't think the split can be fixed. We have tried many times to ask WYAC to come back to the wider Yindjibarndi group. We have tried to forgive each other and come together. This is called *gummwari* in the Yindjibarndi language. But they don't want to come back. If we win this compensation claim some of them will probably come back. I want them to.

Supreme Court actions

20. WYAC members Sylvia Allen and Aileen Sandy took by brother Stanley (Warrie), to the Supreme Court because he is the Chairperson of YAC. Sylvia Allen should not be doing this. She was Stanley's midwife (*urruru*). We were very close with Sylvia Allen. We grew up with her and my uncle. In the *Galharra* she has to help look after Stanley as *urruru* but instead she has caused him a lot of stress and worry. This has been very hard for Stanley and our whole family. It has made us all upset. She should have cared for Stanley and said "*no I can't do this*". We've grown up together with her and her kids. We lived at the old Wool Shed together.
21. A few years ago, outside the Court in Perth, I confronted Sylvia Allen. I asked her outside, "*do you know you're taking your urruru to Court?*". She just said "*oh no. I didn't know*". She was saying she didn't know she was taking Stanley to Court. But she must have known. It's public knowledge in Roebourne that Stanley is the Chair of YAC. The *Gahlara* is broken by this split because people aren't following the rules and because the country is being destroyed by the Mine.

Violence

22. The young people get in fights now in Roebourne. This has happened since the split. It didn't happen before. Before, we were one big happy family. But when the split happened, everything changed.
23. I've been involved in the fights in Roebourne. My children and grandchildren as well. We're all fighting on the Yindjibarndi or YAC side against WYAC. It's very hard for my grandchildren to choose a side because they are grandchildren of Allery Sandy and John Sandy. That's a lot of pressure on our young people. I don't like it and I wish it wasn't like this. My grandchildren have grown up with those fights. They were frightened when they were little. They didn't know if they should talk to their families on both sides (YAC and WYAC).
24. I am worried this generation will keep the fighting going because it's in them now, they've grown up with it. It hurts me and it hurts my daughter too (married to Celia Sandy's sister son). I worry for my daughter. My son-in-law has chosen to support YAC. He doesn't support WYAC. But it still causes problems with Ken Sandy and Allery Sandy because they do not like him following YAC.
25. I blame FMG and Andrew Forrest for these fights. This fighting would not be happening if FMG didn't turn up and split the group. We were all together before then. WYAC only broke away because the YAC Board were saying 'no' to FMG's deal and the members of WYAC wanted a deal. I saw it happen at the meetings I refer to above.

The Mine

26. Our Yindjibarndi ancestors are there in the *ngurra* where the Mine has been built. Building the Mine over our ancestors is breaking the Yindjibarndi Law. That country where the Mine is can't be fixed now. The old people in that land won't have a home again. That's very upsetting for me and the rest of the Yindjibarndi People. We talk about it a lot.
27. Right on the edge of the Mine is the Wirilu-Murra creek. This is the country of Toby Dingoman, my ancestor on my father's side. He was my aunty Joyce

Hubert/King's ancestor too. The WYAC mob should have got permission from my family to use that name for their corporation but they never did.

28. I have been to the area where the Mine is. I visited Bangkangarra recently with Kingsley Palmer and other Yindjibarndi People. I could see FMG were doing work at the Mine close by. When I went to see Bangkangarra, there was no waterfall at the pool and the pool was drying up. There was just a little bit of water in it and the creek was dry. There is not enough water in the pool for *millunjun* (perch). It was a good fishing place before when the Yindjibarndi #1 hearing was on in 2015.
29. I could hear the trucks from the Mine while I was at Bangkangarra. When we went back to make a camp, we heard the big dynamite going off. I could see dust everywhere. I just felt it, and I wanted to cry. It broke my heart. Others there were upset too. I didn't want to hear that sound again. I don't want to see the Mine up close. Andrew Forrest and his FMG have let this happen. [REDACTED]
[REDACTED]
[REDACTED]
30. On the trip with Kingsley Palmer, FMG stopped us travelling through the Mine area. That made me feel angry. They don't have the right to stop us from coming onto our own country. When we were in the creek at Bangkangarra, we saw an aeroplane flying above us. We all thought it was from FMG. The Mine was all fenced off but only a short walk from Bangkangarra. On the trip, we all picked up the dirt and said goodbye to the country. I did this because I thought next time it will be all gone. I thought it would be the last time we would see that *ngurra*. That is heartbreaking. Having mining right next door. You can hear the noise of the Mine from that place. The blasting will disturb the spirits.
31. When I went on this recent trip with Kingsley Palmer, at first, it felt like I was home, on my *ngurra*. My *wirrard* (spirit and soul) felt good. But when I got closer to the Mine, my *wirrard* felt no good – I felt nothing, it was empty. The spirits are so disturbed they're not welcoming me to my own country. It means we have no *ngurra* there. It won't ever come back. That link to the *ngurra* through the

ancestors has been broken forever. When I felt this, I got really upset. Others there were upset too, like Maisie Ingie and Judith Coppin.

