

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

Witness Statement of Kevin Guinness

(Paragraph / Part of Paragraph)	Objection	Applicant's response	Resolution/ Ruling required
[24] (5th sentence); [37] (1st and 2nd sentences); [42]; [44] (8th and 9th sentences); [64]-[78]	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.
[37]	Relevance Opinion Conclusory assertion	Press 1st and 2nd sentences of [37] as s 78 EA lay opinion.	Resolution: [37] 1st and 2nd sentences are read subject to EA 136.

NOTICE OF FILING

Details of Filing

Document Lodged: Witness Statement
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 4/05/2023 5:08:36 PM AWST
Date Accepted for Filing: 4/05/2023 5:08:41 PM AWST
File Number: WAD37/2022
File Title: YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721) AND STATE OF WESTERN AUSTRALIA & ORS
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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 KEVIN GUINNESS

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 and family history

1. My name is Kevin Bruce Guinness. [REDACTED]
[REDACTED] Both my parents were born on Yindjibarndi country. I am the son of Guinness Gilbie, who is an Yindjibarndi man from Thungkawarna (meaning Sandy Creek) (Whitefellas call it Tambrey Station) and Nordi Guinness, a Yindjibarndi woman from Buminjinha, the old Police Block about one and a half kilometres from Tambrey Station. I was born on 8 April 1966 at Gunnabinyarra (Mulga Downs) out in the bush. At that time my Dad was working at Gunnabinyarra.

Filed on behalf of the Applicant
Prepared by Simon Blackshield
Law firm: Blackshield Lawyers
Tel: (08) 9288 4515 / 0414257435
Email: simon@blackshield.net

Address for service
Level 28, AMP Tower, 140 St Georges Terrace PERTH WA 6000

2. 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, and upheld by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78 (**Ngarluma Yindjibarndi claim**) and in *Warrie on behalf of the Yindjibarndi People v State of Western Australia (No 2)* [2017] FCA 1299 (**Yindjibarndi #1**).
3. I gave evidence to the Court in the Yindjibarndi #1 native title claim at Garlarwindjy and at Bangkangarra. I was an Applicant on the Yindjibarndi #1 claim.
4. I am a director of Yindjibarndi Aboriginal Corporation (**YAC**) and of the Yindjibarndi Ngurra Aboriginal Corporation (**YNAC**). YAC looks after the members and YNAC looks after the country. YNAC has made the compensation claim. I was also an applicant before the Yindjibarndi #1 claim got determined. I became an applicant in 2012. My dad was an applicant before me, but after he passed away, they put me on.
5. My Galharra (skin) is Burungu. My dad's mother was Topsy Malcolm and my dad's father was Gilbie. Gilbie was from Jindawarana (Millstream Station).
6. My dad's mother Topsy Malcolm also had kids with Malcolm: Sodie (who passed away before the split), Julie (who passed away before the split), Diana (whose married surname is Smith and is on the Wirlu-murra side), Berry Malcolm (on both the WYAC and YAC sides) and Michael McDuff (Mack, on the WYAC side). They are all my Aunties and Uncles in the Gallarah.
7. My *abijee* (mum's father) was Brumby Ned. He was a Yindjibarndi man. He was from the Buminji area. That's south 120km from Roebourne. My *gantharri* (mother's mother) was Sarah. I don't know where she came from.
8. When I was growing up we lived in *Nhumbigunna* (Wittenoom) and we would travel around Yindjibarndi country. We would go up to *Iramungadu* (Roebourne) to visit family. We would meet family and see my dad's brothers and sisters who

where: Johnny Walker, Mailboy (Adam) Gilbie, Cider Gilbie, Cherry Cheedy, Ginger Gilbie and Polly Malcolm.

9. My brothers and sisters are: Alice, Nancy (**deceased**), Barbara (**deceased**), Billy (**deceased**), Bangu (Dennis Long), Clifford, Nicholas, Esther, Janice and Sonya Wilson. Sonya has a different mum to me but the same Dad.

