

NOTICE OF FILING

Details of Filing

Document Lodged:	Expert Report
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	14/12/2022 4:05:23 PM AWST
Date Accepted for Filing:	14/12/2022 4:05:25 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



A handwritten signature in blue ink that reads "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.



THE YINDJIBARNDI PEOPLE'S COMPENSATION CLAIM

WAD 37 of 2022

ANTHROPOLOGIST'S EXPERT REPORT

Kingsley Palmer, Appleby Consulting Pty Ltd

Meelon, Western Australia

August 2022

CONTENTS

LIST OF TABLES AND FIGURES.....	III
1. INTRODUCTION.....	1
Background to the research.....	1
Services required and structure of the report.....	2
Methods employed.....	3
Definitional issues	5
Details required for an expert report.....	9
2 ASPECTS OF YINDJIBARNDI CULTURE EVIDENT IN AN APPRECIATION OF LOSS OR IMPAIRMENT.....	11
Unity of parts	11
Yindjibarndi cosmology.....	13
Creation	13
Burndud: the ordaining and sustaining song.....	15
The bestowal of country	18
Other beings of the Ngurra Nyujunggamu.	21
Thalu: renewal and regeneration.....	23
The agency of song.....	24
Galharra: the foundation of all social relations.....	25
Conclusion and opinion: Yindjibarndi culture	31
Sanctity of country	31
The indissoluble whole.....	34
'Epic' emotions.....	35
3 SOCIAL DISRUPTION AND CULTURAL LOSS.....	37
Introduction	37
An ethnography of loss and social disruption.....	40
Social and demographic setting.....	40
Social division and mining development: an oral history.....	41
Yindjibarndi social relationship.....	44
Injury, physical and emotional	55
The sadness of spirit	57
Conclusion and opinion: social disruption and cultural loss.....	60
4. LOSS OF RIGHTS AND DUTIES OF AN OWNER OF COUNTRY.....	65
Introduction	65
Loss of dominion	65
Country and rights to country.....	65
Those who do not have rights to country	68
Theft, dominion and cultural loss.....	70
Observing and experiencing loss of access: a case study	76
Loss of the right to be asked.....	81
Loss of the right to teach others and the duty to do so.....	84
Loss of the right to look after country	87
5 LOSS OF SPIRITUAL CONNECTION WITH COUNTRY	91

Introduction	91
Personal spiritual diminishment and loss.....	91
Country broken, <i>ngurra</i> marred.....	91
Feelings of loss	92
The compass of cultural loss	93
Opinion.....	98
Yindjibarndi spirits and the Solomon Hub.....	98
Homeless spirits	98
Opinion.....	102
Conclusions and opinion: spiritual loss.....	103
6 LOSS OF CULTURE AND PLACES AND THE FORFEITURE OF YINDJIBARNDI HERITAGE ...	105
Introduction	105
Mining and the Yindjibarndi sense of place	108
Sites and the cataloguing of place	108
Country as history of Law and culture.....	110
Opinion: sites and the ethnography of place	115
Mining and the Yindjibarndi creative beings: Burndud	117
The narrative and the song	117
The order of the song line	121
Other mythic references.....	122
Mapping <i>jina</i>	123
Missing pieces: the impact of the mine and the song lines	125
Other Yindjibarndi creative beings	128
Barrimirndi	129
Burlinyjirrmarra	130
Conclusion and opinion: lost places, lost country	131
7 RESPONSE TO THE SERVICES REQUIRED.....	134
REFERENCES.....	138
DECLARATION BY THE EXPERT AS REQUIRED BY THE PRACTICE DIRECTION	140
APPENDIX A. THE SERVICES REQUIRED	141
APPENDIX B. EXPERT’S <i>CURRICULUM VITAE</i>.....	144
APPENDIX C. INVITATION TO PARTICIPATE IN RESEARCH	152

LIST OF TABLES AND FIGURES

Figure 2.1: the Galharra system superimposed on the metamorphosed Burndud dancing circle at Ganyirriany.....	26
Figure 2.2: the Galharra system of the Yindjibarndi.	26
Figure 3.1: Relationship between Kaye Warrie and her daughter’s children and members of Wirlumurra group.....	49
Figure 3.2: Relationship between Kaye Warrie and her first cousins who are members of Wirlumurra group.....	50
Figure 6.1: Solomon Footprint – overview.	106
Figure 6.2: Google Earth image of Solomon Hub areas of disturbance.....	107
Figure 6.3: Sites in Ganyjingarringunha (including area of the Solomon Hub). Detail (insert) from YAC map 2015.....	109
Figure 6.4: Ganyjingarringunha through routes.....	114
Figure 6.5: Tracks of Burndud and mythic beings.....	124

1. INTRODUCTION

Background to the research

1. In the latter part of 2021 Yindjibarndi Ngurra Aboriginal Corporation (YNAC) contacted Appleby Consulting, through its solicitor, with a view to securing the services of its anthropologist to undertake anthropological research and the writing of an expert report. The report was to provide anthropological opinion relevant to certain questions relating to an application to the Federal Court for compensation under the provisions of the *Native Title Act*. The application had been made in relation to FMG mining tenements throughout the Yindjibarndi No. 1 Determination Area, including those relating to the Solomon Hub iron ore mine in the Hamersley Ranges, 60 kms north of Tom Price, Western Australia, operated by Fortescue Metals Group. Following the settlement of business arrangements and related practical matters regarding the conduct of the research and agreement on a provisional timetable, Appleby Consulting accepted the commission. It allocated its anthropologist, Dr Kingsley Palmer, to undertake the task. Kingsley Palmer is the author of this report.
2. In the contract between the parties it was agreed that all matters relating to the performance of the services, the consultant would report to and be responsible to Simon Blackshield of Blackshield Lawyers, in his capacity as solicitor on record for YNAC in the Yindjibarndi People's compensation proceedings. In relation to practical matters (the organisation of vehicles, arranging interviews and so on) the consultant was to report to and be responsible to YNAC's General Manager: Culture and Heritage, Phil Davies. One consequence of this was that no part of the expert report or any legal queries relating to it were conveyed directly to YNAC, its staff or members.
3. It was agreed that the field research would be conducted in the period March-April 2022 with a report to be provided within approximately three months of the completion of the field work. Some desk-based research commenced in March 2022, and two periods of field research were conducted by the author in the period March-April 2022 and at the start of May 2022. Commencement of field work was delayed due to the high incidence of Covid-19 within the Roebourne Yindjibarndi community. Desk-based research and writing was undertaken in the period between the two field trips which saw completion of working drafts of chapters 2 and 3. The bulk of the report was written after the second field trip during May 2022. This report was then finalised and provided to the legal representatives of YNAC on 7th July 2022. On 24 July 2022 the legal representatives of YNAC provided comments on the report. These identified

typographic errors, suggestions for additional punctuation and in a few instances requested clarification of expression, amplification of an issue or provision of the basis for an opinion. I responded to these various comments and provided the completed report to the legal representatives of YNAC on 23 August 2022.

Services required and structure of the report

4. The services required are reproduced in Appendix A. I was asked to provide expert anthropological opinion based on field work and other research, ‘which addresses the nature and extent of any loss, diminution, impairment or other effect of the grant of the FMG mining tenements on the Yindjibarndi People’s native title rights and interests in the *Warrie (No 2)* Determination Area’ (Appendix A, 1(a)). This, so it was suggested to me, would include consideration of:
 - (i) physical interference with rights of occupation and use;
 - (ii) social disruption; and
 - (iii) cultural loss.
5. I was further advised that determining the extent of cultural loss would first involve determining the nature of the Yindjibarndi People’s spiritual relationship with their traditional country and in particular, their country in the *Warrie (No. 2)* Determination Area. This then is a fourth task I am asked to undertake.
6. Consistent with these instructions and in response to the fourth task identified, I provide a summary of the principal tenets of Yindjibarndi religious belief and practice. This is set out in chapter 2 below. Based on the opinions I developed through consideration of the data I reviewed in chapter 2, I formed the opinion that all other aspects of Yindjibarndi experience (including feelings of loss and impairment) develop from and are based on these beliefs (see paragraphs 90 to 100 below). This was confirmed by my field work with the Yindjibarndi native title holders. With this in mind I next consider social disruption (chapter 3), and then interference with rights of occupation and use (chapter 4). Additional aspects of cultural loss which were evident in my field data included a loss of spiritual connection with country (chapter 5) and a loss of culture and spiritual presence and practice through the alienation or destruction of places (chapter 6). In the last chapter (chapter 7) I draw some of the principal threads of my opinions together.

Methods employed

7. I base my expert opinions on my study, training, knowledge and experience of Australian Aboriginal customary beliefs, practices and social arrangements. Details of this study, training and experience are to be found in my *curriculum vitae* which is appendix B to this report. Consistent with my training as an anthropologist, I have used data collected during field work undertaken specifically for this inquiry. I have also used materials developed in the course of related work amongst the Yindjibarndi people, particularly that prepared for the Yindjibarndi No. 1 application, including my own expert report for the matter (Palmer 2014). I have also made reference to other works of anthropology where I have considered such reference to be apposite to my opinions. I have made reference to works written by and published by the Yindjibarndi people themselves. Some supporting materials were also found on the internet and I have referenced these when I have judged this to be helpful. All works so cited, including internet links, are referenced in the usual manner, consistent with scholarly practice.
8. As I noted above (paragraph 3) I undertook two periods of field work with the Yindjibarndi native title holders. This included conducting a number of semi-structured interviews based on an interview proforma which I developed for this research. I used the proforma, particularly in the early stages of my field work, as a guide to the sorts of issues I wished to explore with the native title holders. However, it was not used in any way as a determinative of the interviews as I found there to be a number of common themes which participants wished to explore. These are reflected in this report. I also undertook some participant observation during my visits to the Juluwarlu Centre in Roebourne – where I conducted much of my research. I also participated in two day trips to Yindjibarndi country, both in the vicinity of Millstream. I was also a participant in a three-day field trip to the Solomon Hub area which gave me the opportunity to witness responses and reactions to the circumstances of the development of FMG's mining projects.
9. Field data was written up from notes taken at the time of interview or observation. These were typed on to a laptop computer, an activity I undertook as soon as possible after the event, to ensure that I represented my data as accurately as possible. Consistent with my immediate recollections of the content of each event or interview, I sometimes modified my original notes in minor ways in the final field notes. It is this final version of my notes upon which I rely in this report. I cite them as 'KPFN' plus the relevant page number of the notes and the name of the informant or informants. Thus, for

example, ‘KPFN, 25, Charlie Cheedy’ is a reference to page 25 of my notes and an interview with Charlie Cheedy. When citing my notes and statements made by informants I have sometimes placed words or statements made in inverted commas in this report. I do this to reflect, to the best of my recollection and consistent with the account made at the time of the interview, the words of the person with whom I spoke.

10. I have, on occasions, cited the field notes of my earlier period of field work undertaken in 2014. This is referenced in this report by the abbreviation, ‘KPFN (2014)’, plus the page number and name of the informant or informants.
11. I also made voice recordings. These I subsequently transcribed. I have made reference to these transcriptions by the abbreviation, ‘KPVR’, along with the page number of the transcription and the name of the speaker.
12. As will become apparent from a reading of chapter 3 below, the Roebourne Yindjibarndi community has been subject to a division. I am asked to adopt the assumption¹ that this is a consequence of the ongoing agreements and relationships between FMG and some common law native title holders without the consent of the registered claimant for the Yindjibarndi No. 1 native title determination application (currently the YNAC). The social consequences of this division are one of the subjects upon which I am asked to provide anthropological opinion. I was, consequently, as an independent research, eager to speak with members of both groups, if possible. To this end I recommended to YNAC that a letter be sent to the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) advising of my proposed research work in Roebourne and that I would welcome the opportunity to speak with members of that opportunity about any or all aspects of my research brief. The letter is Appendix C to this report.
13. I was not contacted by any members of the group, nor was there, to the best of my knowledge, any reply received to the letter. An authorisation meeting for the compensation claim was held on 11 December 2021. Consequently I consider it reasonable to conclude that most Yindjibarndi people and particularly those living in Roebourne, would have known about the proposed research. I also consider it likely that my presence in Roebourne would have been known through kin networks of the sort I explore below (see paragraphs 118 and 119, 147 to 150). I note that when I undertook my field research in preparation for writing my 2014 report, I was able, after some

¹ Appendix A, Services required, addendum, letter dated 24th May 2022.

difficulties, to work with members of the WMYAC² and data I collected were used in my report.³

14. I am interested in this report to explore the cultural impacts of the development of the Solomon Hub mines on the Yindjibarndi people. The data I here present represent the beliefs, emotions and priorities of those with whom I worked. These I have sought to understand by reference to their cultural underpinnings – the beliefs and practices that, in my opinion, strongly mark the Yindjibarndi culture. Those who share the same culture are likely, in my view, to share similar emotions and feelings with respect to any loss or diminution of that culture. Divisions which have developed as a consequence of choices made with respect to contemporary political or administrative arrangements have no necessary relationship with shared cultural norms and values. These determinants, again in my opinion, lie outside of the divisions evident in the Yindjibarndi community in Roebourne.
15. Consequently it is my opinion that the non-participation of members of the WMYAC does not impact adversely on my research findings as they relate to cultural loss. That stated, in terms of anthropological research, I am of the opinion that my field data would have been expanded by inclusion of materials provided by members of the WMYAC. I accept that there may be other or additional views within those parts of the Yindjibarndi community which were unavailable to me and which are, as a consequence, not a part of the data I here consider.

Definitional issues

FMG

16. Throughout this report I use the common abbreviation ‘FMG’ to mean the Fortescue Metals Group Ltd. This includes its staff and founder Dr Andrew Forrest and its subsidiary companies. I use the abbreviation to mean the company as a corporate entity that is understood to be responsible for certain activities and actions. This reflects how the abbreviation is generally used by those with whom I have worked. I do not use the term with any special legal meaning.

Solomon Hub

17. Based on the assumptions I am asked to adopt I use the term ‘Solomon Hub’ to mean the open-cut iron ore mine in the Hamersley Ranges located 60km north of Tom Price.

² KPFN (2014), 20-23.

³ E.g. Palmer 2014, fn 163 (page 67), fn 226 (page 120) and fn 232 (page 122).

It comprises the Firetail, Kings Valley and Queens Valley mines, along with associated roads, infrastructure, accommodation camps and railway lines. I provide my own assessment of the geographic extent of the Hub (based on 2019 data) in chapter 6 (paragraphs 307 to 311 and Figures).

Claim area

18. I refer to the 'Yindjibarndi claim area' or 'claim area' to mean the land and waters which comprises the Yindjibarndi No. 1 native title determination area.

Customary

19. I use the term 'customary' when writing of what is likely to have been a pre-contact practice, social arrangement or belief or one that can be shown to find its roots or origins in pre-sovereignty laws and customs. Thus, a customary practice is one that is likely to have been in evidence prior to sovereignty or effective sovereignty or, in its contemporary manifestation, one that is shown to be radical, that is rooted in pre-sovereignty laws and customs. I thus use the term 'customary' to identify cultural beliefs and practices that might be called 'traditional' in the sense required when considering native title matters.

