



Showing Solidarity with the Yindjibarndi People in the Pilbara

Issued April 2023

The Synod of Victoria and Tasmania has committed itself to walking together as First and Second Peoples.

In July 2017, a First Nations group in Western Australia won a famous native title case in the Federal Court. The Court ruled that the Yindjibarndi Aboriginal Corporation (YAC) had native title over an area of land in the Pilbara. The claim was contested by billionaire Andrew Forrest's mining company, Fortescue Metals Group (FMG).

The Synod's ethical investment arm, U Ethical, is a shareholder in FMG. U Ethical and the Synod have repeatedly raised concern with FMG over their dealings with First Nations communities.

At the centre of the decade-long dispute is the issue of compensation. FMG refused to pay the local Yindjibarndi compensation for extracting iron ore from a mine they operate on the Yindjibarndi land. That mine is estimated to contain up to \$280 billion of iron ore!

FMG's tactics and YAC's resistance resulted in litigation on multiple fronts for almost a decade. Between 2009 and 2013, there were 18 separate legal proceedings concerning FMG and the mining complex on Yindjibarndi land. In addition, the Yindjibarndi had to commence another two Federal Court proceedings after the mining company and the WA government sought to undermine its native title claim. Despite being poorly resourced with only one full-time lawyer, the Yindjibarndi ultimately won in the courts.

In late 2010, FMG began funding a rival Yindjibarndi group, the Wiru-murra Yindjibarndi Aboriginal Corporation (WMYAC), to undermine the YAC's attempt to secure compensation.

In June 2015, FMG secretly funded and orchestrated a meeting to replace YAC with the WMYAC, which would weaken the native title claim. The Federal Court issued a withering assessment of FMG's conduct in its decision. It said that each member who agreed to vote for the FMG-backed WYMAC was given a \$400 Woolworths shopping voucher purchased by WMYAC. The judge said in his judgement, "There was a close correspondence between the persons who voted Yes [and] the subsequent use of 180 vouchers on the afternoon and evening of 23 June, after the close of voting." The 'divide and conquer' tactic from FMG resulted in deep divisions within the Yindjibarndi community.

FMG appealed the 2017 ruling of the Federal Court in favour of the YAC. They failed before the Full Court of the Federal Court in 2019. They were denied leave to appeal by the High Court in 2020.

YAC and FMG negotiations for an Indigenous Land Use agreement fell through in 2021. The failure of the talks has forced the YAC to mount a native title compensation legal case against FMG in the Federal Court.

Yindjibarndi elder Margaret Read told the Federal Court in March 2023 she had tried unsuccessfully to visit the land on which FMG was now mining. "We were stopped from going there; we were stopped from visiting our own country. We were not allowed to come face-to-face with it. FMG put [up] a barricade. It made me feel so really, really horrible, really, really bad that we could not go on to our own country", Ms Read told the court.



Disgracefully, FMG has publicly defended its failure to pay compensation to the Yindjibarndi because FMG believes the Yindjibarndi community are incapable of managing its own finances.¹ Mr Forrest was reported as having told journalists that paying compensation to the Yindjibarndi people for mining their land was paying them “cash for nothing.”²

Rather than pay the Yindjibarndi compensation for digging up their land, FMG argued that they give local First Nations people jobs and contracts relating to the mine. However, we believe that all the companies operating in the Pilbara should be trying to create employment and training opportunities for the local First Nations population regardless. Providing jobs should not be an excuse to not pay First Nations native title groups proper compensation for digging up their land.

Employment is not compensation! If the state government compulsorily took possession of your home to build a road, you would be unlikely to accept being employed by the state government to make the road as compensation for the loss of your home. Similarly, the Yindjibarndi should not be expected to receive employment opportunities as compensation for the intrusion by FMG onto their land.

Michael Woodley, CEO of the YAC, has stated, "As Aboriginal Australians, we deserve an equal share of riches from our country, if not more".

FMG's mine also sits on Eastern Guruma land. Compensation to the Eastern Guruma people is capped at \$6.5 million annually. In 2021 and 2022, FMG shipped 40 million tonnes of ore with an approximate value of \$5 billion annually from the lands of the Eastern Guruma people. *The Australian Financial Review* has estimated that FMG's compensation rate to the Eastern Guruma people is equivalent to one-quarter of the rate paid by Rio Tinto.³ Rio Tinto operates six mines on Eastern Guruma land.

What can you do?

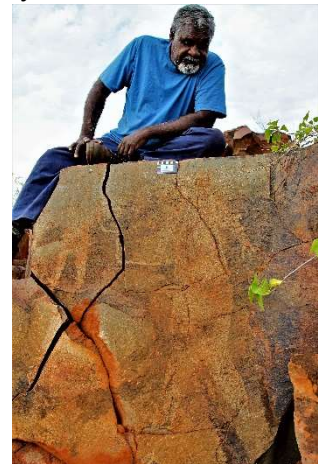
Write a polite and respectful letter to:

Ms Fiona Hick
Chief Executive Officer
Fortescue Metals Group Ltd
Level 2 87 Adelaide Terrace
East Perth WA 6004

You can also post a comment to FMG on their contact webpage:
<https://www.fmg.com.au/contact-us>

Points to make in your letters or emails:

- Express deep concern about how FMG has conducted itself throughout their negotiations with the Yindjibarndi and its ongoing failure to pay proper compensation for mining on their land without their consent.
- Request FMG re-enter into good faith negotiations with the Yindjibarndi Aboriginal Corporation and reach a prompt agreement to pay fair compensation in line with the level of compensation paid by other major mining companies in the region.
- Point out that any employment and business opportunities offered to the Yindjibarndi people should be additional to meeting FMG's compensation obligations for mining their land.



¹ Sue Lannin and Tom Robinson, 'Andrew Forrest says signing Yindjibarndi royalty agreement will lead to Alice Spring style chaos', ABC, 15 February 2023.

² Joe Aston, 'Andrew Forrest, insane in the membrane', *The Australian Financial Review*, 19 February 2023.

³ Joe Aston, 'Forrest hits back as compo decision looms', *The Australian Financial Review*, 25 February 2023, 12.