Yindjibarndi Ngurra

10. To be a Yindjibarndi person you have to have a mother or father who is Yindjibarndi. You don't have to be born on country. All Yindjibarndi *ngurra* or country belongs to all Yindjibarndi People together but each Yindjibarndi family has their own home within Yindjibarndi country where their ancestors come from.
11. Even though the *ngurra* belongs to all Yindjibarndi, it is for the senior Yindjibarndi men, who learn the *Bundut*, to speak for the Yindjibarndi country and Yindjibarndi sites in the country.
12. My *ngurra* (home, country) is Thungurwarna, Tambrey Station and Garliwinji from my father's side. Garliwinji is the Yindjibarndi *ngurra* near the FMG Solomon Hub Mine (**the Mine**) sits on. I have travelled through the Garliwindji area, including where the Mine is from when I was young my family would go off the Nanutarra Wittenoom Road to Bangangkarrara to visit. I have always visited that area as it is my *ngurra*, which I get from my father. I used to go hunting and camping around Garliwinjinha, Ganjingaringunha and Wirlu-Murra *jinbi* (spring), which is a creek and water hole right next door to the Mine. When I go to that area there's hardly any animals now. I feel like I'm being watched by FMG people when I'm there. I get that feeling. So if I want to go hunting, I do not go around Ganjingaringunha hunting anymore because of the mine so now I go on Coolawanya and Hooley Stations. They are the only places I can hunt and get any game now.

13. I feel no good at the Mine. There's a lot of noise, dust and digging and a lot of lights. FMG is blowing up the country. That's why there's no animals for hunting there.

Yindjibarndi Ceremony and Law

14. Yindjibarndi people follow the *Birdarra* Law. I went through my first *Birdarra* Law ceremony, personally, in 1984 at Woodbrook and I have been to the ceremonies just about every year since then. The bosses when I went through were Gilbie Warrie, Johnny Walker, Kenny Jerrold, Woodley King, my dad Guinness Gilbie and Tim Douglas (all deceased except for Tim Douglas).
15. In 2012, I went to Garliwinjini with my grandson Ashton (Cheedy) to get red, white and black ochre for the *Birdarra* Law ceremonies. The ochre was for my son Patrick (sister Nancy's son), who was going through the *Birdarra* Law. TJ (deceased), uncle Gilbie Warrie, Cheedy Ned, Alec Ned and Kenny Jerrold told me where to get the ochre. I had to get ochre and food for the Law ceremony for my family. I had to do that under Yindjibarndi Law as part of our rules about *nyinyaard*.
16. In the *Birdarra* Law, we sing the *Bundut*, the creation song for Yindjibarndi country. Some songs are for men only but in the *Bundut* the ladies participate.
17. The *Bundut thalu* starts at a place between Millstream and the bridge near Pannawannica rail line called Bilin Bilin (meaning flat rocks). Bilin Bilin is where the first *Bundut* was performed on Yaandanyirra (Fortescue River). The song line follows the Yaandanyirra to a place near Wuyunmarlinnah (Gregorys Gorge) and then goes along the Gamburdayinha (Hammersley Ranges) and into the Mine including Ganjingaringunha (Kangeenarina) *Wundu* and Bangangkarra and then up to Punmu (in the desert).
18. Yindjibarndi men sing the *Bundut* keeping time with sticks which we beat on an up-turned hollow log or dish (*yandi*) while the women dance.

19. The Mine is on hills that are a part of the *Gamburdayinha*. It cuts through our *Bundut*. The whole *Gamburdayinha* is a sacred site for us Yindjibarndi People. When FMG first came to Roebourne (me and the other Yindjibarndi men including Michael Woodley, Cheedy Ned, Stanley Warrie and Middleton Cheedy) tried to tell them many times *Gamburdayinha* is a sacred site but they wouldn't listened.

Asking permission and *manjangu*

20. Whenever I am travelling in Yindjibarndi country I do *wuthuru*. It's like knocking on the door, talking to country. I was taught by my Mum and Dad and other Yindjibarndi elders that Yindjibarndi people must do this to tell the spirits who we are. If I have kids or grandkids with me I will introduce them to the spirits of the country too. I say in Yindjibarndi language, "*Ngurra! Ngurra!* We are the people from this area." I tell the old people, the spirits of the country, "we will be fishing, swimming, eating. Do not make us sick". If I didn't do this, I'd get sick. I do this with Yindjibarndi people when I go out anytime, even when we are surveying country for mining exploration or other surveys. I call it *whayumugga*, which means "straightening it out". We let the spirits know we are with the surveying mob and to protect the surveying mob too. We also call out when we go to country for surveying to ensure that when we find a site that it will be protected after we have shown the miners. We want the spirits to help us to protect the sites. When I cannot go out to the Mine site to do surveys I cannot *whayumugga* with the spirits at the Mine. I feel sad and broken about this.
21. I was taught by my Mum and Dad and other Yindjibarndi elders that if I come across a *yinda* (permanent pool) or *wundu* (permanent creek). I always do the *wutheru*. I put the water in my mouth, blow it out and say "*Ngurrara! Ngurrara!*" If it is a *yinda* (permanent pool) with a *warlu* you have to be especially careful. If I have eaten plainy kangaroo I cannot go near the *yinda* with the *warlu* because it will stir up the *warlu*. I know *yinda* has a *warlu* in it because it always has permanent water.
22. I was taught by my Mum and Dad and other Yindjibarndi elders that I should always ask the local groups for permission if I am not on my own country. This is