Law

20. The English word 'Law' represents a significant concept in Yindjibarndi religious belief and practice. It represents a body of jural-like rules that many writers have reported for Aboriginal Australian groups (Berndt, R.M. and C.H. 1977, 363). In this report I use the term to mean those rules and normative referents which are believed to have been supernaturally ordained and have a continuing sanctity and relevance within Yindjibarndi society. Since the term constitutes a specific rather than a generic name for a cultural phenomenon, I consider it to be a proper noun and so merits an initial capital letter. I consider this word further in paragraph 49 below.

Orthography

21. I have set out my approach to the spelling of Yindjibarndi words in my 2014 report (Palmer 2014, v). For the convenience of the reader I reproduce this account below, with minor amendments.

There has been considerable variation over time in the orthography used when writing the Yindjibarndi language. The orthography provided in one publication (Juluwarlu Aboriginal Corporation 2008, 240) recognises both short and long vowels, retroflex rd, rl, and rn but favours rr for trilled r sound reserving single r for rhotics.

I here use a practical orthography consistent with that suggested above, but I have simplified it. There are three vowels distinguished (a, i and u) and their long forms are evident in the language, but are generally not marked in this report. Stops are b, d, g and j, with retroflex rd and dental th. Other retroflexes (n and l), where identified, are indicated by use of r before the consonant. Nasals are m, nh, n, ny and ng. Laterals are lh, l and ly. Rolled rr and retroflex r are differentiated, but this may not always be reflected in the orthography. Glides are w and y.

Sounds not obvious to an English speaker may be ny as in English ‘canyon’, while ly is similar to the li sound on ‘million’. The dental lateral lh is made by saying l with the blade of the tongue against the back of the top of the teeth and dental nasal nh is produced in the same way when saying n. Neither has an English equivalent. Dental stop th is pronounced with the blade of the tongue against the back of the top of the teeth, like ‘thin’ in English. Ng is pronounced as in English ‘sing’. W, y, n, l and m are pronounced as in English.

When quoting the work of other writers I have retained their spelling. Names that are commonly used in the region have been spelt consistent with that common usage.

Palmer 2014, v.

22. The orthography adopted is to some extent one that seeks to represent the Yindjibarndi language in terms of its articulation. This means that some words, if read according to conventional English conventions, will not reflect the Yindjibarndi pronunciation. For example, the common retroflex in Yindjibarndi is denoted by an ‘r’ which marks the position of the tongue (curled back against the roof of the mouth) when pronouncing a consonant, not a phoneme in itself. Thus the Yindjibarndi word *wirrard* (spiritual self) could be mispronounced as ‘wirr rare’ (the second syllable like English ‘card’) whereas, by my hearing, the second syllable is much shorter and almost akin to English ‘rut’. Similarly, Yindjibarndi Burndud, the name for the creative and ordaining song line, has the first syllable more akin to English ‘bun’ but with a retroflex ‘r’ and not like English ‘burn’. In general all Yindjibarndi words have the stress on the first syllable.
23. With the exception of words I have treated as proper nouns Yindjibarndi words are italicised without initial capital unless commencing a sentence. Proper nouns have initial capital letter and are not italicised.

Kin terms (abbreviations).

24. In this report I refer to kin terms by means of conventional abbreviations. Thus F = father, MF = mother’s father, mm = mother’s mother, z = sister, S = son and so on. Males are distinguished from females by the use of the upper case for the former and the

lower case for the latter. A fuller account of these conventions is provided by Sutton (2003, 181-2).

Names that signify division

25. During my field work with Yindjibarndi people I found that generally reference was made to the members of the WMYAC group as ‘Wirlumurra’, ‘Wirlumarra’ or Wirilimurra. Weelumurra is also the name of a creek that runs northward to the west of the Solomon Hub mine area.⁴ In this account I refer to members of this group generally as ‘Wirlumurra’ except when making reference to the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) when I preserve the spelling adopted by that organisation. Members of the Yindjibarndi Aboriginal Corporation are often referred to together by the abbreviation ‘YAC’, a term of reference I also adopt in the following account. Members of WMYAC may also be members of YAC by virtue of being native title holders in the Yindjibarndi determination areas. However, the evident social divide is reflected in the use of differentiating names.
26. The Yindjibarndi Ngurra Aboriginal Corporation (YNAC) is the RNTBC (Registered Native Title Body Corporate) holding native title rights and interests in the Yindjibarndi (No. 1) claim area on trust for the Yindjibarndi People. The Yindjibarndi Aboriginal Corporation (YAC), is the RNTBC holding native title rights and interests in the,

2005 Federal Court determination of native title (in *Daniel v Western Australia* [2005] FCA 536, as varied by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78), and YAC holds those rights and interests on trust for the Yindjibarndi People.

YAC is also the lawfully authorised agent of the Yindjibarndi People in respect of their common law native title rights in the area of land and waters covered by the Yindjibarndi #1 native title claim.

YAC is the first point of contact for anyone wishing to undertake any activities in Yindjibarndi Country that may affect the native title rights and interests of the Yindjibarndi People.

<https://www.businessnews.com.au/Company/Yindjibarndi-Aboriginal-Corporation> accessed 11 May 2022.

⁴ The spelling adopted in *Warrie* [2017] FCA 803 is Wirlumarra (see, for example *ibid.*, [240]).

Details required for an expert report

27. The brief provided to Appleby Consulting required that I comply with the obligations of expert witnesses in the Federal Court of Australia as amended from time to time.⁵ I acknowledge that I have read, understood and complied with the Practice Notes and the 'Harmonised Expert Witness Code of Conduct' to the best of my knowledge and ability and I agree to be bound by them.
28. I acknowledge that my opinions are based wholly or substantially on specialised knowledge arising from my training, study or experience.
29. The issues and questions that I was asked to address and the instructions given to me are set out in Appendix A to this report.
30. Sources upon which I base an expert view are identified consistent with scholarly practice by means of a footnoted or parenthetical reference in the text. Bibliographic references are listed at the end of this report.
31. Particulars of my training, study or experience by which I have acquired my specialised knowledge are set out in my *curriculum vitae* which is Appendix B to this report.
32. In this report my expert opinion is developed from data derived from a number of different sources. These include field data, the ethnographic and scholarly literature, archival sources and my own study, training and experience as an anthropologist. These sources are identified in the text. In some cases, opinions are derived from propositions and understandings which are common to the profession and discipline of anthropology. Where practical these are attested by reference to a relevant work of anthropology. Each opinion can be examined in relation to the data from whence it is derived. Facts which are assumed are designated in the body of the report by the use of a qualifying phrase such as, 'I have assumed' such and such to be the case. I set out my expert opinion as derived from these data or assumptions and distinguish that opinion by an identifying phrase such as, 'in my view' or 'in my opinion', meaning that I base the opinion wholly or substantially on my specialised knowledge.
33. Where I have relied on literature or archival materials in developing my expert view, I have explained in the following accounts my reasons for any reliance placed on such material as well as the degree to which I have placed reliance on that material.
34. In cases where I have relied on the view of another anthropologist or writer, I have made clear in my account the author of the view and the opinion he or she had expressed.

⁵ 'Expert Evidence Practice Notes (GPN-EXPT)' (J L B Allsop, Chief Justice, 25 October 2016) and 'Harmonised Expert Witness Code of Conduct'.

35. I have signed this report at the declaration required for an expert report which is at the end of the report.
36. I have indicated in the report any qualifications placed upon an opinion expressed in the report without which the report might be incomplete or inaccurate as well as indicating whether an opinion expressed in the report is not a concluded opinion because of insufficient research or data.

2 ASPECTS OF YINDJIBARNDI CULTURE EVIDENT IN AN APPRECIATION OF LOSS OR IMPAIRMENT

UNITY OF PARTS

37. In this report I use the term ‘culture’ as an embracive term to mean the rules, normative values, ways of doing things, beliefs and customs of the Yindjibarndi people. The scope of this report precludes an exhaustive account of this topic and since my principal focus is issues of loss and impairment, my attention will be on those aspects of Yindjibarndi culture that may have relevance in this regard. Based on my research undertaken for this inquiry, as well as my knowledge and understanding of Australian Indigenous cultures more generally, I am of the following opinion. For the Yindjibarndi (as for many other groups) there is a fundamental and elemental aspect of the multiple and component parts of their culture. This I set out in the form of a statement in the following paragraph 38 below. I then provide the bases upon which I have come to these opinions (paragraphs 39 to 89 below) followed by my further conclusions relating to them (paragraphs 90 to 105 below).
38. Yindjibarndi culture is in essence sanctified through spiritual endowments. The normative system which frames the manner whereby Yindjibarndi people conduct all their activities is believed to have been ordained by spiritual powers in times past and has enduring authority and relevance through time to the present. Such action includes how country is imagined, treated and managed, the rules that prescribe social relationships and all other action; economic, mundane and sacred. Consequently, there is no distinction made between quotidian activity and sacred or religious belief and related actions, including ritual performance. The separation of the sacred from the profane or secular which is a feature of mainstream Western thought is not a feature of Yindjibarndi thinking. The unity of secular and spiritual is fundamental to an appreciation of how Yindjibarndi people view their world, both past, present and future. It is the basis for a comprehension of the manner of their relationships with others with whom they interact and their sense of autonomy, identity and worth as Yindjibarndi individuals.
39. An understanding of the comprehensive nature of Aboriginal religious belief encompassing all aspects of lived experience is no new thing. The pioneering anthropologist, Phyllis Kaberry, writing principally of Indigenous people in the Kimberley region (north of Western Australia) in 1939, concluded that both men and women were linked with the Dreaming (the *ngarungani* of her ethnography) and totemic

beings so that they were born with a 'spiritual heritage' (Kaberry 1939, 217). These 'totemic ancestors', wrote Kaberry, were not merely,

fantastic beings of a mythical past having little relevance for present-day actualities. They moulded the contours of the country, channelled the hills with streams, and splintered the plains with rivers and billabongs. They laid down the pattern which life must follow; they instituted the law of marriage, the kinship obligations, and methods of obtaining food. Through the reciprocity of kinship rights and duties the individual is helped and supported in his daily activities, in the satisfying of needs with a minimum of social conflict.

Kaberry 1939, 217.

40. Within the economic domain, less obviously perhaps understood to have spiritual ordinance,

the totemic ancestors have left in the keeping of the old men and women of the horde the power to ensure by ritual means a normal supply of game, fish, and food, and an adequate rainfall for the coming season.

Ibid., 217-8.

41. Some years later, the anthropologist R.M. Berndt provided a similar analysis. He wrote of the mythic beings who populated the creative era, that they,

are believed to have been responsible not only for creating the natural species, which included man, and much of the physiographic features of the country associated with them. Importantly also, in this context, they are believed to have established an Aboriginal way of life, its social institutions and its patterns of activity: in other words, they established a moral order, comprising a series of "oughts" and "ought nots", indicating what people should and should not do.

Berndt, 1970, 216-217.

42. Consequently Aboriginal religion is, in Berndt's opinion, 'intimately associated with social living, especially in relation to the natural environment and its economic resources' (*ibid.*, 217). Berndt goes on to provide an example of the immediacy of the spiritually ordained world of the creative era in the daily lives of contemporary people.

If, for example, a specific spirit character is also a shape-changing goanna man, then all goanna today are a reflection of that spirit, all contain its essential Dreaming essence. The spirit character concerned is perpetuated in its continued presence on this earth, through them. This orientation is communicable to man. It emphasizes the essential unity of man with nature, where man is viewed as being for general purposes part of nature, not

opposed to it; as having a close and personal interrelationship with his natural and physical surroundings.

Ibid., 217.

YINDJIBARNDI COSMOLOGY

Creation

43. In this report I use the word ‘cosmology’ to mean a theory or doctrine of the Yindjibarndi universe as an ordered whole, and the laws that are believed to govern it. The Yindjibarndi people have explained the fundamentals of their cosmology in a book which they compiled which features a part of Yindjibarndi country known by its English name, Gregory Gorge (Juluwarlu Aboriginal Corporation 2008).⁶ An accessible and expanded account by Yindjibarndi people of their religious beliefs is to be found on the Juluwarlu website.⁷ It is their belief that during a period of the far past the physical world was soft, like clay, waiting to be shaped and formed. This creative period is called in Yindjibarndi, Ngurra Nyujunggamu which is commonly translated as ‘when the world was soft’⁸ (Juluwarlu Aboriginal Corporation 2008, vii). The great creative spirit, named Mingala, along with the spirit beings he created, some of whom were known as Marga, shaped the country, elevated the then low sky and lifted the world from the sea (*ibid.*). The Yindjibarndi’s own account of this time runs as follows.

When Mingala made the Marga – the creation spirits who were the first beings belonging to this country – the Marga rose singing from the soft world after Mingala lifted the sky and earth out of the sea.

In the Ngurra Nyujunggamu, the Mingala, the Marga moved about the country singing and creating everything we see in the natural world today – hills, gullies, plains, waterways and springs, birds, animals and plants. Their activities and every place are recalled in our inherited Yindjibarndi stories and our sacred Burndud songs that have been passed down to us by our voices and memories through 2,000 generations.

<https://juluwarlu.com.au/our-beliefs/ngurra-nyujunggamu/> accessed 19th April 2022.

⁶ Juluwarlu Aboriginal Corporation was established 2000, following a cultural recording and archiving project started by Lorraine Coppin in the Ngurrawaana Community on the Yindjibarndi Tablelands in 1998 <https://juluwarlu.com.au/our-story/> accessed 19 April 2022.

⁷ <https://juluwarlu.com.au/our-beliefs/> accessed 19 April 2022.

⁸ In this report I use initial capitals for words that might reasonably be regarded as proper nouns and do not italicise them. Other words from the Yindjibarndi language are italicised and follow the orthography outlined in paragraph 21 above. Ngurra Nyujunggamu is sometimes equated with the term ‘Dreaming’ (Juluwarlu Aboriginal Corporation and Rijavec 2004, 2). *Ngurra* in this context, means ‘country’ or ‘earth’ (Wordick 1982, 323) and *nyuju* ‘soft’ (*ibid.*, 330), with suffix *-ngka* (meaning place; locative; Wordick 1982, 122, 230) and *-mu* (meaning ‘before’; Wordick 1982, 131, 311).

44. In these early times, animals, plants and birds were people and were the caretakers of language and the rules for behaviour and culture which were ordained by the Mingala. Through these various beings and their activities, now recounted as sacred song and text, moral obligations and relationship structures were taught (*ibid.*). The account provided by the Juluwarlu Aboriginal Corporation continues,

The Dreaming and Dreamtimes stories provide the basic rules of social conduct for Yindjibarndi people. These rules apply to all aspects of relationships between men, women and children, and are the basis of all Law governing country, environment, flora, fauna, culture and tradition. The Law connects people to the spirit world and is maintained through honour, celebration and ceremony.

Juluwarlu Aboriginal Corporation 2008, vii.

45. The period of Ngurra Nyujunggamu witnessed the activities of numerous mythic beings as well as the institution of the laws and rules that would govern the *ngaardangarli* (Yindjibarndi people). These Yindjibarndi people were first created by and then left behind by the Mingala to use and occupy the land that he had given to them. Michael Woodley gave me the following account of this creation time which I have edited from an original voice recording I made.

... Mingala made the *ngurra* [country] ... before he made the *ngaarda* [people] he kind of explored the laws and the land with the animals. So, all the birds were the first ones who occupied the land, you know in terms of how systems might work and laws might work.