32. I saw that there were no animals around and no birds except for just one crow. That wasn't right. Some boys came along on that trip with us for hunting but didn't get anything.
33. I do not see any game on Yindjibarndi country anymore except at Coolawinya Station. Everywhere close to the Mine, I notice that there are hardly any animals – no kangaroos or emus. Even when we camped in the creek at Bangkangarra, we noticed at night time when we had our lights on that there were no bugs flying around. Middleton Cheedy noticed this too.
34. I think this is all caused by too much blowing up of the country, too much mining. There is no *nyinyaard* with the country anymore. We have let the country be destroyed so it's not looking after us. This is true even though we've done everything to stop the Mine. This is really devastating. We want to go back and live in our country but the country won't look after us.
35. Another time, around 2008, I visited the Mine area before the mining had started and while it was being built. I was camping with other Yindjibarndi People at Wayne Steven's block nearby. I saw some caves there in the Mine area. We were worried about those caves because there were roads going up the hills and they had started flattening out parts of the hills with earth movers. Me and my sister were just standing there, crying, as we saw what had been destroyed. We wondered why this had been done. Money is not going to change what's happened to country.
36. There were caves where the Mine is [REDACTED]
[REDACTED]
[REDACTED]. Those caves have been destroyed.
37. Caves are where our ancestors were. They were using these caves for burials. They had old people in those caves. They are sacred sites. It's very upsetting knowing that these caves have been destroyed. These ancestors are lost and wandering around now.

38. The hills the Mine sits on are part of Gamburdayinha (Hamersley Range). They were created in the Dreaming. My father sang the *jowi* (spiritual song) for that place. We have to protect that place.

Spirits in and around the Mine

39. I've heard that the spirits of the *ngurra* are visiting people in the camps at the Mine. I believe these stories. Aboriginal families in Port Hedland have young people working at the Mine and they are seeing spirits. Those spirits are hurting those young fellas and those workers stopped going to work at the Mine.
40. Some young people from Karratha and Roebourne went to work at the Mine and one girl saw an old man spirit standing up on the hill. I have heard a couple of people say this. I believe this is happening because these people are *manjangu* (strangers) to the country and they are destroying that country. The spirits are trying to speak up to stop people destroying Yindjibarndi *ngurra*.
41. There are *nguga nulli* (little hairy spirits who live on country and protect it) living in the Mine and around the Mine. I know this because of the caves that were there, and all the hills that were there. We were always told not to climb any hills and not to go in caves by our old people when I was growing up. We were told this because hills and caves are the homes of the *nguga nulli*. Sylvia Allen's husband and my mum and dad used to have a big bus through the Pilbara Aboriginal Church. Every holiday, we went out on Yindjibarndi *ngurra* and camped out. We went to places like Millstream and Wittenoom. We camped at Camp Carlewis. That's towards Millstream. I can remember that one time we were making noise at night time. I was about 8 or 9 years old. The old people told us to go to sleep and be quiet. They told us the *nguga nulli* will come and get us kids. My grandmother told me that if you hear little babies crying this is the *nguga nulli* looking for their mum. They live all around Yindjibarndi country. But the *nguga nulli* that lived in the Mine area have had their homes destroyed. They are there but have no home.
42. It's very noisy at the Mine. I think the spirits are very angry about the noise. They like it to be quiet. They don't want to be disturbed. Their peace and their *ngurra* have been disturbed.

Permission and speaking for Country

43. It's the Yindjibarndi People's job to protect the ancestors and the *nguga nulli* in that land. That job has been taken away from us and destroyed by FMG. Yindjibarndi can talk for country but nobody has listened to us. It means nothing to be responsible for speaking for country when the Mine can be built without our permission. The State government gave them permission. FMG is the *manjangu* (strangers). They are not from that country. This means they should have got Yindjibarndi permission to be there. They've broken the Law and the State government has too in giving FMG permission to go there. FMG are *muyunmarra* (thiefs). They have stolen the *ngurra* from us.
44. [REDACTED] I heard all the old people around in 2007 when FMG came along complaining that there should be no Mine. They said "*no you can't destroy that ngurra it's a sacred place*". They all died with broken hearts. People like Dora Solomon and my mum, Bridget Warrie, taught us not to go to other peoples' country and damage it. The old people would have killed us in the old days for doing that. But this is what FMG have done to us.
45. We have never given FMG permission to build the Mine.
46. Under Yindjibarndi law, only the senior men can speak for (and give permission to enter) Yindjibarndi *ngurra*. I know the Mine is on a sacred site and other smaller sites in and around the Mine are now gone but that's for the men to talk about. We senior women come in behind and support the men. We stand strong together with the men.
47. I was taught by my Muma and dad that ladies shouldn't go on country by themselves. They should not do surveys unless there's womens' places. That's a rule too. The Sandy ladies shouldn't go on surveys unless all the men invite them and the other ladies. All the senior men ~~go~~ must go together to do surveys. When I was young all the old people did things together. That rule has always been there and I was taught it by Mum and Dad who was an Yindjibarndi elder and Law carrier.