a Yindjibarndi rule. It's the law. I go to an elder and ask them. For example, if someone from Tom Price came to my *ngurra*, Garliwinji, they would have to do the same thing and ask me. If they want to come into Yindjibarndi country, they should ask permission first. They should ask permission from the owner; the *ngurrara* whose family has a special connection to that place. This goes for all *manjangu* (strangers) have to ask permission under Yindjibarndi law. FMG are strangers to Yindjibarndi *ngurra* and should ask permission.

23. Yindjibarndi have not given FMG permissions to build the Mine. FMG has broken Yindjibarndi law by building its Mine without our permission. FMG has also broken Yindjibarndi law by building the Mine on *Gamburdayinha* and the *Bundut* song line.

24. I was taught by my Mum and Dad and other Yindjibarndi elders that a person who respects Yindjibarndi laws would come and ask for permission but Andrew Forrest and FMG instead went to the back gate, jumped it and started digging up the *Nyambali's* (the boss)'s country. FMG is *moyunmulla* (a person who steals things). When my father was young if someone was *moyunmulla* the elders would flog them with a *juna* (stick) and have to return the thing they took. We can't get our *ngurra* back from China. They split us up and took our own Yindjibarndi (who became the Wiru-Murra Yindjibarndi Aboriginal Corporation (**WYAC**)) and had a yarn with them. But WYAC didn't give FMG permission either. FMG wanted WYAC to take over YAC and agree to the **FMG mine** but it did not work.

25. Now FMG tells me I need FMG's permission to go to Yindjibarndi country where the Mine is. This happened recently when I went to Bangangkarra near the Mine with Kingsley Palmer. I heard Tom Weaver, who worked at FMG then, came and told Michael Woodley that he had not called the police to keep us out of the Mine area. He said he didn't know who had called the police and said we could not go in to the Mine because of safety. I think he is *tharday thardaguru* (telling lies) because contractors go into the Mine all the time. I don't believe this was about safety, even though that's what Tom Weaver said. They don't want us there. The only time they have let me in is when ~~I'm~~ **I was** surveying **in** 2021. They don't like us being there. They think they own that country and we're the visitors. They treat us like we're the *Manjangu*. That's pretty bad. It makes me feel terrible.

26. When we went Bangangkarra with Dr Peter Veth from 16 to 18 March 2023 I noticed that the water level in the permanent pool had dropped and the waterfall was running slower than it was when I went with Justice Rares for the Yindjibarndi #1 hearing in September 2015. I am very worried about the water from the mine affecting Yaandanyirra (Fortescue River) because the Mine is in the basin and the water is being pumped out from the underground. The water levels are going down. In particular, I am concerned about Millstream because it is the heart of, and is the capital of, Yindjibarndi country. I have also noticed that the Wirlu-Murra jinbi water levels are going down too.

Damage to the country

27. I have seen that there are no *yinda* in the Mine area now. They've all been destroyed. I have drawn on a large blown up aerial photo of the Mine 3 of our traditional *yidiyas* (walking track or road) that Yindjibarndi old people used to get to Bangangkarra, that is a very significant pool and site for Yindjibarndi People. A photo of my markings is attached to this statement at "KG-1". They show the tracks for the Mine that used to be the *yidiyas*. We can't use them but FMG can use them. FMG says we have to ask them permission to go into the Mine area and they won't give us that permission. Now I have to use a track from the north to get to Bangangkarra that takes over 3 hours to get from Tea Tree Rio Tinto railway camp where it used to take an hour from the Rio Tinto access road near the Wirlu-Murra *jinbi*. That makes me feel no good. I feel very sad. My *wirrard* (spirit) feels empty about that. They have taken away our right to speak for the country.

28. I was taught by my Mum and Dad and other Yindjibarndi elders that the Ganjingingunha *wundu* is a very important creek for us. It flows out to the Fortescue River and it's part of the *Bundut*. The Bangangkarra and Ganjingingunha *wundu* are connected in the *Bundut*. The mine has stopped the *wundu* from flowing through the Mine area. The Mine ~~has~~ is sucking up all the water out of that river and it has been cut up in the middle. The waterways in that area are the lifelines for the *ngurra*, plants and animals. Now the *wundu* is not working

properly, the *ngurra* is suffering. This is one of the reasons we have no animals to hunt. I do not know how the Yindjibarndi can ever get the Ganjingaringunha *wundu* back even when the mine finishes.