KPVR 5, Michael Woodley with Middleton Cheedy and Kevin Guinness.

46. The narratives which are now a part of Yindjibarndi oral tradition tell of the moral weaknesses and failures of these animals as they succumbed to greed, jealousy, covetousness and behaviours that contravened the rules which the Mingala had set down for them (*ibid.*; 5). By Michael's account, Mingala next made,

other beings like the Nyingara or Stone Man, they also came into play as well and Dreamtime stories as well and what happened to him with the power and the greed and stuff so he said well that's not working, so then he made the *ngaarda* [Yindjibarndi person] then, right. The *ngaarda* was the perfect specimen kind of the perfect specimen for him.

KPVR 5, Michael Woodley with Middleton Cheedy and Kevin Guinness.

47. In this way Mingala tested all the laws he had decreed, but in the end found the birds and other beings unworthy of the trust he had placed in them, so he created humans (*ngaarda*)

to take their place. Aboriginal people, known as *ngaardangarli*⁹ were created from the Marga themselves (Juluwarlu Aboriginal Corporation and Rijavec 2004, 2). While the *ngaarda* were given the land, it came with a huge responsibility.

Well, he [Mingala] made the *ngurra* alright. He wanted the *ngurra* to also be looked after and cared for so he, ... split up the language groups to ... look after the land [telling them] 'You have to maintain your existence as a *ngaarda* now. As the beings I'm leaving in charge right because I'm taking everything else with me.' So, he took the Marga back with him he took all the other beings back with him and he left the *ngaarda* here now to look after the land for us – for him. And he said to them 'You fellows to maintain your existence as the first *ngaardangarli* [human beings], here's the land, here's who you are, here's your land and here's the laws that comes with this land. And the Law is that the *ngurra* is your first responsibility. Secondly is your community, people, and then the languages and cultures and all that sort of stuff which he gave us.

KPVR 6, Michael Woodley with Middleton Cheedy and Kevin Guinness.

48. The Juluwarlu website expresses the same belief.

Mingala and the Marga spirits believed that everything needed had been created. They wanted to pass on responsibility for the management of their great created world, and decided that Ngaardangarli were their choice for custodians for the Ngaardangarli might be the ones who would prove most faithful to the Law and the most capable in carrying the powers of increase and regeneration necessary to maintain equilibrium between everything.

<https://juluwarlu.com.au/our-beliefs/ngurra-nyujunggamu/> accessed 19th April 2022.

49. As can be seen from a perusal of these various accounts, the term 'law' is, in some accounts, capitalised. The system which is believed to have been laid down by the Mingala has jural-like qualities and in common with many other areas of Aboriginal Australia, is regarded as a determining rubric for all social, economic and religious action. Its representation as 'the Law' (that is, in the singular and with an initial capital) is, in my opinion and based on my many years of anthropological research and study, a way of reflecting the significance of the body of normative prescriptions and their singularity as a combined and indivisible whole.

Burdud: the ordaining and sustaining song

50. The Law which the Marga prescribed, the landscape, its natural ecology and all living things are believed to have been the product of a series of ritualised songs and associated

⁹ Ngaarda, 'Aboriginal person' (Wordick 1982, 315) plus plural suffix *-ngarli* i.e. 'many', (*ibid.*, 317).

actions known to the Yindjibarndi as Burndud. I noted the following information from an interview with Michael Woodley, Middleton Cheedy and Stanley Warrie.

They tell me that the Burndud came first – along with the creation of the world. The songs created the landscape and the animals. If there had not been the Burndud there would be no landscape.

KPFN, 31.

51. I also noted,

I ask Michael who gave the Burndud and he said it was Mingala who sent it out – or *tharna*.¹⁰ It was provided by the Mingala as a guide for the Marga.

KPFN, 32 Michael Woodley.

52. Michael explained that Mingala realised that the country he had created was too large for one *ngaarda* and so he must have commented,

‘This is too big for one *ngaarda* to have. He’ll have too many problems. How you going to manage this land, with all these rules and all these laws and stuff? One *ngaarda* can’t do that.’ So he took the first song of the country which was the Burndud and cut the Burndud up into little pieces, sections.

KPVR, 5, Michael Woodley.

53. In this way Mingala gave the people the language of the Burndud dividing up the *ngaarda* into the language groups by which people identify today.

He [Mingala] gave us the language then, so he took the language of the Burndud, and he said, ‘Well here’s the Yindjibarndi’, expanded that, another one here, ‘Here’s Ngarluma’ and expanded that, Banjima, Gurama all round and he expanded all of the, what do you call it, the language, from the pieces of song from the Burndud.

KPVR, 5, Michael Woodley.¹¹

54. Mingala then took the people to a place called Gumana Hill which is located a short distance downstream from Gregory Gorge, on the Fortescue River.

and he put us all through the ceremony test. He’s the first Law Birdarra. Then he tested the Birdarra Law with all of the groups and he found

¹⁰ ‘Send’, past tense; Wordick 1982, 250. Wordick defines the root *thaa* to mean, ‘allow, permit, let; release, let go, drop, send’ (*ibid.*, 347) indicating, by my reading, a greater sense of purpose and direction than the single English word ‘send’ might convey.

¹¹ See also <https://juluwarlu.com.au/our-beliefs/ngurra-nyujunggamu/> for a similar account. Accessed 19 April, 2022.

Yindjibarndi had the ones who had the, he found the what'd you call it ... the one he thought, 'Well you got the right character, you didn't bleed so much' [They had] a ... personality that satisfied him and then he said, 'That place is your Law your Birdarra Law and this your *ngurra* now. Yindjibarndi.

KPVR, 5, Michael Woodley.

55. The Law, with its teachings and normative references which are regarded as having jural-like qualities that direct all Yindjibarndi in their social, religious and economic actions is called Birdarra Law.¹² The Burndud is the cycle of songs first sung at the original ritual ground called Ganyirryanha located on the Birlinbirlin (flat rocks) of the Fortescue River.¹³ Burndud is also the name of the circular depression in the flat rock at this place which mark the dancing feet of the women who first performed the accompanying ritual dance, when the world was soft.¹⁴
56. Based on these accounts I am of the opinion that the word 'Burndud' identifies a song cycle, which continues to be sung during annual Yindjibarndi initiation rituals, and the identity of a natural feature that attests to the events of the Ngurra Nyujunggamu. Moreover, it is a concept that encapsulates the spiritual potency of world creating powers. Burndud as a lived ritual experience is believed to reference all living things which were a product of its instigating performance. Burndud resonates with the totality of Yindjibarndi *ngurra* (country) and the people, plants and animals that are a part of it. The performance of Burndud as contemporary ritual is believed to renew and replenish the life force of the natural world¹⁵, as well as to reinforce the normative values its Law set out.¹⁶
57. These ritual activities today mark a significant event in the annual Yindjibarndi calendar, where the Burndud mysteries are rehearsed and reproduced through successive generations of younger men and women at the Law ground at Woodbrook, close to the town of Roebourne. It is beyond the scope of this summary account to review these rituals and their social meanings here. However, some idea of the richness and

¹² <https://juluwarlu.com.au/our-beliefs/the-burndud/> and <https://juluwarlu.com.au/our-beliefs/ngurangarli-murna-birlinbirlin/> accessed 19 April 2022;

¹³ <https://juluwarlu.com.au/our-beliefs/the-burndud/> accessed 19 April 2022; Juluwarlu Aboriginal Corporation 2008, 98-117

¹⁴ <https://juluwarlu.com.au/our-beliefs/ngurangarli-murna-birlinbirlin/> accessed 19 April 2022.

¹⁵ 'We sing plants into life in the Burndud Law song cycle' <https://juluwarlu.com.au/our-beliefs/plants-flora/> accessed 19 April 2022.

¹⁶ 'Many of our animals are sung about in the Burndud, the song cycle which is our Law. There are also rules set out in our Law about who can and cannot eat or touch certain animals, birds, fish and reptiles, and the times or places these restrictions apply. Everyone holds responsibility for ensuring their well-being and survival.' <https://juluwarlu.com.au/our-beliefs/animals-fauna/> accessed 19 April 2022.

complexity of these rituals can be gained by viewing materials developed by the Yindjibarndi community on the internet.¹⁷

The bestowal of country

58. Implicit in this creation process was a bestowal of country (*ngurra*) on different Aboriginal groups whose autonomy was framed by reference to their unique language (see paragraph 47 above). The portions of the Burndud, the sacred songs that brought into existence the language, the Law and the country itself, defined the country of the different groups;

so he [Mingala] took the language of the Burndud, and he said, ‘Well here’s the Yindjibarndi’, expanded that ...

[Following certain ritual trials,]

and then he said that place is your Law your Birdarra Law and this your *ngurra* now. Yindjibarndi.

He wanted the *ngurra* to also be looked after and cared for so he, like I said, ... they split up the language groups to say to look after the land [repeats] and you have to maintain your existence as a *ngaarda* now.

KPVR 5-6, Michael Woodley.

59. The land was bestowed as a sacred trust – it had rules for its use and responsibilities for its exploitation.¹⁸ This bestowal of land is understood by Yindjibarndi to constitute an ‘inheritance’. When giving evidence in the Yindjibarndi No. 1 trial Middleton Cheedy stated that different Yindjibarndi families were responsible for different areas of Yindjibarndi land.¹⁹ He went on,

Middleton Cheedy: Who gave them? It was their inheritance, handed down from generation to generation.

His Honour: What about in this area where we're sitting today? Do you know who's got the *ngurra* for that, which family group?

Middleton Cheedy: The – the man sitting next to me.

¹⁷ See, for example, <https://www.facebook.com/juluwarlu/videos/yindjibarndi-law-insights/911766705654431/> and <https://juluwarlu.com.au/our-beliefs/law-ceremony/> accessed 22 April 2022.

¹⁸ KPFN, 17, Michael Woodley.

¹⁹ WAD6005/2003, 08.09.15, p. 252 Middleton Cheedy. Xxn Mr O’Gorman

His Honour: So that's Mr Michael Woodley.

Middleton Cheedy: Yes.

WAD6005/2003, 08.09.15, p. 252 Middleton Cheedy. Xxn Mr O’Gorman.²⁰

60. Stanley Warrie, Middleton Cheedy and Kevin Guinness told me that *ngurra* meant ‘your home, your inheritance, your place’.²¹ I then noted, based on the discussion that followed,

The suffix *-ra* [attached to *ngurra*] makes the meaning of ‘you belong to Yindjibarndi country’ and ‘you heir to that place’. I understand this to also mean ‘countryman’ or one who owns the *ngurra*. Other examples noted were, ‘I am Yindjibarndi, I am *ngurrara* for Yindjibarndi country.’ This includes the Solomon Hub. Middleton draws on the whiteboard a rectangle which he says represents the whole of Yindjibarndi country or *ngurra*. The lines are the boundaries. He again says that this is ‘your inheritance’. And ‘what’s in it [the rectangular representation] is yours’. Also, ‘my home’.

Within Yindjibarndi *ngurra* are different areas (12 or 13 I think from memory) which are associated with particular families. They are ‘where you are from’ in each case. So, for Middleton, these places are Winjawarranah (Hooley Stn) which was his father’s country and Tambrey which is for his mother. Middleton was born at Coolawanyah, so that too is important for him.

KPFN, 2, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

61. This bestowal of country areas in the Ngurra Nyujunggamu also conferred dominion. ‘Michael Woodley told me,

That’s the power given to us by the Mingala – this is your place; you got a right to control who comes here.

Mingala gave the country and the rights to it during the creation time and he gave us a set of rules, how it is to be looked after and managed.

KPFN, 17, Michael Woodley.

62. Michael Woodley understands the division of the original country of the Ngurra Nyujunggamu set the boundaries for the various named language groups, making mention of the neighbouring Banjima, Gurama, Ngarluma and others.²² The first rule is that you do not go onto anyone’s country, ‘before you go and see that mob and ask them

²⁰ The Court was sitting at Garliwinjinha approximately 50 kms north west of the FMG’s Solomon Hub.

²¹ KPFN, 2, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

²² KPVR, 6. Michael Woodley.

permission'.²³ In this there is a ready distinction between *ngurrara* (that is, those with rights to the country) and others who do not have those rights who are termed *manjangu* or 'strangers' in English.²⁴ The word can also mean 'unwelcome' and because *manjangu* are unknown they readily evoke negative responses.²⁵ In practical terms *ngurrara* have free and exclusive use of their *ngurra*. *Manjangu*, on the other hand, must ask permission to enter land that is not their *ngurra*. Critical to all aspects of this account, by my reading, is that this not only constitutes a system of rights to country, but it is one that was laid down through supernatural agency in the creative period. As god-given Law its contravention through trespass is considered to have dire consequences. I asked Michael what the consequence for breaking this Law was, particularly in earlier times. He replied simply, 'Death'.²⁶

63. Part of the *ngurrara*'s duty to country is to 'look after' strangers who seek to enter country and perform a ritual of introduction to ensure their safety. They should also accompany them or give them clear direction as to where they can go and what they may do.²⁷ This introduction to country has been well documented in the literature and court transcripts.²⁸ Thus *manjangu* may access country which is not theirs, but must do so according to Yindjibarndi cultural practices. This ensures not only the integrity of the country but also the physical and spiritual safety of the *manjangu*. A stranger has no knowledge of the fatal spirituality potentialities of the countryside and its innate cultural values, and consequently might, albeit inadvertently, become a victim of a spirituality of which he or she has no comprehension.²⁹
64. These many aspects of the Yindjibarndi people's exclusive rights and duties to their country have been explored and recognised by the Court in the Yindjibarndi No. 1 native title application.³⁰

²³ KPVR, 6. Michael Woodley.

²⁴ KPFN, (2014), 7, Middleton Cheedy, Bruce Woodley, Barry Pat, Harry Mills, Stanley Warrie, Angus Mack.

²⁵ KPFN, (2014), 10. Michael Woodley.

²⁶ KPVR, 7, Michael Woodley.

²⁷ KPFN, 7 (2014), Middleton Cheedy, Bruce Woodley, Barry Pat, Harry Mills and Stanley Warrie. Angus Mack.

²⁸ See, for example, Juluwarlu Aboriginal Corporation 2007, ii, 71; 2008, viii; WAD6005/2003, 07.09.15, pp. 88, 89 Michael Woodley, Xn Mr Hughston; WAD6005/2003, 08.09.15 p.182-3 Charlie Cheedy, Xn Mr Hughston.

²⁹ I have provided an account of these rules and associated practices in an expert report prepared for the Yindjibarndi No. 1 application (Palmer 2014, 388-399).

³⁰ See, for example, (*Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* [2017] FCA 803 [23] [54-55] [66-78] [87] [89] [95] [106] [111] [113-4] [122] [144-148] [149-151] and [381]).

Other beings of the Ngurra Nyujunggamu.