48. I feel sad, frustrated, angry and shamed that the right to speak for the country the Mine is in has been taken away from Yindjibarndi People. It's our job to talk for country and we can't do that with the Mine being there. It is not right that FMG say we need their permission to go to the country where the Mine is. If I had the chance, I would say to Andrew Forrest and FMG, "*who are you to come here and tell me what to do in my ngurra?*". This is breaking the Law, Yindjibarndi Law. It makes me angry I can't even protect my own *ngurra*.

Compensation

49. I don't believe money will ever fix up the mess made by the Mine and FMG's behaviour towards the Yindjibarndi People. This can never be fixed.

50. I am poor. I have got no money. YAC has some money. YAC spends its money on:

- this compensation claim;
- all the Court cases with WYAC and FMG;
- the Yindjibarndi #1 native title claim;
- trips to *ngurra* for the Yindjibarndi People including food and fuel for those trips; and
- a little bit of money to help with funerals.

51. The money YAC has comes from Rio Tinto. We have received no money from FMG. We have no agreement with FMG.

52. [REDACTED]
[REDACTED]
[REDACTED] I have never received any money from WYAC even though they are my close family.

53. If we are successful with our compensation claim, the Yindjibarndi Ngurra Aboriginal Corporation will spend the money on housing for Yindjibarndi People, gardens, yards and playgrounds for Yindjibarndi People, bush trips on *ngurra* for

holidays, weekend trips, funeral assistance, and health projects including a dialysis unit in Roebourne and/or Karratha.

Negotiations with FMG

54. I remember when Elizabeth Gaines was negotiating with YAC in 2021. I attended a number of YAC meetings in 2021. I hoped there would be a deal. But there was no deal.

Negotiations with WYAC

55. I have been to plenty of meetings with WYAC in Roebourne. But we didn't work anything out. I saw the WYAC participants walk out. I went to the Ibis Styles meeting in 2021. My aunty Joyce Hubert/King got upset. She was saying "*why are all these things happening?*". She tried to get everyone together and she told me she was sad when she could do nothing.

Complaints about YAC to ORIC

56. I know that YAC members have been investigated by ORIC. We had to do a lot of work during that investigation. We had to provide all our financial records to ORIC. But ORIC didn't find anything wrong with YAC. It was very stressful and took our attention away from protecting our *ngurra*.

Working at the Mine

57. I have not ever worked on the Mine and I don't want to work on the Mine. It would be too upsetting for me. I find it frightening, sad and empty in my heart to be there. It's my *ngurra* but it's gone. I think about what it was like before and it makes me too sad.

WYAC members s 66B applications in September 2011 and July 2015

58. WYAC tried to take control of the Yindjibarndi #1 claim because they wanted to do a deal with FMG.
59. I remember the March 2011 meeting in Roeboune. I can remember there was a bus load of people from Carnarvon from the WYAC side. I remember old Cheedy Ned at that meeting. He got up and wanted to say something. He was talking as

the most senior elder but the WYAC people weren't listening. It made me wild and upset to see that elder being disrespected. Part of Yindjibarndi Law is to look to the elders. But people weren't listening to him. He was saying "*Listen to me, listen to me, don't take the deal*". I can remember people were split across the room; WYAC on one side and YAC on the other side. I remember one woman, Allery Sandy, was praying and talking. She was trying to tell us to get the deal done. Andrew Forrest was there too trying to sell us the deal. Ron Bower, the WYAC lawyer, was there running the meeting. He had a megaphone and a microphone and he was trying to control the meeting. There was a lot of shouting at that meeting between WYAC and YAC supporters. It was very distressing.

60. I can also remember the 2015 poll at the 50 Cent Hall. I went and voted in the cardboard booths set up by FMG. It wasn't a meeting. WYAC and FMG organised that voting. I remember FMG people were there like Tom Weaver and Michael Gallagher.

Nyingara creation story

61. This is the story about the Nyingara, a big Stone Man. He came down from the hill to try and kill the people and hurt them. Then one day they decided to get rid of him so they made a camp, built a big fire and got kangaroo tails and cooked them. The Nyingara was there waiting for the food. The old people were dancing and so were the women and the kids. He started to take the food and when he finally came close to the fire they pushed him in the fire and his whole body was scattered. It became the *munda* (ground) everywhere. This is a story about not being *Dtadamundar* (greedy). I believe that FMG are like the Nyingara.

Signed:



Kaye Warrie

Date: 1 May 2023