Spirits in the country

29. I was taught by my Mum and Dad and other Yindjibarndi elders that some of the spirits in the land are ancestor spirits and good ones. They protect Yindjibarndi people and sites. I was taught by my Mum and Dad that some spirits can be punish me if I don't respect their area, like their cave, ^{or} hill close to sunset, or if you are the wrong person to go to a sacred site. If you break an Yindjibarndi rule you might get sick, or if you go to someone else's country without asking, your family could get sick, or you can have an accident. They can make you sick if you do the wrong thing.
30. When I was a kid driving with my grandmother from Wittenoom to Roebourne, I would see smoke in the *Gamurdayinya* hills, where the Mine is now. I asked her "what them smoke there"? She said, "it's the *nguga nulli*". The *nguga nulli* are little spirits that look after country. But now when I have a look at the hills near the Mine, I don't see the *nguga nulli*'s smoke there anymore because they have lost their *ngurra*.
31. I was taught by my parents and grandmother to leave those caves alone because that's where the *nguga nulli* live. I've seen caves in the Mine area and the next time I've been back they are gone. Many of those caves are lost. We talk about this at the YAC general meetings. I feel terrible about this. I feel like my *wirrard* is dying away.
32. I was taught by my Mum and Dad and other Yindjibarndi elders it's my job to protect the caves and the *nguga nulli* but I couldn't do anything to stop the destruction by FMG. My right to make decisions about that country as a Yindjibarndi man has been taken away from me when FMG built the Mine without my permission and locked me out of the Mine site. I feel powerless and ~~foolish~~.
hopeless

33. Now, I believe that the country is punishing us. This goes back to the *nyinyaard*. If you look after the country, it will look after you. But if you don't then the country doesn't look after you. We haven't looked after the country because we haven't been able to stop the Mine happening, even though we tried everything. This makes me feel very sad. This is another reason we have no caves. The *ngurra* can't provide for us if we don't protect it.
34. I was taught by my Mum and Dad and other Yindjibarndi elders that those caves also contain burial sites. There are spirits there too. I avoid them so I do not disturb them. Disturbing them would be a bad idea. I could get sick if I did. There were bones of our old people in a cave at Garliwinji so we had to do a ceremony. In 2012, I went with some Yindjibarndi men to a cave at Garliwinjinha where we performed a smoking ceremony to let them know we are family, we are *ngurrara*, and to remove the bad spirits from the area so no one would get hurt or the spirits would come for us.
35. I was taught by my Mum and Dad and other Yindjibarndi elders that a lot of old people from the *Ngurranyujunggamu* (when the world was soft) are from the area of the Mine. My son was working at the Mine and a lot of whitefellas would see the spirits there. One story was told to me about a white lady who was in the laundry and felt a presence, saw a shadow and could hear sounds. I believe it's the *nguga nuilli* who are reacting to the Mine and the activities there. ~~and~~ They are not happy with what is happening to their land.
36. My grandson Ashton Cheedy has also been working at the Mine and he hears people have been getting grabbed by the spirits. I believe these stories. I believe it is happening because those people are *manjangu* – strangers. They should have come to see the *nyambali* (boss for the country) before working there. Andrew Forrest is not the *nyambali*. It's the Yindjibarndi elders. FMG and its workers need permission from Yindjibarndi People to be at the Mine on Yindjibarndi country. We Yindjibarndi never gave them permission. I have never given permission to FMG to be there, as an Applicant on the Yindjibarndi #1 claim or a Director on YAC or YNAC.

Litigation supported by FMG

37. FMG has funded Aboriginal people to fight the Yindjibarndi People and YAC for many years. I know this because before FMG turned up we never had fights in Court with anyone. ~~and~~ I know ^{this} from the case where May Adam, Sylvia Allen and Maudie Jerrold called a meeting on 23 June 2015 to try to replace me and other Applicants ^T that was the subject of a decision by Justice Rares in *TJ (on behalf of the Yindjibarndi People) v State of Western Australia* [2015] FCA 818. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. The Todd family also caused us a lot of trouble when we were trying to get our native title recognised in the Yindjibarndi #1 claim. At first, they joined with WYAC, and WYAC helped them to **try to** join YAC to get the WYAC numbers up within YAC. I never knew the Todds when I was growing up. No one ever told us they were Yindjibarndi. My ^{sister KG} brother was married to ^{Richard KG} Bridget Todd. Yindjibarndi mob knew all the old people so they would have told me if the Todds were Yindjuibarndi. That was stressful dealing with the Todds and the Yindjibarndi #1 claim at the same time.