65. There were other beings that traversed Yindjibarndi country during the creative era, leaving their marks on the landscape and are commemorated in oral narratives, songs and imprinted on the countryside itself, as well as now represented by its flora and fauna. The examples provided here demonstrate how the moral order came to be defined in a time before humankind occupied the known Yindjibarndi world. Actions such as greed, violence and the violation of certain kinship relationships which fell outside of the normative values prescribed in the new creation were punished by transformation, evident today within the Yindjibarndi landscape or in the natural world as animals and birds. The misdirection that characterises the actions of these mythic beings and their often dire consequences now underpins and endorses the maintenance of core moral values. These constitute the normative system of laws and customs upheld by the Yindjibarndi today.
66. The Yindjibarndi native title holders have conveniently assembled some of these narratives on the Juluwarlu website. I summarise these in what follows and provide the relevant link in each case so the fuller version (and, sometimes, illustrative materials) can be reviewed.

Bunggaliyarra³¹ (two sisters-in-law together)

Mingala sang the Gurdigurdi sisters into the sky where they became the Mayalarri (Pleiades or Seven sisters). A Marga sang the Burndud and two of the sisters fell from the sky into the sea near Murujuga.³² The power of the Burndud song drove them from the sea. The Marga wanted the women as their wives and chased them. As they fled they created and named many places before being turned into anthills before ascending to the sky.

The anthills that commemorate these acts have been flooded by the Harding River dam.

Barrimirndi³³

The Barrimirndi, a huge sea serpent, became angry because he smelled food that two initiates had eaten which was forbidden to them. The snake travelled inland, making the Fortescue River, many pools and other natural features, sometimes travelling underground. The pools are named sequentially in the narrative. Eventually he found the boys and swallowed them in a whirlwind. The people tried to prize the boys out from inside the

³¹ <https://juluwarlu.com.au/our-beliefs/bunggaliyarra/> accessed 19 April, 2022. KPFN, 31, Michael Woodley.

³² Burrup Peninsula. <https://www.creativespirits.info/australia/western-australia/karratha/murujuga-burru-peninsula> accessed 20 April 2022.

³³ <https://juluwarlu.com.au/our-beliefs/ngurra-nyujung-gamu-a-sea-serpent-made-millstream-pools/> accessed 19 April 2022; Juluwarlu Aboriginal Corporation 2008, 94-95; Juluwarlu Aboriginal Corporation 2007, vi-vii. Brandenstein 1970, vol II, 290-297.

serpent by poking sticks in the monster's anus. The serpent then drowned them all in the flood he created which is now a large pool in the river [Nhangangunha], Deep Reach Pool, Millstream].

Eaglehawk and crow³⁴

Eaglehawk was married to Black Kite. Eaglehawk's nephew (FZS³⁵) was Crow, who then had white feathers. Eaglehawk and Crow liked to hunt for rock wallaby. Crow desired Kite, even though it was a taboo relationship. Crow tricked Eaglehawk, entombing him in a cave while out hunting wallaby. Crow took Kite as his wife and moved away. Eaglehawk turned himself into an ant and escaped from the cave. He grew wings and sought Crow and Kite, finding them in their camp. He dragged Crow through the coals of his fire, turning him forever black. His eyes were also infected. Eaglehawk condemned Crow to live on refuse and to be a bird despised with a reputation for being greedy.

Wirringil (Quail) and Jirruny (Pelican)³⁶

Pelican fished while Quail looked after Pelican's children in a cave near Millstream. Pelican returned with fish which he and his family ate and they gave none to Quail. Pelicans today have a large beak which they used to store fish to keep them from Quail.

Next time Pelican went fishing Quail, angry at Pelican's selfishness, blocked the entrance to the cave and lit a big fire inside. Pelican's children were incinerated. When Pelican returned he asked where his children were and Quail pointed to the cave, where the children had been burnt to death. Quail then darted away quickly and Pelican was unable to catch her.

Today, no one can catch a quail as it moves so quickly. The place where the incident happened, called Malarni near Millstream, is now believed to ensure a good supply of babies.

Nyingara, Stone Man³⁷

Nyingara was a giant man made of stone who was hateful, greedy, mean and brutal. He lived on his own in the hills, visiting the camps of the Aboriginal people who otherwise were happy and free. They gave him cooked meat and knew that if they did not he would kill them with his stone hands or burn out their souls with his stare.

Seeking to rectify this situation and with the help of their gods, the people set a trap for Nyingara using the lure of a kangaroo tail, separated from the kangaroo's body, placed on a high hill. Round the tail the rocks were loosened and at the base of this hill they dug a big fire pit.

³⁴ <https://juluwarlu.com.au/our-beliefs/creation-stories/the-eagle-hawk-crow-and-black-kite/> accessed 19 April 2022.

³⁵ Based on the section system, Crow would have been Eaglehawk's sister's son, so that Crow's wife's mother would be the same section as Kite, and so his *nyrdi*, a relationship that allows for no contact or communication.

³⁶ <https://juluwarlu.com.au/our-beliefs/creation-stories/wirringil-and-jirruny-quail-and-the-pelicans> accessed 19 April 2022; Juluwarlu Aboriginal Corporation 2007, 96-98.

³⁷ <https://juluwarlu.com.au/our-beliefs/creation-stories/nyinkara-the-stone-man/> accessed 19 April, 2022.

When Nyingara visited the camp to get some meat, they told him of the fat kangaroo on the top of the hill, with its tail sticking out. Nyingara went to the place, pulled the tail not knowing it was already detached from the body. He fell backward on the loosened rocks and down into the fire pit below, where he burnt to death.

The different coloured rocks in Yindjibarndi country are the scattered parts of Nyingara's body, his bones, blood, fat and liver.

Barganyji (Olive Python)³⁸

Barganyji was a savage snake with huge sharp teeth and liked to eat flesh. Burlinyjirrmarra, a Marga who lived in Yindjibarndi country, went out hunting and was confronted by Barganyji. Burlinyjirrmarra ran off and Barganyji gave chase, the Marga hoping that the snake would get tired. Burlinyjirrmarra then sang a special song which made the Barganyji dizzy and blurred his vision. But it also made him snap his jaws in a frenzy. Eventually Burlinyjirrmarra saw a Snappy Gum which he climbed. Barganyji took a last bite, his jaws missing the Marga but instead sinking into the trunk of the tree smashing his teeth for ever, while his poison seeped into the tree.

Today the Barganyji is harmless to humans. He lives in the gorges and rock holes along Gamburdayinha [Hamersley Range] and around the Fortescue River.

Thalu: renewal and regeneration

67. The Yindjibarndi believe that during the Ngurra Nyujunggamu places were ordained that were replete with the spiritual essence of a particular plant, animal or other natural phenomenon.³⁹ Such locations, sometimes identified as piles of rocks, a placed stone, a particular tree or natural object are called *thalu* by Yindjibarndi people. The *thalu* were ordained through the Burndud and some are included in that song cycle. The Yindjibarndi state that there are,

hundreds of *thalu* (sacred ritual ceremonial increase sites) across our tablelands that are associated with our animals, birds, fish and reptiles, where the owners of the site perform rituals to ensure that sufficient numbers of every creature will be produced to keep all living things in balance.

Today, we continue working our *thalu*, and take care that our animals, birds, fish and reptiles are given every chance to survive so that every generation

³⁸ <https://juluwarlu.com.au/our-beliefs/creation-stories/olive-python-dreaming/> accessed 19 April 2022; KPFN, 32, Michael Woodley, with Middleton Cheedy and Stanley Warrie. I have standardized the Yindjibarndi names to reflect current orthography.

³⁹ Data in this paragraph are derived from <https://juluwarlu.com.au/our-beliefs/animals-fauna/> (accessed 20 April 2022); Juluwarlu Aboriginal Corporation, 2008, 30-33 and my own knowledge and experience of Yindjibarndi and neighbouring cultures (cf Palmer 1981, 405-408).

will inherit their country with same the abundance of living things as was given to us all by the Marga.

<https://juluwarlu.com.au/our-beliefs/animals-fauna/> accessed 20 April 2022.

68. It is the duty of those with responsibility for a *thalu* to both look after it (ensure its physical integrity) and ‘work it up’, that is, perform the requisite rituals for the increase and renewal of the species whose spiritual essence is deemed to reside in the place.⁴⁰
69. The ubiquitous nature of the *thalu* site in Yindjibarndi cosmology reflects, in my opinion, a belief that the natural order of things is wired to an infinite spiritual genesis that links the present physical world to the spiritual universe of the Ngurra Nyujunggamu. The celebration of *thalu* in the Burndud songs⁴¹ situates a contemporary spirituality of place within the metaphysical domain of the creative period whence all life, values, rules and cultural precedents emanated through supernatural ordinance.

The agency of song

70. While the Burndud is the central medium whereby the spirituality of Yindjibarndi country is both evoked and renewed, there are other forms of song that are recognised as a means whereby human kind is linked to the metaphysical realms and to places within the country (*ngurra*) in particular. *Jawi* is a word used of a song about a particular place or places.⁴² A *jawi* is composed by one individual but its origins are believed to lie within the spiritual realm of the Dreaming. Michael Woodley told the Federal Court when he gave evidence in 2015 about his continuing connection to Yindjibarndi country.

we always connected ... through our ceremonies. My old people, my great great grandfathers were connected always through country when they were given what we call a *jawi*, and the Buyawarri [dream⁴³] when - when the old people dreaming, the Tharngangarli [spirit of senior ritual leaders⁴⁴] from the country would come and grab them and ... take them on a journey and they will show them the event of what's happening somewhere else in country, and they will sing the song in the same time that they taking them for the journey, and the next day the old people get up and say, look, I went on the journey last night and - in my Dreaming in the Buyawarri [Dream] and this is what the Tharngangarli been show me. They showed me this

⁴⁰ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness; 19, Michael Woodley with Middleton Cheedy and Kevin Guinness.

⁴¹ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴² Juluwarlu Aboriginal Corporation 2008, viii.

⁴³ Footnote added: Rares J in his account of Michael Woodley's evidence defined Buyawarri as 'dreaming mediation' (*Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia [2017] FCA 803 [48]*).

⁴⁴ *Tharngu* is a ritual leader or 'elder'. (See WAD6005/2003, 8.09.15, p, 238 Middleton Cheedy. Xn Ms Jowett, lines 6-10.) The suffix *-ngarli* gives plural and the sense of 'group together' and in this case means 'spirits of the old ritual leaders'. See WAD6005/2003, 08.09.15, p, 297 Rosemary Woodley. Xxn Mr O'Gorman, line 25.

event happening and this was happening and this happens and that's how we always stay ... connected to the country.

WAD6005/2003, 07.09.15, p 53. Michael Woodley. Xn Mr Hughston.

71. Based on this account it is reasonable to conclude that a *jawi* is believed to have been given by the transcendent powers to an individual through the agency of natural sleep, and evidenced through a dream. A *jawi* is not a secular song since it is believed to have its origins and present substance within a spiritual sphere. It reproduces that spirituality through the agency of performance.
72. There are many examples of *jawi* contained within the Yindjibarndi publications cited above. Some have been passed down to successive generations and are likely to be over a hundred years old.⁴⁵

Galharra: the foundation of all social relations

73. Yindjibarndi social relationships are structured according to principles laid down by the Marga in the Ngurra Nyujunggamu. The system, known as the Galharra, is represented by the Yindjibarndi as emerging from the rock at the first Burndud ritual initiation site at Ganyirranha, located in the flat rocks bed of the Fortescue River, downstream from Gregory Gorge.⁴⁶ I have reproduced an illustration from the Juluwarlu website as Figure 2.1 below which illustrates this ideal and belief.
74. According to this system all Yindjibarndi people belong to one of four named social categories. Ego's Galharra is determined by that of his or her parents. Marriage choice is limited to one of the four social categories, others being ideally forbidden. The system, as followed by the Yindjibarndi, can be shown in diagrammatic form in Figure 2.2 which is on page 26.

⁴⁵ See, for example, 'Gambulanha song' (Hamersley Range song), Jawi in Yindjibarndi by Toby Wiliguru Bambardu (died 1934), Juluwarlu Aboriginal Corporation and Rijavec 2004, 19. Brandenstein and Thomas (1974) published a selection of 80 *jawi* collected mostly from Roebourne which include songs from a number of west Pilbara languages, including Yindjibarndi. The Ngarluma word of *jawi* is *tabi*, a term used throughout the collection. See also Brandenstein 1970, 12.

⁴⁶ Juluwarlu Aboriginal Corporation 2008, 105; <https://juluwarlu.com.au/our-beliefs/law-ceremony/galharra-skin-groups/> accessed 20 April, 2022.



Figure 2.1: the Galharra system superimposed on the metamorphosed Burndud dancing circle at Ganyirriyany.

Source: <https://juluwarlu.com.au/our-beliefs/law-ceremony/galharra-skin-groups/>

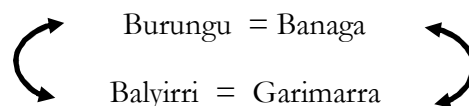


Figure 2.2: the Galharra system of the Yindjibarndi.

Source: KPFN 16. Stanley Warrie, Middleton Cheedy and Kevin Guinness.

75. According to this system,

A Banaga man must marry a Burungu woman and all their children are Balyirri. A Burungu man marries a Banaga woman and their children are Garimarra. On the other side, Garimarra men must marry Balyirri women and their children are Burungu. Balyirri men marry Garimarra women and their children become Banaga.

<https://juluwarlu.com.au/our-beliefs/law-ceremony/galharra-skin-groups/> Accessed 1 April 2022.

76. This categorisation extends to plants, animals and places and areas of spiritual importance, resulting in particular relationships between people and the natural world

who are believed to share the same Galharra.⁴⁷ Social categories also determine roles in the Birdarra rituals in which the Burndud is celebrated and evoked. The social categories effectively divide all Yindjibarndi people into two generational moieties (Burungu/Banaga and Balyirra/Garimarra). Those of the initiates first ascending generation (fathers, mothers, uncles and aunts) are his ‘bosses’ or *garngu*⁴⁸ while those of his own generation are his ‘workers’ or *jinyjanungu*.⁴⁹ In day to day terms the operation of the system of social categories (also commonly referred to as ‘skins’) means that all Yindjibarndi people can relate to all known others (including those who belong to other language groups) by reference to their Galharra, even when consanguineal relationships are either not known or do not exist. There are strict rules that are embedded within the Galharra system that prescribe how relationships between categories of kin are to be conducted – ranging from familiarity and relaxed behaviour to absolute avoidance. Galharra underpins Yindjibarndi social living and, like other social institutions discussed in this chapter, is believed to have supernatural authority as it was bestowed through the agency of the great creative mythic being.

77. The Juluwarlu website comments with respect to the Galharra,

Through our Galharra relationships, all Yindjibarndi are connected like an extended family, where clear rules of respect and discipline enables everyone to relate [so] they can work out whether you are brother, auntie, cousin, nephew or whatever. If you don’t know your Galharra, then you’d be lost wherever you go.

<https://juluwarlu.com.au/our-beliefs/law-ceremony/galharra-skin-groups/> accessed 20 April 2022.

78. Based on my field work data, a significant aspect of kin relationships is based on an ethic of reciprocal generosity and sharing. In the Yindjibarndi language this is termed *nyinyaad*. Yindjibarndi people with whom I worked made reference to the word *nyinyaad* in response to my questions as to whether there was an Yindjibarndi word for ‘making good’ or ‘compensation’.⁵⁰ The term, I was told, expressed the idea of sharing but also could be used of an action that made up for something which had been deprived. Others stressed the fundamental normative attributes of sharing and generosity that must be extended to all Yindjibarndi. Margaret Read stated, ‘You can’t ignore that. If they ask for *muramura* [\$20] for cards or food, that *nyinyaad*, you still do that or share some *mula*

⁴⁷ <https://juluwarlu.com.au/our-beliefs/law-ceremony/galharra-skin-groups/> accessed 15 April 2022.