43. We also had the Office of the Registrar of Indigenous Corporations (**ORIC**) come and investigate YAC. This made me feel really bad like I had done the wrong thing. It was a lot of work to deal with the ORIC mob and expensive too. It was also painful. I believed that YAC was doing the right thing and we had all the paperwork in order but we still had to go through it all. I couldn't understand it. At the end we got the all clear. This was very stressful, hurtful and depressing. I believe this was caused by FMG encouraging the WYAC to bombard YAC with investigations and court cases.

Income and Compensation

44. I work as a diesel mechanic on the Cape Lambert ^{port KG} mine for Rio Tinto not far from Roebourne, near Wickham ~~Point~~. It's on Ngarluma country. I look after my family with the money I make. It's part of our *nyinyaard* which is the Yindjibarndi law that says whenever someone asks for something, you have to give it to them. So when my family asks for money, I give it to them. This is something my parents and our other elders always did. I grew up observing them and learnt this was the proper way to behave. It doesn't work now with the Sandys. They don't share with me and I don't really want to share with them anymore.

45. If we get compensation for the Mine, I would like to set up my own workshop for mechanics to do repairs and services. I would like to hire young Yindjibarndi

people as apprentices in the workshop so they can learn the trade. I have been in my trade for 40 years and I would like to pass what I have learned onto young people. They could learn to fix up their own vehicles.

46. I would also like YAC to spend money on better education for Yindjibarndi kids and send them to college. I would like to see Yindjibarndi doctors and lawyers. Yindjibarndi want self-determination. Yindjibarndi can show Andrew Forrest that Yindjibarndi people can run their own businesses. We can be entrepreneurs. I want to prove to him I can be like that. When I hear Andrew Forrest say we will just drink the money away it is so hurtful. He reckons he loves Aboriginal people but he can't if this is what he believes. I don't believe he knows Aboriginal people. If he did, he would know we don't drink all our money away because each of us is different like Whitefellas are.

The country of the Mine area – before and since the Mine

47. As I say above, from the age of 11 I have visited the *ngurra* the Mine sits on from before the Mine was built. I would travel with Mum and Dad from Wittenoom to visit family and we used to travel down through to *Bangkangarra*, a sacred site and significant pool to Yindjibarndi People. There was an old track off the Nanutarra Wittenoom Road through to where the Mine is now. It is marked on the photo and map at **KG-1**. We would go there on weekends. It was beautiful country. There were hills, trees and lots of water in *Bangkangarra*. There were also lots of *milanja* (perch) *mardanginyu* (hill kangaroos), porcupine (*jirriwii*), and birds. We didn't even need to get out of the car to shoot a kangaroo – you could just do it from the car on the road – there were that many around all the time.
48. But now when I go back to that country, it's heartbreaking to look at. There's a hole there. That hole gets bigger and bigger and it's now close to the Wirlu-Murra *wundu* (creek) and *Jinbi* (spring). I got a real shock the last time I went to Wirlu-Murra *jinbi* and saw how close it is to the Mine. On the enlarged photo of the Mine I have marked with a circle where the Wirlu-Murra *jinbi* is. A photo of my markings is attached to this witness statement and marked **KG-2**. Wirlu-Murra *jinbil* was a

good fishing spot. But now it has all dried up because the Mine is sucking up all the water.

49. I went to the country of the Mine during my last time off before my last work swing, so only a few weeks ago. I saw FMG workers taking a sample on the Ganjingaringunha *wundu*. We went with archaeologist, Peter Veth. I pulled up and asked the FMG workers, "what are you guys doing? Are you checking on us?" They said "no", they said they were checking the water. But I never feel relaxed and safe around that Mine area. I never feel welcome. I feel like a stranger on my own country
50. The last time I saw kangaroos near the Mine area was before the Mine was built. I don't ever see kangaroos out there when I go there now.
51. I'm concerned about the impact of the Mine on Yindjibarndi country, including the water. It has destroyed the *ngurra*, and that's why there's no kangaroo or animals on Yindjibarndi county anymore. I was taught by my Dad and other Yindjibarndi elders that all the water goes underground from the *Gamburdayinha* to the Fortescue Marsh and then flows through to Millstream. I sing this in the *Bundut*. But that water isn't flowing any more as there isn't enough water for the animals on the Yindjibarndi *ngurra*.
52. There is also a song for Bangkangarra in the *Bundut*. It's a song about the little sand goanna. That's his home, *Bangkangarra*.
53. I was taught by my Mum and Dad and other Yindjibarndi elders that the *nyinyaard* system I talk about above is for relationships between people and between people and country. If you look after the country it will return and give you food like animals. For example, a while back, I took my grandson to Millstream. I saw some rubbish so I told my grandson to clean it up. We did that and then he went fishing and got a *milanja* (perch). It's very unusual to catch a *milanja* where we were as there's a lot of catfish. I was really proud of him. This was because of the *nyinyaard*. I explained to him about the *nyinyaard* and told him this is why he caught that *milanja*.

54. Because the land is all dried up now, we don't see the animals. The Mine has taken away our responsibility to care for the country so the country can't care for us anymore. I feel very devastated by this. Each time I go back to the Mine, it takes a piece out of me, my *wirrard*. It is not the same feeling I had, being on the country as a young person. I am broken hearted now. The spirits have been torn out of the country by FMG and the *Bundut* is broken by the Mine.
55. As I said above, when I go out, I talk to the country. My Mum and Dad taught me that Yindjibarndi country is full of *nguga nulli* and the spirits of our old people. We feel them in the country and we talk to them. But in the area of the Mine, I can't feel them anymore. I just have a dead, empty feeling inside me.
56. I am worried about how close the Mine is getting to Garlawindji and to *Bangkangarra*. The last time I was surveying in that area, it was because FMG wanted to build a haul road through the *Ganjingaringunha wundu* past *Bangkangarra*. I told FMG, "no, don't build it". I don't want it to happen. Even the WYAC group on that survey said "no" as well. I think it's happening though. I don't feel like we have any say about our own country. I feel like FMG does not respect me or my old people's spirits.
57. I have been on heritage surveys in the Mine area in 2020 or 2021. I didn't go on surveys before then. This was because WYAC were doing all the surveys. But in 2020 and 2021, by agreement, we would get together half and half.
58. In 2021, I took part in meetings talking with WYAC directors trying to resolve our differences. Me and the others at the 2021 ^{meeting K9} had agreed that we needed to do things together like surveys. Elizabeth Gaines came to Roebourne on 1 June 2021, I recall me and the others talking about an agreement with FMG and working again with the WYAC. I went out on heritage surveys with WYAC members from 21 to 29 March 2021 and 15 and 16 October 2021.
59. From 22 to 26 March 2021, I went on a trip with Charlie Cheedy, Stanley Warrie, Devon Woodley, Middleton Cheedy, Phil Davies and Erin Flynn from FMG. We did a survey, with WYAC men, Ricky Sandy, Ethan Sandy, Max Coppin and Steven Adams. Everything went well on that survey, and we all got along well. As

we drove through the mine, I went up in a helicopter. I can ~~was~~ remembering ~~seeing~~ the country where the Mine is now when I was young driving in the car with my Mum and Dad. ~~T~~he country was beautiful with hills, gorges, caves, plants and animals. ~~From the helicopter, a~~All I could see was lots of trucks, trains, train line, crusher, roads, pits and blasting (there was dust everywhere). I saw water trucks driving and spraying water on the road. When I saw these trucks I thought to myself "there goes our Millstream water". Water is life for Yindjibarndi People, plants and animals and seeing that water being wasted made me sad and worried for the plants and animals.

60. During the trip on 5 and 6 October 2021 I went to the Mine with Curtis Lockyer, Michael Woodley Jnr, Kendall Nannup, Ricky Sandy, Ethan Sandy, Max Coppin, Steven Adams, Declan Bailey and Ross Williams. We talked to FMG about a heritage agreement and I thought things were moving forward. I enjoyed working with the WYAC members and getting on well again.

Effect of the Mine on Yindjibarndi rights

61. I went camping at *Bangkangarra* recently. I could hear the machines going all day and night. This was when we went with Kingsley Palmer and I heard blasting too. When we hear that, we feel no good. We think, "There goes one of our sites." They are destroying part of the site *Gamburdayinha* (hamersley Ranges) and that makes us feel no good. They are stopping us from protecting the country. it's like we can't protect our child – our *ngurra*. That relationship we have with *ngurra* is as strong as a parent has with a child. And we can't protect that child from being destroyed.
62. Now we have no right to hunt, protect, speak for, or fish on Yindjibarndi country. The Mine has taken it all away. The mine's noises and lights are going 24 hours a day. I believe that the animals have their timeclocks off by the lights and the noise and they have moved away.
63. That country is broken forever. It can never be fixed.