⁴⁸ Wordick 1982, 291. *Karnku*.

⁴⁹ Wordick 1982, 357. *Tyinytyanungu*

⁵⁰ KPFN, 3, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

[meat] if you've got some like a kangaroo'.⁵¹ Michael Woodley described *nyinyaad* as one of the four 'pillars' of Yindjibarndi Law that are founded upon the *ngurra*.⁵²

79. The Juluwarlu Group Aboriginal Corporation has set out its own understanding of *nyinyaad* in an unpublished manuscript, cited by Phil Davies in his Master's thesis.

Nyinyaad is duty and obligation to meet the need of another ... it goes beyond the giving of things, it is about having care for someone ... even when you have nothing to give ... offering your spirit ... togetherness ... passing on to the next generation knowledge, understanding, know-how in the celebration of the Creation – is *Nyinyaad*

Davies, 2021, 41.⁵³

80. The centrality of the ethos of *nyinyaad* to Yindjibarndi affairs is endorsed by other references to the term and the relationships it prescribes. I discussed it in my 2014 report in relation to the ethos of allowing visitors into your country if the correct procedures were followed (Palmer 2014, 394) Yindjibarndi witnesses gave evidence to the Federal Court relating to the principle.⁵⁴ Middleton Cheedy stated in response to a question put to him,

There is a word in Yindjibarndi that is "nyinyadt" [*nyinyaad*]. Nyinyadt, which is – which is "always giving". Nyinyadt. If – if someone was in need, you'd give. If someone came to ask you something, if you had, you'd give him. And going back to that question there, if someone wanted to go into my – my place, then, if he came and asked me, I'd give him permission, as long as I go with him or one of my family members that would escort maybe to take him into your *ngurra*.

WAD6005/2003 08.09.15, p. 261, Middleton Cheedy, Xxn Mr O'Gorman.

81. His Honour, Rares J, understood the *nyinyaad*, as a fundamental aspect of the Galharra system. It was a,

... system of rules ... for sharing resources in Yindjibarndi country. Michael Woodley said that nyinyadt "is the social fabric of Yindjibarndi ... it is a social contract under which every Yindjibarndi person is entitled to share in the bounty of Yindjibarndi country and prosper". If a Yindjibarndi does not comply with, or will not acknowledge, nyinyadt, "they become cursed by the

⁵¹ KPFN, 5, Margaret Read.

⁵² KPFN, 17, Michael Woodley. The other 3 pillars are the Galharra system, the Birdarra Law and the Yindjibarndi language or *wangga*.

⁵³ I have not viewed the originating manuscript which is cited by Davies as 'Juluwarlu Group Aboriginal Corporation. 2018 Heirs of Exile. Unpublished draft manuscript for the film sequel to the 1993 filmed documentary, Exile & The Kingdom, not yet filmed or produced.' Davies notes further that during 2017 and 2018 the team at Juluwarlu, and the film's Director Mr Frank Rijavec, worked with the Yindjibarndi community to develop the script.

⁵⁴ *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* [2017] FCA 803 [49, 241 and 261].

country ... and it is a death warrant. A slow and painful death follows to demonstrate what happens to greedy and selfish individuals who challenge or go against nyinyadt”.

Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia [2017] FCA 803 [51].

82. While not directly linked to the Galharra system there are two other important relationships that inform Yindjibarndi social relationships, also prescribing the manner of the relationship and attendant obligations and duties. The first is the *wurruru* relationship, which is commonly expressed in English as ‘midwife’.⁵⁵ During an earlier period of field work in 2014 I collected the following account relevant to this relationship which featured Pansy Cheedy’s brother, Middleton. According to this account Middleton’s *wurruru* was a person who,

saw a sort of person in the dream. This person [in the dream] was from Bunjadbirinha, Hooley way. This spirit told the *wurruru* that the child was coming from Bunjadbirinha. So next day the woman told the mother that she had to call her baby child by that name Bunjadbirinha. This is because his spirit came from the place.

KPFN (2014), 4. Pansy and Lyn Cheedy and Alice Guinness.⁵⁶

83. Those with whom I worked amplified this account by telling me that when a woman is pregnant, ‘she’ll get a visit from a spirit from the country. That spirit is a part of the place and so too is the child when it is born. He [the baby] speaks for the country then. When he grows up. Other people will recognise his knowledge for the country where his spirit comes from’ (*ibid.*). During the same period of field work others told me that the word *wurruru* was formerly given to the woman who cut the umbilical cord, but it is also a woman (usually an older woman) who ‘hears’ the baby call out (before it is born) and tells the mother of this news and so she is named as the *wurruru*.⁵⁷ In this way the *wurruru* is an agent of the child’s procreation, linking the life to the spirit of the countryside and a place.

84. Ego’s *wurruru* is a significant person in his or her life.⁵⁸ The child has a life-long duty to both respect and care for the *wurruru*⁵⁹ as the mediator between the spirit world emanating from country and their subsequent physical existence.

⁵⁵ Wordick 1982, 372

⁵⁶ I am of the opinion that ‘Bunjabirinha’ was my mishearing of Winjawarranah, the Yindjibarndi name for Hooley.

⁵⁷ KPFN (2014), 18, Michael Woodley, Middleton Cheedy.

⁵⁸ KPFN, 18, Michael Woodley, Middleton Cheedy and Kevin Guinness.

⁵⁹ KPFN, 14, Kaye Warrie.

85. The second relationship which is also one relating to spiritual procreation is termed, *gajardu*, sometimes translated as ‘godfather’.⁶⁰ Just as the *wurruru* relationship links a person to a place in Yindjibarndi country, so the *gajardu* relationship and the events that instigate it, link a person indissolubly to country through the agency of a natural species. I collected accounts of the creation of this relationship during my 2014 field work⁶¹ as well as on my 2022 trip.⁶² On that latter occasion both Michael Woodley and Middleton Cheedy used the word ‘totem’ when speaking of the spiritual relationship which is believed to exist between a person, the country and the natural world of animals, birds and reptiles.⁶³ The English word ‘totem’ is the equivalent of Yindjibarndi *nyirlun* which means ‘belly button’ or ‘navel’.⁶⁴ A person and his or her *nyirlun* share the same Galharra.⁶⁵ The circumstances whereby the *nyirlun* is obtained was explained to me as follows.

The *nyirlun* is gained through an event associated with conception. A man who went hunting for meat which, upon eating, the prospective mother gets sick is called the *gajardu* – also sometimes ‘Godfather’. He may deny that he was the *gajardu* but his own nipples will begin to harden and he excretes a milky substance. Then all know it is him and he has to accept that he is the *gajardu* for the baby. The meat he got is the *nyirlun*. Michael adds – ‘it’s the country that decides. It’s the meat he brings’. ... The *gajardu* gives you the meat from the Mingala.

KPFN, 18, Michael Woodley and Middleton Cheedy.

86. A person must treat his or her *gajardu* with great respect,⁶⁶ and the *gajardu* must, ‘look after’ the child and they have a special life-long relationship.⁶⁷
87. During my 2014 field work there was some indication that the *gajardu* relationship was not evident in ‘all the young people’.⁶⁸ However, I was given examples of *gajardu* relationships amongst older native title holders⁶⁹ and in my opinion, it continues to provide the basis for a significant social relationship understood to have supernatural ordination.

⁶⁰ Wordick 1982, 294. Wordick also gives ‘soul-father’ (*ibid.*).

⁶¹ KPFN (2014), 17-18. Middleton Cheedy.

⁶² KPFN, 18. Michael Woodley and Middleton Cheedy.

⁶³ KPFN, 18. Michael Woodley and Middleton Cheedy.

⁶⁴ See Juluwarlu Archive n.d.: *nyirlun*, *navel*; *belly button*.

⁶⁵ KPFN, 18. Michael Woodley and Middleton Cheedy.

⁶⁶ KPFN, 18. Michael Woodley and Middleton Cheedy.

⁶⁷ KPFN, (2014), 18. Middleton Cheedy.

⁶⁸ KPFN, (2014), 18. Michael Woodley.

⁶⁹ E.g. KPFN, (2014), 18. Middleton Cheedy; KPFN, 18, Michael Woodley with Middleton Cheedy. Kevin Guinness.

88. Based on my anthropological understandings it is my opinion that the use of the word *nyirlun* in these accounts is significant. The navel marks the point of attachment of the umbilical cord and so indicates the point through which the foetus gained nourishment from its mother through the umbilical cord. Comprehending the navel as the totem is then a trope that characterises the spiritual link with the natural world as vivifying the foetus and so imbues the baby upon birth. It asserts that the child is as much a part of the spirit of the natural world (identified by reference to a particular species) as it is a part of the flesh and blood of the mother. The *gajardu* is significant because it is this person who is the agent for the process whereby an unborn child is believed to carry a spirituality which is linked to country and the natural world through designated totemic species.
89. Relevant to these understandings of the indivisibility of person and country is the Yindjibarndi belief that their own ancestors continue to inhabit the countryside. These beings, apparent as spirits, are an ever-present metaphysical force that must be acknowledged, managed and sometimes placated. I have collected examples of reference to the spiritual presence of ancestral beings in Yindjibarndi country.⁷⁰ Rituals of greeting country and the importance of the proper introduction of strangers are also examples of how this belief frames relationships with country.⁷¹ Moreover, the spirits of the country, whether specifically understood as ancestral or of some other metaphysical manifesting, affirm the dominion that the Yindjibarndi have over their country, to the exclusion of others who are characterised as *manjangu* (see paragraphs 61 to 63 above).⁷²

CONCLUSION AND OPINION: YINDJIBARNDI CULTURE

Sanctity of country

90. In his judgement on the Yindjibarndi No. 1 native title application⁷³ Rares J observed that,

In *Ward* 213 CLR at 64-65 [14], Gleeson CJ, Gaudron, Gummow and Hayne JJ said:

As is now well recognised, the connection which Aboriginal peoples have with “country” is essentially spiritual. In *Milirrpum*

⁷⁰ KPFN (2014), 7, Middleton Cheedy, Bruce Woodley, Barry Pat, Harry Mills and Stanley Warrie; KPFN, 3, Stanley Warrie, Middleton Cheedy and Kevin Guinness; 17, Michael Woodley.

⁷¹ See paragraph 63 above and footnote references.

⁷² Rares J understood from the evidence before him that the *manjangu* concept was consistent with the concept of spiritual necessity giving rise to a right of exclusive possession. *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* (2017) FCA 803 [23].

⁷³ *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* (2017) FCA 803.

v Nabalco Pty Ltd [(1971) 17 FLR 141 at 167], Blackburn J said that: “the fundamental truth about the aboriginals’ relationship to the land is that whatever else it is, it is a religious relationship ... There is an unquestioned scheme of things in which the spirit ancestors, the people of the clan, particular land and everything that exists on and in it, are organic parts of one indissoluble whole”.

Warrie [2017] FCA 803 [42].

91. Consistent with these opinions, his Honour had noted that the agreed statement of issues, read together, admitted that, amongst other things,

the Yindjibarndi consider that Yindjibarndi country, including the claimed area, is redolent with spirituality, commemorated by senior male members through mytho-ritual traditions, and, in particular, their unique Birdarra law.

Ibid., [40].

92. This is a country-based spirituality which his Honour further noted had been recognised by other judges specifically with respect to exclusive possession. In this regard his Honour cited French, Branson and Sundberg JJ in *Griffiths v Northern Territory* (2007) 165 FCR 391 at 429 [127], who wrote that, “The relationship to country is essentially a “spiritual affair”” (*ibid.*, 22).
93. That the relationship the Yindjibarndi people have with their country is essentially a spiritual one finds an explanation in the data I have represented above. The relationship is indeed spiritual for it is a relationship which is believed to be a response to the ontology of Yindjibarndi life and experience. Country (*ngurra*) is believed to have been imbued with spirituality during the creative period of Ngurra Nyujunggamu. It was consequently to be understood as comprising not merely earth, clay, rocks and creeks. It was a landscape redolent with spirituality, complete and integrated which was bestowed upon the Yindjibarndi, who were themselves a creation of the same originating spirituality, along with their laws, customs; language and kinship. As constituent parts of the greater whole (‘one indissoluble whole’) Yindjibarndi relationships with country are innately spiritual because they are a part of the same originating spirituality. Humankind and *ngurra* are conceived of as being of the same elemental and spiritual form.
94. The correspondence of Yindjibarndi person with country extends to an additional attribute – that of sentience. Just as a Yindjibarndi person is cognizant of the physical world, of relationships, apprehensive of possible harm and having emotions and feeling, so too is the country believed to be cognisant of danger or harm. This appreciation of

how Indigenous Australian perceive their country was explored by the anthropologist Basil Sansom in a paper in which he identified what he termed, 'epic emotions' (Sansom 2002, 157). One of his several ethnographic examples relate to the Australian Indigenous response to damaged country as a result of development activities ('ripping their country'; *ibid.*, 164). In this, country is characterised by a Wagiman man of the Daly River area of the Northern Territory as being 'frightened' at the destruction (*ibid.*). The attribution of sentience by other anthropologists including Povinelli (*ibid.*, 173) is also noted by Sansom. Payne understood country to be alive but imperilled by death if it is not properly nurtured by its Indigenous owners (*ibid.*, 172; Payne 1989, 56). Deborah Rose wrote,

Aboriginal people in many parts of Australia have taught me to consider country to be a conscious entity. Place is one kind of embodiment of being, and the encounters of living things are recorded there.

Rose 2000, 215, cited Sansom 2002, 172.

95. Based on the materials I have reviewed in this chapter I am of the opinion that for the Yindjibarndi with whom I have worked, both recently as well as the past, human experience is founded upon religious beliefs and associated values. These beliefs and values privileged country (*ngurra*) above all else, as a compendium of all that is in it – past and present. This includes the places imbued with spirituality during the activities of the beings of the Dreaming, the birds, plants, animals, the places where the ancestors lived and camped and where their spirits are to be found now. Thus the whole of the topography is believed to be redolent with meaning and spiritual value. Those alive today are themselves indissolubly linked to the country through a spiritual correspondence articulated through totemic belief. Yindjibarndi people believe that they were given a portion of this land, 'as a birth right' so were given dominion over it to the exclusion of all others. In my opinion, while the term 'birth right' may, in part reflect, a right gained through descent, it is also a right reflective of autochthony – that is a Yindjibarndi is a living manifestation of the spiritual essence of the *ngurra*.
96. These god-given perquisites came with conditions. Strongly expressed in the data I have reviewed is the belief that country was given to be used in a certain way; to be protected and managed. This duty emerges in the data as a significant factor in the whole dynamic of human-spiritual co-existence: Yindjibarndi land is for Yindjibarndi people, but they have a duty to look after it. So not only are all aspects of the physical world understood as an indivisible amalgamation of inter-dependent parts, but the Yindjibarndi have a duty

to ensure its integrity through the generations. As this is a duty of supernatural ordinance inability to comply is understandably a keenly felt and negative emotion.