The Split

64. The split with the WYAC mob has broken the *nyinyaard*. It doesn't work properly anymore. We don't follow it with the WYAC mob. This is because we lost the connection to the country at the Mine. The Mine has broken the country and Yindjibarndi people are now broken inside. With my family on the WYAC side, even in the street, we just pass one another or just mumble words to each other. It really hurts. This is not how we are supposed to behave with each other in Yindjibarndi law. I feel like my guts have been ripped out.
65. Yindjibarndi people were never like this. It only started happening after Andrew Forrest came to Roebourne and wanted a deal with the Yindjibarndi people. When I was young and we used to come to Roebourne from Wittenoom, we would stay with May Adams. We were one close family. We would go visit them. She is my young sister in the *Galharra*. But I don't really talk to her now since the the split. I never go and see her. It's the same with Rodney and Vince Adams. They are sons for me in the *Galharra* (nephews in whitefella way) but we don't talk much. This is not right under the *Galharra*. Vince Adams used to look after my Dad. They should be following me and listening to me Yindjibarndi way.
66. Even the Sandys are family for me. The Pats, Sandys and Adams are all in that line together. We were very close before the split. Then, we would come together and put each other's sons through the law. We would hang around together and party together. We would help each other through the *nyinyaard* – if anyone got a kangaroo for a feed, we would share with everyone – all the Yindjibarndi families.
67. I don't go and see any of these people now because of the split and I'm worried they will try and put pressure on me to go with FMG. It makes me sad. My *wirrard* is very hurt.
68. When John Sandy's son passed away 3 or 4 years ago, I was all mixed up. I wanted to go and see John but it felt strange without other family members there (because of the split) so I told my wife I would catch him next time (I ~~flew out for~~ ^{drove back} work then.) Later on, I was then driving through Karratha and I saw a car parked. I turned around and I saw it was John Sandy so I went to see him. I pulled up not

far from him. He was in the car and he had another young fella driving him. His door was open so I stood inside of the door waiting to grab him and hold him and pass my feelings through to him (that's what we do when we lose someone ~~hug~~) as he was playing on the phone. He knew I was standing there and I was waiting. I stood for a good 20 minutes and when he finished with his phone, he told the young driver to go. So they drove off and left me standing there. That really cut me. That would never have happened before the split.

69. A funeral was held for the young fella and I went. He's my son in the *Galharra*. But it just wasn't the same as funerals like before the split. I was at the back, watching from far away. I was not included.
70. I can see that grieving is done differently by Yindjibarndi at funerals now. We don't follow the *Galharra* at funerals properly anymore. Before FMG, we would gather and meet the family. But now, I see the difference. The WYAC families don't follow the *Galharra* and we don't do it for the WYAC families. I still go to funerals but I see everyone standing apart from each other. Before, I saw that everyone would be close and cry together. But now we stand apart.
71. I hardly talk to John Sandy and Allery Sandy now. I just say "hello" and we don't talk like we used to. Before the split I believed and felt that we were one happy family and now we're not. I have never approached John Sandy after that day in the car. I'm still hurting about it and the things that happen in our community, like the physical fighting. My *wirrard* is hurt by the disregard for the Yindjibarndi Laws. I see that our *Galharra* is broken too. I'm not really following it because there's too much hurt in my *wirrard* and that makes me feel like a failure to my Yindjibarndi old people who taught me to follow the Laws.
72. I can see that Law obligations haven't been followed properly either since about 2015 when the Yindjibarndi #1 hearing happened. When I attended Law time at Woodbrook before the split I saw all Yindjibarndi People coming together. I have seen recently that when it's time to do the Bidarra Law, sometimes the WYAC members come, sometimes they don't come. Sometimes I have seen them start Law time for their own sons and do not do it together with YAC members. John Sandy does the Law himself. He's a senior man and he been with old people. I get upset about this behaviour because he's an elder but he's chosen not to follow

what the old people told us to do. Traditionally, I would see all the elders in the past getting together to decide when to start Law time but John Sandy starts Law on his own when he wants to now. It's all broken.

73. It's so hard. All our old people struggled through their days, working the country with no pay. Then some of those old people were still alive when the split happened. This includes my dad and Cheedy Ned. That's what got me because the WYAC broke the Yindjibarndi law by choosing to follow Andrew Forrest and not in the footsteps of the old people. The old people never gave permission to have the Mine built. Uncle Ned Cheedy was the last one and they all disrespected him as an elder. [REDACTED]

[REDACTED] He died with a broken heart.