97. In my opinion it follows from these understandings that for the Yindjibarndi religious experience is first and foremost about a relationship with country; the possession of country as well as a possession by country. The *ngurra* defines who an Aboriginal person is. It is the Dreaming that gives *ngurra* and the laws to enable Yindjibarndi people to live in it and look after it. These prescriptions for living with country include the rules for religious observance (the Birdarra Law and the Burndud song cycle), the Yindjibarndi language and rules for social relationships.

The indissoluble whole

98. The common spirituality of person and country, social action and normative referent mean that there is no evident divide between the domain of the secular and the sacred in Yindjibarndi lived experience. A person is defined and has his or her identity and autonomy framed by virtue of a relationship with Yindjibarndi country and the social and normative attributes believed to be innate to that country through the ordaining powers of the Dreaming. These include Yindjibarndi language, kinship, religious belief and customary ways of acting. Accordingly, consistent with Yindjibarndi thinking, there is no divide to be made in spiritual terms between one part of Yindjibarndi country and another, just as Yindjibarndi people, their laws and customs are held to be derived from one common origin which finds its expression in the believed events of the Dreaming or Ngurra Nyujunggamu.
99. In my opinion, the Yindjibarndi religious system, composed of multiple and inter-connected and inter-related parts can helpfully be understood in ecological terms. By this I mean that it is a set of relationships of organic parts that are inter-dependent. Ritual practice, (Birdarra) Yindjibarndi language, social relationships (Galharra, reciprocity and mutual care (*nyinyaaard*), are all founded upon country. All owe their existence (according to this belief) and so share common origins, to the all-empowering spirituality of the Mingala, ordained through the Burndud songs.
100. This means that a proper understanding of Yindjibarndi religious belief, practices and associated human responses, emotions and feeling, cannot rest on any separation of component parts, or dictating that one part of the country was separable from another. Such discrimination and dissociation, in my opinion, belies the very nature and origins of the Yindjibarndi religious system. The known Yindjibarndi world (country, birds,

animals, human kind, social institutions) owe a common origin which was evidenced in the Dreaming.

‘Epic’ emotions

101. I draw a third conclusion from these data and the opinions expressed so far in this section. Since Yindjibarndi cultural attributes are conceived of as a whole of life experience having divine and supernatural origins, they are held to have high value. By my understanding the Yindjibarndi hold all *ngurra* as a sacred and inviolable trust. But this cultural value extends to the ways of doing thing, the rules, laws and normative values which are understood to be component parts of the bestowal of a spiritual dispensation, founded upon the gift of country. These together are believed to have emanated from a supernatural world and powers beyond and above that of a mere human world. This supernatural ordination means that emotions, feelings and determination are inspired by something believed to lie beyond the merely human.

102. These heightened emotions were called by Sansom, ‘epic emotions’ (Sansom 2002, 157). They are evoked by ‘situations of ultimate reference’ constructed with ‘reference to social absolutes’ (*ibid.*). Mansfield J, in his judgement made in response to the Timber Creek claim for compensation, wrote with respect to the unauthorised use of Aboriginal land by others,

Professor Sansom, having read the transcript of evidence by the claimants, was of the view that the general theory in his 2002 paper on the emotional effects of dispossession was in operation in this case. Those emotions, which Sansom described as “primary feelings socially recognised” (and in his paper as “epic”) were a “feeling...about a person and a numinous, the holy”. This is because the notion of injury to Aboriginal self is connected with the oneness between people and Dreamings, and the “feeling” is about an Aboriginal person’s experience of engaging with the Dreaming.

Griffiths v Northern Territory of Australia (No 3) 2016 FCA 900 [357].

103. The credo that the integrity of the country and the fabric of social relationships is a consequence of supernatural ordination has a consequence. Emotions, feelings and a frame of mind, when evident as responses to the hostile actions of others, are believed to be inspired as something that lies beyond the merely human and the here and now. These emotions and feelings, including the negative ones that reflect loss or diminution and an inability to discharge a duty, are powered by time-honoured rules of divine devising. They lead to the unwelcome realisation that many things of spiritual value are irrecoverably lost and the ordinances of the Dreaming have been disregarded. These

events and their accompanying emotions are then strongly felt as they are ‘epic’ in their perceived impacts and possible consequences. As a result, they pose a threat to the individuals’ sense of self-worth, autonomy and identity.

104. Consistent with these opinions, Mansfield J noted,

In his 2002 paper, Professor Sansom writes that the business of “feeling” is a code word that:

...stands for moments of active participation in which the person as totemite is engaged with Dreamings or is spiritual communion with another human being (also a totemite)

This emotion is something that Professor Sansom describes as:

The experience of ripping that goes “right through” the traditional owners (as totemites who experience sympathetic shock when their land is wounded).

Griffiths 2016 FCA 900 [358].⁷⁴

105. It is my opinion, based on these appreciations of Aboriginal religion that ‘epic emotions’ are as keenly felt as any human sentiment. Intrinsically they go to the very core of Yindjibarndi emotions. They are the product of the unique spiritual foundation of Yindjibarndi land and culture. They develop as negative feelings where spiritual values and a divine order of land, Law and language are contravened, devalued or disregarded. They are then intensely felt and acutely experienced. Their coming into being as a response to the results of the development of mining on Yindjibarndi land are matters which I consider in the ensuing chapters of this report.

⁷⁴ The text cited by his Honour is Sansom 2002, 161 and 164 respectively.

3 SOCIAL DISRUPTION AND CULTURAL LOSS

INTRODUCTION

106. In the brief provided to me I am asked to ‘addresses the nature and extent of any loss, diminution, impairment or other effect of the grant of the FMG mining tenements on the Yindjibarndi People’s native title rights and interests in the Warrie (No 2) Determination Area’ (Brief, Schedule 1, 1(a)). Amongst other aspects of the negative consequences of the granting of mining tenements, I am asked to consider ‘social disruption’ and ‘cultural loss’, the latter phrase being described in *Northern Territory v Griffiths* [2019] HCA 7. I find in this judgement that ‘cultural loss’ is an aspect of value of land inherent in that which has been ‘lost, diminished, impaired or otherwise affected by the compensable acts’ (*ibid.*, [154]). Cultural loss is ‘a particular effect of a compensable act’ (*ibid.*).

107. I am advised⁷⁵ that I should adopt the assumption that ‘social disruption’ is a matter that will be relevant to the courts when considering the application for compensation as this is a principle or criterion that must bear on that deliberation.

108. For reasons based on data set out in this chapter I am of the view that social disruption is an example of cultural loss. This is because the fabric of Yindjibarndi social relationships is woven from Yindjibarndi culture.⁷⁶ I have explained why this is so in the previous chapter (see a summary, paragraphs 98 to 100). The loss of social relationships is a loss of Yindjibarndi culture.

109. A second assumption I have been asked to adopt and relevant to the subject of this chapter runs as follows.

FMG has entered into a relationship and agreements with some of the common law native title holders without the consent of the registered claimant for the Yindjibarndi #1 native title determination application (prior to 17 November 2017) or of the Yindjibarndi Ngurra Aboriginal Corporation RNTBC (after 17 November 2017). These agreements and relationships are ongoing. This has caused a division in the Yindjibarndi community.

Appendix A, Services required, addendum, letter dated 24th May 2022, item 6.

110. His Honour, Rares J. summarised the principal aspects of a, ‘deep and unfortunate internal diversion’ within the Yindjibarndi community in response to the

⁷⁵ Appendix A, Services required, addendum, letter dated 24th May 2022, item 8 (c).

⁷⁶ ‘Culture’ a term I define in paragraph 37 above.

Solomon Hub mine.⁷⁷ The Yindjibarndi community had divided into two opposing groups. One was the Wirilu-Murra Yindjibarndi Aboriginal Corporation (WMYAC⁷⁸) and the other the Yindjibarndi Aboriginal Corporation (YAC⁷⁹). His Honour wrote,

As Ken Sandy, a director of WMYAC, said (and I find), that corporation has a very close relationship with FMG. He explained that FMG has not yet entered into an agreement with the Yindjibarndi people over the Solomon Hub mine. WMYAC was formed by Yindjibarndis who disagreed with YAC's decision not to enter into a form of agreement that FMG had proposed. He agreed that the members of WMYAC had tried to get control of YAC on a number of occasions but had failed to get sufficient votes.

Warrie [2017] FCA 803 [393].

111. His Honour also noted that he had found that FMG 'had orchestrated, to a considerable degree' events that would favour its desired operations (*Warrie* [2017] FCA 803 [396]).
112. The assumption noted above (paragraph 109) also finds support in ABC '4 Corners' episodes in 2011 and again in 2015.⁸⁰ The division was also the subject of accounts by Paul Cleary (2021, 79-96; also Cleary 2014). I consider that it is evident that the division developed from differing views as to how native title rights, recognised by the Court, were to be exercised. The data I discuss below also supports this conclusion.
113. I proceed in this chapter on the basis that one of the 'particular effects' of the development of the Solomon Hub has been a division in the Yindjibarndi community.
114. I noted at the beginning of this report that members of the WMYAC were invited to participate in my research, but none chose to do so (see paragraphs 12 and 13 above). The data I have collected support the conclusion that all members of the Yindjibarndi community have been affected by the internal division. I think it reasonable to assume that the examples of emotional hurt and suffering I present here would also find correspondence with those that might be provided by other members of the community with whom I did not speak.
115. In the narratives I present as examples of the circumstances that resulted in emotional pain, blame for this hurt is never far from view. Although this is not

⁷⁷ *Warrie* [2017] FCA 803 [391].

⁷⁸ <https://wmyac.com/> and linked sites, accessed 26th April 2022.

⁷⁹ See <https://www.facebook.com/Yindjibarndi/> and linked sites, accessed 26th April 2022.

⁸⁰ 'Iron and Dust', ABC 4 Corners, 2011. This episode is, as far as I can ascertain, not available for free viewing. The later 2015 program, 'Iron Man,' ABC 4 Corners 2015 is available at <https://www.abc.net.au/4corners/iron-man-promo/6643316> the relevant section being approximately 22.18 to 26.00, accessed 26 April 2022.

invariably the case,⁸¹ it reflects the perspective of the teller. Since the sources for my data were members of the YAC, it is members of the WMAC who commonly are the object of this blame. This is an evident part of my ethnography. It prompts the common-place observation of human interactions that when one person makes the object of blame another, the latter will counter with an alternative account of the events that attribute blame to the author of the first account. Blame, however, is not my interest here and has no place in my analyses. Rather, what I seek to do in this chapter is to document examples of social disruption that are the consequence of the deep division in Yindjibarndi society. I then seek to explain how that disruption may be understood in terms of cultural loss.

116. The Yindjibarndi with whom I spoke sometimes personalised the actions of FMG I have described in paragraph 109 above which are also a finding of Rares J (paragraph 110 above). Through this action some attributed the ‘unfortunate internal division’ directly to Dr Andrew Forrest (see paragraphs 127 to 129 below). As is the case with the attribution of blame to the members of WMAC by members of YAC this is an evident part of my ethnography. Consequently, in fulfilling my duty to the Court I have presented my field data as I collected them. I have sought to provide an anthropological analysis of this personalisation of cause and effect in a later section of this report (see paragraphs 182 and 183 below).
117. While fault finding can be understood in anthropological terms I understand the data I have reviewed to reflect the social process and reasoning of the members of the YAC with whom I worked. Members of the WMYAC might present their account of causation in different terms. As is the case with other data I have considered in this chapter, blame is not my interest here and has no place in my analyses. Consequently, in some cases, I have omitted personalised attribution of blame where I consider it not to affect my anthropological analyses and expert opinions (e.g. paragraphs 128, 129, 148, 166 and 179). I seek to document examples of social disruption that are the consequence of the deep division in Yindjibarndi society. I then seek to explain how that disruption may be understood in terms of cultural loss.

⁸¹ KPFN, 46, Angus Mack.

AN ETHNOGRAPHY OF LOSS AND SOCIAL DISRUPTION

Social and demographic setting

118. Before turning to a consideration of the various aspects of social disruption and related emotions, it is helpful to provide some background to the nature of the Yindjibarndi community as a whole, whose members, for the most part, live in the town of Roebourne. Roebourne is an historic town dating to 1866⁸² For many years it was the administrative centre for the west Pilbara region, first as the town for the nearby port of Cossack and subsequently as a service centre for the pastoral hinterland. For reasons that lie beyond the scope of this report it also became the place of residence for many Indigenous people who progressively moved (or were moved) from their own countries to live on the Roebourne Reserve, situated just outside the town on the eastern banks of Yirramagardu, a pool in the Harding River. Rapid demographic changes that followed the development of the mining industry in the Pilbara region in the 1960s and 1970s initially saw an increase in Roebourne's population. This also placed increased pressure on the Indigenous population who were further marginalised within the reserve setting.⁸³ However, with the development of Karratha in the 1970s along with other towns of Dampier and Wickham, Roebourne witnessed a steady decline as a regional centre and many White residents relocated to neighbouring towns of Dampier and Karratha. The last-named now represents the largest town in the region and is the administrative centre for the west Pilbara.

119. Roebourne is now a small town with a majority Indigenous population. Australian Bureau of Statistics data for 2016 (the latest available at the time of writing this report) show the total population of Roebourne to be 981.⁸⁴ Of these, 75.8% (744) were Indigenous. Of these 744 individuals, some 259 were under the age of 20, meaning that the Indigenous adult population was about 485. The population also comprises a set of people who have lived together in difficult circumstances for multiple decades. Many trace common ancestry. During their time together there have been marriages between

⁸² <https://juluwarlu.com.au/150-years-of-roebourne/> accessed 27 April 2022. An account of the European history of Roebourne can be found in Shire of Roebourne 2013 (available at https://karratha.wa.gov.au/sites/default/files/Assets/Documents/Document%20Centre/LGHI/volume_1_Local_Gov_Heritage_SOR_FINAL.pdf). An Indigenous account of the post-European settlement of Roebourne and region is set out in Juluwarlu Aboriginal Corporation 2004. Edmunds (1989, 21-39) has also provided an account of the development of the Indigenous population in Roebourne. Data in this paragraph are based on these sources and the author's own knowledge and experience of the region.

⁸³ Edmunds 1989, 3, 7-14.

⁸⁴ <https://www.abs.gov.au/census/find-census-data/quickstats/2016/SSC51294> accessed 27 April 2022. The statistics that follow in this paragraph are derived from this source.

families and groups, further cementing ties of kin and consequential obligations.⁸⁵ Roebourne is then a small community of Indigenous Australians comprising a close-knit community of consociates and kin who have a long history of shared experiences together.

Social division and mining development: an oral history

120. Senior Yindjibarndi woman Margaret Read told me something of her understanding of how the split between Wirlumurra and YAC came about.⁸⁶ Having travelled away from Roebourne she returned in about 2004 or 2005. At that time, it seemed to her that everyone was happy about the native title arrangements and there was no division in the community. She continued,

Then about 2005 some of the Wirlumurra wanted to form their own group, while others [including Margaret] wanted everyone to stay together. But they [Wirlumurra] decided 'no' and they went off and formed their own group.

KPFN, 5, Margaret Read.