74. I felt bad that our elder who was over 100 years old was being disrespected. I consider that is breaking the Yindjibarndi law. You have to listen to your elders. At the March 2011 meeting, I got up and tried to explain to the WYAC mob about the Bidarra Law. I tried to tell the meeting about how I was taught by my elders that back in the old days Yindjibarndi People were together but at that time the WYAC mob wouldn't hold my hand unless I held Andrew Forrest's hand. He had come and to split us up. That's what I was trying to explain at the March 2011 meeting. I was trying to calm everyone down. Never before had I seen a Yindjibarndi meeting behave like that. Now I see all the meetings like that as Allery sandy and Michelle Adams attend YAC meetings and scream abuse.

75. I hear a lot about physical fights between the WYAC and Michael Woodley's families in Roebourne. I haven't seen them myself because I do not live in Roebourne, but my family who live in Roebourne tell me about the **fighting** ~~fights~~. The Sandy and Adams families go to Michael's house and pick fights with his sons. The constant physical fight is new and has only happened since the split. It didn't happen before. We were one happy family before FMG came.

Attempts at Reconciliation

76. On the 18 May 2021, I attended a meeting of WYAC and YAC members at the 50 Cent Hall in Roebourne to try to get WYAC and YAC to be one Yindjibarndi

People to negotiate with FMG for an agreement. I recall Michael Woodley raising the legal cases against YAC by members of the WYAC in the Supreme Court of WA. I thought we needed a clean slate before we could move forward together as one. Paul Aubrey said he would have to listen to the members of WYAC and if they told him, they would drop the cases. The cases were not dropped and WYAC and YAC have not come back together. I felt no good about this because I had put a lot of time and energy into the reconciliation.

77. I remember being at an earlier mediation ~~with Ron Bower~~, in around 2017 or 2018, I attended a meeting with WYAC as a director of YAC. We gave them what they asked for, which was having 3 WYAC directors on the YAC board. But the next day they wanted to get rid of the rest of us and replace us all with WYAC people.

78. We have tried everything to *gummawarni* (reunite) with WYAC. We have tried mediations and meetings from 2010 through to 2021. I can remember more recently going to the Ibis Styles, Karratha in October 2021 for a meeting of the Yindjibarndi and WMAC Boards. When I arrived I noticed TV cameras were set up. I asked them, "what's that for?". They said they wanted a record of the meeting. John Sandy, Allery Sandy and Aunty Jill Tucker were at the meeting. Michael Woodley, Stanley Warrie, Charlie Cheedy, Pansy Cheedy, Lyn Cheedy, Middleton Cheedy, Margaret Read (~~deceased~~) and Judith Coppin and I were all there for YAC. We didn't ask them to remove the cameras because we wanted to show we were ~~honest conciliatory~~. But, at the time, I thought the film footage would go back to FMG. WYAC Directors mentioned the book 'Title Fight' by Paul Cleary and reckon some of it wasn't true. We wanted to update WYAC and bring them back together. I wanted to talk about the FMG negotiations with Elizabeth Gaines that were going on in 2021. But all the WYAC Directors wanted to do was talk about the book.

Negotiations with FMG

79. I attended negotiations with Elizabeth Gaines in June 2021. I remember asking her about an apprenticeship for all the young people.

80. I approved the letter Michael Woodley sent earlier this year to Andrew Forrest. He brought it to the Board and asked the Directors permission before he sent it. The invitation was for a meeting with Andrew Forrest.

Consultation for compensation claim

81. YNAC had a meeting on 11 December 2021 at the 50 Cent Hall. We agreed that there was not a traditional decision-making process for such things as compensation claims. At the meeting YNAC consulted with the native title holders ^{about KH} who attended whether or not YNAC should make a compensation claim on behalf of the Yindjibarndi People. Everyone that attended the meeting agreed that we should make a compensation claim. Annexed and marked "SCB-437" to the affidavit of Simon Charles Blackshield dated 1 May 2023 is a copy of ~~the minutes~~ of a certificate about the meeting of 11 December 2021.

Signed:



Kevin Guinness

Date: 4 May 2023

“KG-1”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

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

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “KG-1” referred to in the statement of Kevin Guinness made this 4th day of May 2023 before me: *Sophie Kilpatrick*

S. Kilpatrick



“KG-2”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

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

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “KG-2” referred to in the statement of Kevin Guinness made this 4 day of May 2023 before me: *Sophie Kilpatrick*

S.K.P.