121. Margaret refers to the Wirlumurra as the 'splinter group' and was unwilling to use their official name. By 2006 the Wirlumurra group 'really took off' and left YAC altogether. She added that this caused 'quite a division'.⁸⁷

122. I also spoke with younger members of the Yindjibarndi community⁸⁸ who had spent their teenage years in Roebourne as the divisions between the groups developed. John Woodley told me⁸⁹ that growing up in Roebourne there was just one Yindjibarndi family together and he recalled them as a tightly knit community both at Roebourne and at Ngurrawaana.⁹⁰ John said,

We knew all the Wirlumurra people and had good relationships with them. Because they were all family through our fathers. But then FMG came into

⁸⁵ I base these two statements on my own knowledge and experience of the Roebourne community, as well as the evidence of Yindjibarndi witnesses during the Yindjibarndi No. 1 trial, which I attended. I have also studied genealogical materials relevant to the Yindjibarndi and their forebears while undertaking research for both this present inquiry and in preparation for writing my expert report of 2014.

⁸⁶ KPFN, 5, Margaret Read.

⁸⁷ KPFN, 5, Margaret Read.

⁸⁸ KPFN, 40-41, John and Michael Woodley Jnr, Isaiah Walker.

⁸⁹ KPFN, 40, John Woodley.

⁹⁰ A community established by Yindjibarndi people on the Tablelands, 22 kms north north east of Millstream.

the picture and they made another Yindjibarndi group. They took them on a ride against us.

KPFN, 40, John Woodley.

123. John Woodley told me⁹¹ that he was about 16 years old at that time. He said that after the split, it 'all went downhill. The community went downhill'.

124. Senior Yindjibarndi woman, Kaye Warrie, told me her understandings of the development of the division between YAC and Wirlumurra. Speaking with her father's sister, Joyce King, I made the following notes of their comments.

I ask a little about the development of the split. They say that after native title was granted there was just YAC. Then Andrew Forrest turned up and they [Wirlumurra] wanted an agreement of their own. Andrew Forrest didn't like how YAC was being run and [Wirlumurra members] said that it was just one man – that is Michael Woodley. So they started their own organisation. So the Yindjibarndi got split into two. Some of the Wirlumurra would come out to Woodbrook [for ceremony; initiations]. But others didn't. They wanted to be different and kept themselves apart. They took their name from the creek of that name on Yindjibarndi country.

KPFN, 14, Kaye Warrie and Joyce King.

125. Kaye explained to me that the Wirlumurra creek country was Toby Dingoman's country.⁹² The genealogical data I have relied on⁹³ show that Toby Dingoman is Kaye's FMF and Joyce's MF. In my opinion and based on this account, I consider that the implication of this statement is that since the name 'Wirlumurra' relates to their ancestral country, its use by the breakaway group without permission is considered by them to breach Yindjibarndi rules for correct behaviour. Wirlumurra (the place) is the country of Joyce and Kaye's family. In their view, they have the right to be asked if someone wishes to use that name for any purpose. According to their account, such a request was never made.⁹⁴

126. Lyn Cheedy also gave me her account of how Wirlumurra separated from YAC.

[After native title] we set up the PBC [Prescribed Body Corporate] and the Yindjibarndi people together were the members. But then Andrew Forrest

⁹¹ KPFN, 40, John Woodley.

⁹² KPFN, 14, Kaye Warrie and Joyce King. In my expert report prepared for the Yindjibarndi No. 1 claim I was of the opinion that Dingoman was identified as a member of the Yindjibarndi language group and was associated with country in the vicinity of Mulga Downs Station (Palmer 2014, 233). This is based on a genealogical annotation of Tindale. Mulga Downs is approximately 75 kms east of Wirlumurra Creek.

⁹³ These data were provided to me when I undertook research for the Yindjibarndi No. 1 claim. I explain the nature of this material in my 2014 report (Palmer 2014, 51-55).

⁹⁴ According to the genealogical data I have relied upon Toby Dingoman had many descendants. In my opinion I consider it likely that at least some of those descendants may now be members of the Wirlumurra group.

came along and didn't do the right thing. He never negotiated an ILUA [Indigenous Land Use Agreement] and this still hasn't been done.

So now we just keep going on and going to court and we losing a lot of family. If Andrew Forrest had come through the right procedure, we'd have been a bit better off in our lives. It's all sort of dragging us down.

It's been a very long time.

KPFN, 21, Lyn Cheedy.

127. By my reading Lyn Cheedy's statements that Forrest, 'didn't do the right thing' and that he had not 'come through the right procedure' relates to a failure on the part of FMG to gain permission from the Yindjibarndi native title holders (as represented by the YAC) for the development of the Solomon Hub and its related mines. Michael Woodley understands the development of the Solomon Hub as action taken without permission, the granting or withholding of which is a part of the right of the Yindjibarndi people.⁹⁵ He called it the 'first law' with respect to entering or exploiting Yindjibarndi country.⁹⁶ Michael told me that the 'problem' with FMG's actions was that they,

broke our Law. By going up there in the first place without asking our permission, and asking that you can do what you want to do up there in terms of mining and exploiting and making money by our country. [They] broke our Law.

KPVR 7, Michael Woodley, with Middleton Cheedy and Kevin Guinness.

128. Lyn Cheedy remarked that the divisions in the community and the creation of Wirilu-Murra was caused by the actions of FMG.⁹⁷ Kaye Warrie said that the close relationship between FMG and Wirlumurra was because they had accepted FMG's proposals. 'But YAC felt that what he had offered was not enough. They wanted more.'⁹⁸ During an interview with Wendy Hubert and Pansy Cheedy, I made the following note of our conversation.

Discussion turns to the hill which was flattened at the Solomon Mine hub and I ask about their responsibility for that. Pansy responds mostly. She says that they couldn't stop them from digging it up. This was because Twiggy Forrest just used one group. And that did not include her or her

⁹⁵ KPVR 6, Michael Woodley, with Middleton Cheedy and Kevin Guinness.

⁹⁶ *Ibid.*

⁹⁷ KPFN, 21, Lyn Cheedy.

⁹⁸ KPFN, 14, Kaye Warrie.

family. So there's no way we could stop it. The Yindjibarndi people Forrest chose had no idea.

KPFN, 9, Wendy Hubert and Pansy Cheedy.

129. Margaret Read was also very critical of FMG's approach and their close relationship with members of the Wirlumurra group.⁹⁹ Margaret considered that it was still possible to mend the rift between the two factions but that FMG was the 'one thing stopping us'.¹⁰⁰

130. Some particulars of the events and their dates that feature in these accounts are provided by Cleary in a 'chronology' (Cleary 2021, xvi-xvii). Relevant events and dates are further detailed in his book (*ibid.*, 79-96). The oral accounts I have presented above are consistent with this account. The data I have reviewed support the following sequence of events:

- (i) FMG wished to mine in the Yindjibarndi No. 1 determination area. FMG would not agree to YAC's terms for mining-related payment;
- (ii) the native title holders would not give their permission, a right they held to be a sacred one, for the mining activity to proceed;
- (iii) one section of the Yindjibarndi native title holders did not agree with this withholding of permission. They formed a separate group;
- (iv) this breakaway group sided with and was supported by FMG;
- (v) this caused a split in the Yindjibarndi community which was hurtful on a number of levels.

131. The social disruption occasioned by these events is manifest in different ways. These are comprehensible through an appreciation of Yindjibarndi cultural norms and values. It is to these aspects of social disruption that I now turn.

Yindjibarndi social relationship

132. In an earlier chapter of this report I described some of the fundamental aspects of Yindjibarndi social relationships and the structuring of associations, duties and expectations (see paragraphs 37 to 89 above). I noted in this account that the basis for social interaction is believed to have been ordained by the creative being of the Ngurra Nyujunggamu (paragraphs 43 to 49). Kinship, along with other aspects of Yindjibarndi customary belief and practice, is of divine ordination. Its observance is then more than representing a series of protocols or an accepted way to behave. It is rather a

⁹⁹ KPFN, 5-6, Margaret Read.

¹⁰⁰ KPFN, 6, Margaret Read.

prescription which has supernatural authority. I described how according to the Galharra system all others within ego's social universe are categorised as kin, while each kin relationship mandates a mode of interaction – ranging from a lack of restraint and open familiarity to deep respect and, in some cases, avoidance (see paragraphs 73 to 77). I have also described how relationships between Yindjibarndi people (and sometimes others) are governed by other normative rules that require that human interactions are framed by generosity (*nyinyaard*) and the obligations and expectations that are integral to the *wurruru* and *gajardu* relationships (paragraph 78 to 89). Certain ritual roles are also determinative of life-long social relationships (paragraph 163 below).

133. The data I have collected during my field work indicate that the division of the Yindjibarndi community as a consequence of the actions of FMG in pursuing its aspirations with respect to the Solomon Hub and associated mines have had a significant impact on the observance of customary kinship behaviour. I provide some examples of these data in what follows.

134. Margaret Read told me¹⁰¹ that she was related to members of the Wirlumurra group 'through the Galharra'. Margaret named four people she classified as siblings who are also members of a prominent Wirlumurra family. Later Margaret named an additional family, some of whose members she counts as 'cousins' 'in the Galharra way'.¹⁰² Margaret added that all members of the Wirlumurra group are kin, 'through the Galharra'.¹⁰³ Making specific reference to one family, Margaret told me¹⁰⁴ that should you meet them in the Supermarket you should greet them, saying '*wanthiva thurdu*' ('hello, how are you, older sister?') or '*wanthiva gaja*'.¹⁰⁵ ('hello, how are you, older brother?'). These are greetings of respect. Margaret told me how when there was a funeral, all disagreements and fighting must be set aside.¹⁰⁶ 'Sorry business' is about coming together and grieving for a lost member of the Yindjibarndi group.

135. Despite these moral prescriptions Margaret Read's view about the state of inter-personal relationships in the Roebourne Yindjibarndi community was dire.¹⁰⁷ Respectful greetings, of the sort described above, are absent. Margaret described 'much heart ache' and 'tears' in 'surviving abuse' that was a consequence of a loss of the rules for social

¹⁰¹ KPFN, 5, Margaret Read.

¹⁰² KPFN, 6, Margaret Read.

¹⁰³ KPFN, 6, Margaret Read.

¹⁰⁴ KPFN, 5, Margaret Read.

¹⁰⁵ Juluwarlu Archive, n.d. has *Gaya*, brother, older brother; stepbrother; son of father's older brother or mother's older sister.

¹⁰⁶ KPFN, 5, Margaret Read.

¹⁰⁷ KPFN, 5, Margaret Read.

relationships between kin. She cited the media posts on Facebook as illustrative of the community infighting.¹⁰⁸

136. Kaye Warrie and her aunt Joyce King told of how numbers of the Wirlumurra group were regarded as kin and that the same rules about kin behaviour applied to relationships with them as they did to others. Kaye Warrie continued,

Sometimes we meet them in town and we say, '*wanthina*'. But we leave it at that because there's tension in the relationship. ... they look at us like we not family. ... [this is] not Yindjibarndi way.

It's sad to be that way, cousin sisters and brothers.

KPFN, 12, Kaye Warrie and Joyce King.

137. Angus Mack made a similar point.¹⁰⁹ 'We go to the shop and say "Hello" but that's all. There's no further interaction'. Isaiah Walker stated,¹¹⁰ 'We can't hardly talk to them [members of the Wirlumurra group]. We feel like strangers'. During the same interview John Woodley commented,

Before we used to speak but now we don't talk to them. We don't say hello, ask them how they're going. But [emphasised] they family and we should do things together.

KPFN, 40, John Woodley.

138. John Woodley continued, explaining that this lack of social recognition and respect results in tension and this may lead to a fight.¹¹¹ The young men with whom I spoke were of the view that the division was not limited to the Yindjibarndi and Wirlumurra groups, but others too in Roebourne have been recruited to support one side or the other.¹¹² Michael Woodley felt¹¹³ that the division between the two communities meant that visits to Yindjibarndi country, of the sort in which I participated in May 2022¹¹⁴ meant that members of the Wirlumurra group 'missed out' on the social and spiritual benefits of such trips.

139. Lyn Cheedy spoke to me of her personal response to the development of the Solomon Hub and the involvement of the Wirlumurra group with FMG. She told me,

¹⁰⁸ KPFN, 5, Margaret Read.

¹⁰⁹ KPFN, 46, Angus Mack.

¹¹⁰ KPFN, 40, Isaiah Walker.

¹¹¹ KPFN, 40, John Woodley.

¹¹² KPFN, 40, John and Michael Jnr Woodley, Isaiah Walker.

¹¹³ KPFN, 44, Michael Woodley.

¹¹⁴ KPFN, 34-43.

this is about the break. It's not so much about him [Andrew Forrest] coming here but more about what it's done to relationships between the Yindjibarndi people. ... We avoid each other – we can't even greet each other in the street. They turn and look the other way. During sorry business – and there's been a lot of that – that's the only time we get together but after the funeral it's back to being not a proper family again. We are strangers on the streets.

KPFN, 21, Lyn Cheedy.

140. For Lyn this 'is not the Yindjibarndi way' and she continued,

We've always been very close [in the past]. If there was a disagreement we'd have a meeting and the old men would sort it out. Settle it. You just don't carry on with this sort of business [bad feeling, anger] inside of you. But now it's going on and on and on. We've tried to get the families together again but no, it's just like a revolving door. First they want to come back and get everyone together again, but then, a short time later, they change their minds. Then the same happens, it's back together but then it's broken up again.

KPFN, 21, Lyn Cheedy.

141. I added a note on my writing pad at the time of the interview that I gauged from Lyn's voice and emphases that she finds this situation very stressful. Lorraine Coppin remarked¹¹⁵ with sadness on the alienation of those who were once regarded as close family. 'Now we stay away from [named person]. We don't share our feelings or our thoughts with her.'

142. Denial of the rules of kinship behaviour was also illustrated by Kevin Guinness who told me¹¹⁶ that he is *gadja* (usually, older brother) to a man whom he named who belonged to the Wirlumurra group. That man had lost his son following a violent incident. Kevin went to visit the bereaved father, wanting to pay his respects and 'cry' (participate in ritual mourning) for the loss. However, the man would not see him and drove off in his car when he saw Kevin coming. Kevin was upset because as the father's brother, the deceased was also Kevin's son.

143. Lorraine Coppin raised an incident (or likely series of incidents) where the respect that should have been afforded to a very senior and elderly Yindjibarndi man (now deceased) was not shown by members of the Wirlumurra group. This, she said, had occurred at a meeting where issues of FMG's engagement with the community were being discussed. According to Lorraine's account members of the group told the senior

¹¹⁵ KPFN, 24, Lorraine Coppin.

¹¹⁶ KPFN, 19, Kevin Guinness.

man, before all others present, that he was wrong in his opinions and advice'¹¹⁷ The senior man stood in the relation of 'first father'¹¹⁸ to them and should, according to the rules of kinship, have commanded their respect.¹¹⁹ In my experience such respect would include never disagreeing with such a man, particularly in a public meeting. Lyn Cheedy made this clear when she told me,

they [members of the Wirlumurra group] did not listen to him. They were disrespectful. Respect is very important. If you don't have respect, no one will have respect for you. An older person is the one who carries the knowledge and for him to be shouted down is to be disrespectful. It's not that *ngaarda* way. It's them [senior knowledge holders] that teach you Law and culture. It's cutting across these values you should hold as an Yindjibarndi woman.

KPFN, 21, Lyn Cheedy.

144. Lorraine also explained to me how her husband was related (through the Galharra system) to a group of senior Wirlumurra siblings. In her opinion these siblings were now attempting to use the kinship system and its rules for behaviour to support their view that Michael Woodley was failing to respect his duties to them and defer to their views as (so they asserted) the kinship relationships required.¹²⁰ This, she implied, constituted an abuse of the Galharra system and so engendered further discord and hostility in the community.

145. The operation of the Galharra system complements and extends the knowledge of consanguineally relationships. These too are evident amongst the Yindjibarndi, as is to be expected in a relatively small-scale community. During the period of my field work I collected a number of examples of how consanguineal kin relationships are being impacted by the divisions within the Yindjibarndi community.

146. Lorraine Coppin told me that one of Michael Woodley's cousins, a descendant of a man called Wimiya King¹²¹, is a member of the Wirlumurra group – adding that Michael always greets her if he meets her in the street.¹²² Lyn Cheedy told me¹²³ that her nieces were members of the Wirlu-Murra Corporation but thought they were not active

¹¹⁷ KPFN, 23, Lorraine Coppin.

¹¹⁸ Father's younger brother. KPFN, 33, Michael Woodley.

¹¹⁹ KPFN, 23, Lorraine Coppin. The same incident was discussed by Lyn Cheedy: KPFN, 21, Lyn Cheedy.

¹²⁰ KPFN, 24, Lorraine Coppin; 21, Lyn Cheedy.

¹²¹ KPFN, 24, Lorraine Coppin. Wimiya King was father of Woodley King who was Michael's MF. Wimiya had many children, including Lila who married Sandy Andrew with whom Lila had 9 children who took the Sandy family name. The Sandy family are regarded as being for the most part members of the Wirlumurra group. Gloria Lee is Wimiya King's ddd and may be the individual referred to here.

¹²² KPFN, 24, Lorraine Coppin.

¹²³ KPFN, 22, Lyn Cheedy.

members and did not attend their meetings – adding, ‘Well, I hope not’. By my reading of these comments, Lyn was aware that there was an ever-present danger of the family being split by the current arrangements. Charlie Cheedy also has family members who align with the Wirlumurra group.¹²⁴

147. I collected examples of family relationships which have been directly affected by the splits in the community. Kaye Warrie told me¹²⁵ that she has children married in to Wirlumurra families. So, for example, Kaye has a daughter married to Allery Sandy’s sister’s son and they have children.¹²⁶ Kaye remarked that this causes ‘friction’ and, ‘the kids don’t like it at all’. Based on these field data I prepared the following chart which I reproduce as Figure 3.1, below.

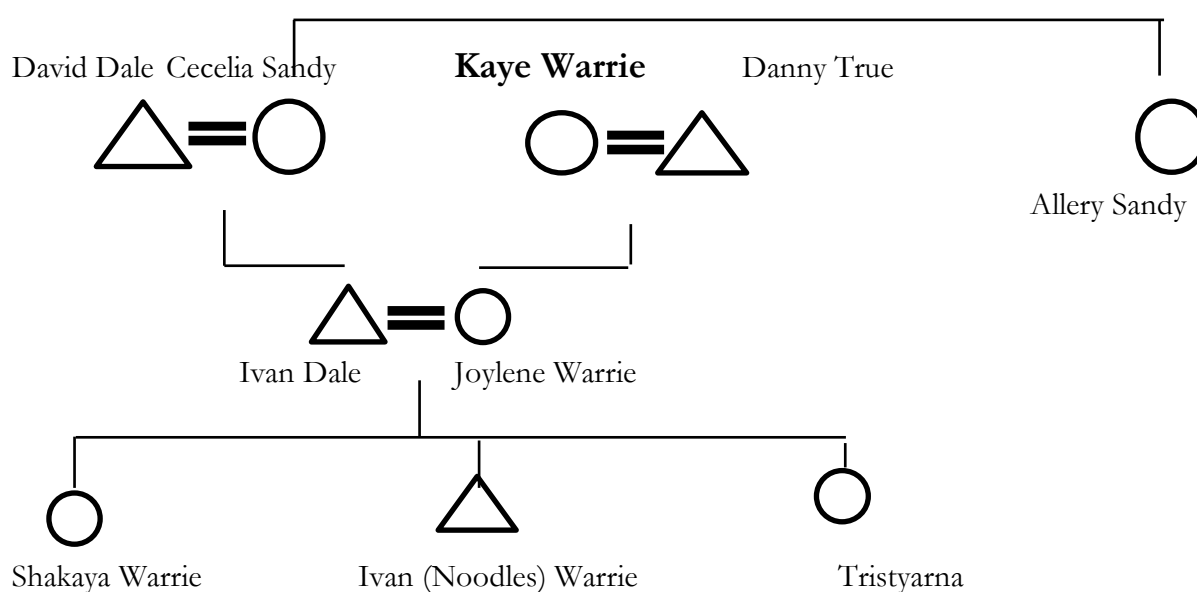


Figure 3.1: Relationship between Kaye Warrie and her daughter’s children and members of Wirlumurra group.

Source: KPFN, 13 Kaye Warrie and Joyce King.

148. Kaye explained that Cecelia is deceased, so Allery Sandy takes the role of grandmother to the children Shakaya, Ivan and Tristyarna. Kaye is also the grandmother of these children through her daughter Joylene. Allery Sandy is a notable member of Wirlu-Murra while Kaye’s allegiances rest with YAC. The various relationships are further complicated by the fact that, according to Kaye’s account, she raised her

¹²⁴ KPFN (2014), 11 August 2014, entry reproduced in KPFN, 16.

¹²⁵ KPFN, 12-13, Kaye Warrie.

¹²⁶ Allery Sandy is listed as a Director and Chair of WMYAC along with Rodney Adams, Paul Aubrey, John Sandy, Ken Sandy and Vince Adams. See <https://wmyac.com/about-us/our-directors/> accessed 28 April 2022. Other Wirlumurra members were interviewed by me in August 2014 (KPFN (2014), 20-22.

grandchildren because her daughter had experienced personal problems. Consequently, the relationship she has had with these children is very close as she has raised them since they were babies. Kaye remarked that even though the children live in the same town as other family members (on both sides) it has been hard for them to spend time with Allery, ‘even if they wanted to’. Kaye told me that as a consequence the children ‘feel sad’ because of these events.

149. Kay provided a further example of divisions within families.¹²⁷ Kaye explained that Sylvie Allen (now deceased, formerly a member of the Wirlu-Murra Corporation)¹²⁸ was in a relationship with Allen Jacob. Allen Jacob was Kaye’s mother’s brother. Sylvie and Allen had children. I have represented these relationships in Figure 3.2, which is below.

150. Kaye told me, ‘We grew up with them [the children], so this really hurt us,’ referring to the rift between the two Yindjibarndi factions. The children of Sylvie and Jacob are Kaye’s first cousins (mbch) so, to her, they were like siblings. Indeed they, ‘grew up together’. However, the current circumstances where relation between the two groups are marked by open hostility, abuse and legal action, first cousins are no longer linked by the bonds prescribed by customary Yindjibarndi kinship arrangements.

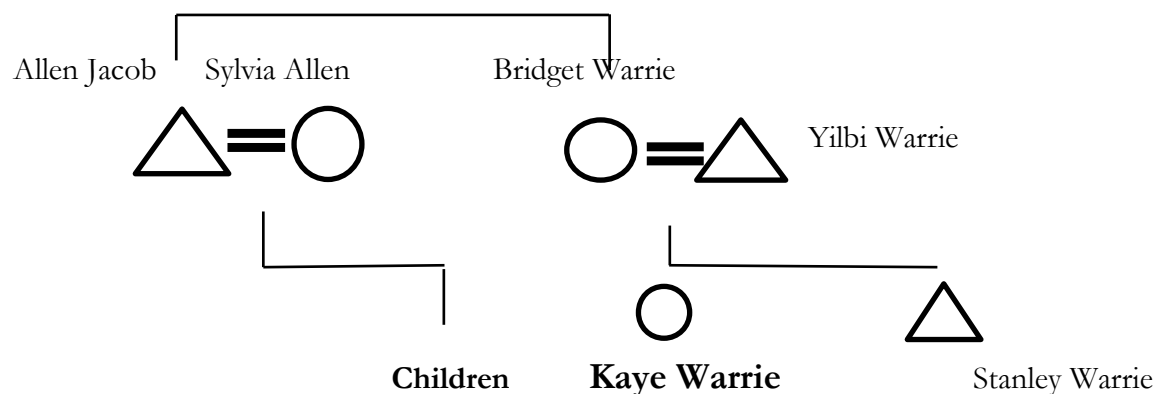


Figure 3.2: Relationship between Kaye Warrie and her first cousins who are members of Wirlumurra group.

Source: KPFN, 13, Kaye Warrie and Joyce King.

151. These family ties are known to extend back through prior generations. Kaye and Joyce explained to me¹²⁹ how they are related to the Sandys through Wimiya King who

¹²⁷ KPFN, 13, Kaye Warrie and Joyce King.

¹²⁸ Sylvia Allen’s is named multiple times in the *Warrie* decisions (e.g. *Warrie* [2017] FCA 803 [481] and [505] and she would appear to have been an active member of the WMYAC.

¹²⁹ KPFN, 11, Kaye Warrie and Joyce King. See footnote 121.

was Joyce's father. Wimiya had two wives. The one was called Yali. Wimiya and Yali had a daughter Lila who married Sandy Andrew and the children (there were 9 according to the data I have reviewed) took the family name Sandy. Allery Sandy is the daughter of Lila Sandy. Wimiya also had a wife called Yiili, who should not be confused with Yali. Yiili had children with Wimiya that included Joyce King and Yilbi Warrie, the father of Kaye Warrie and Stanley Warrie. Thus Kaye and Allery are first cousins, tracing descent from the same grandfather (Wimiya King) – although they do not share the same grandmother.

152. I have drawn a summary genealogical chart to show these relationships which is Figure 3.3 below.

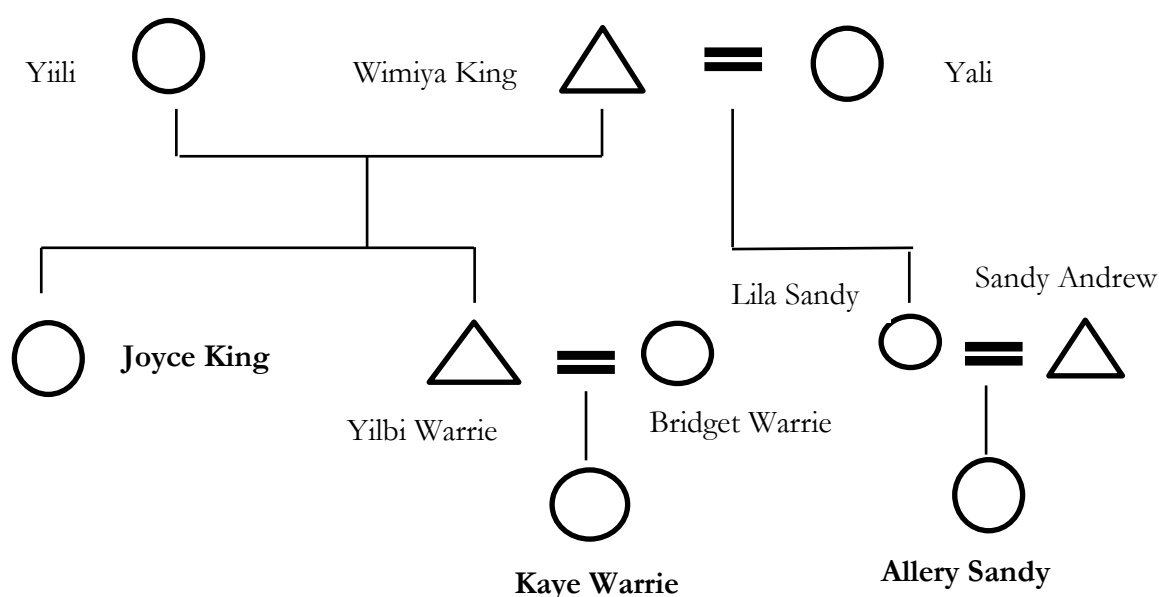


Figure 3.3: Common antecedent of Kaye Warrie Joyce King and Allery Sandy.

Source: KPFN, 13, Kaye Warrie and Joyce King.

153. Kaye Warrie and Joyce King gave other examples of the close kin links between families.¹³⁰ Members of the Aubrey and Lee families also share common ancestry. Paul Aubrey's MMF was Wimiya King while Maggie Aubrey (Wimiya King's dd) married Tommy Lee and their daughter was Gloria. Members of these various families trace descent from the same ancestor (Wimiya King) as do Joyce King and Kaye Warrie. Kay also reminded me that Michael Woodley is related to Wimiya through Woodley King, Michael's mother's father. Kaye adds, 'So they are all nieces and nephews; their mothers are our cousins'. She continued,

¹³⁰ KPFN, 11, Kaye Warrie and Joyce King.

So we all very close yet this man came and divided us. Now we fighting each other family against family.

KPFN, 11, Kaye Warrie and Joyce King.

154. As I was finishing my interview with Kaye and Joyce they told me¹³¹ of two younger relatives (I assumed them to be Kaye's nephews) who each now live with one of Ellery's children. In turn, these couples have their own children. Consequently, there is a new generation of Yindjibarndi children who are caught up in the split. I think it reasonable to conclude that there are other examples of divisions between kin, given the Yindjibarndi comprise such a close-knit set of relationships – as indeed the data I have presented above illustrates.

155. In all relationships with kin the rules of *nyinyaard* should always apply, requiring that you show generosity when people are in need or you have food or meat when another does not.¹³² Angus Mack also raised the principle of *nyinyaard*. He told me¹³³,

there's a mine sitting there. The only way is for all to get together and share the money – but under the present arrangements the *nyinyaard* has been set aside. Going to court has meant the loss of the principles of caring for each other and sharing. There's no longer these principles in play. These principles [rules, laws] are a part of being a *ngaarda* and a Yindjibarndi person.

KPFN, 47, Angus Mack.

156. Angus Mack also raised the importance of generosity in daily living, citing by way of example the imperative that when hunting you always bring back more than is required to satisfy your own immediate needs so that you can share the meat round the community.¹³⁴ However, in his view, members of the Wirlumurra were not honouring this practice with respect to the benefits of the mine, which flowed only to them. 'They keep to their own group' and share between themselves rather than 'across the whole of Yindjibarndi people'. Angus was of the view that this was not altogether their fault. 'They just get bribed', he said.

157. A further example of the hurt and damage done to customary Yindjibarndi kin relationships relates to contravention of the rules that structure the *wurruru* relationship. This is a relationship which is believed to have supernatural underpinnings – thus the

¹³¹ KPFN, 14. Kaye Warrie and Joyce King.

¹³² KPFN, 5, Margaret Read.

¹³³ KPFN, 47, Angus Mack.

¹³⁴ KPFN, 46, Angus Mack. The data in the rest of this paragraph are derived from this source.

honouring of the relationship is a matter of observing divine prescription. I have explained the ethnographic details of the *wurruru* relationship in paragraphs 82 to 84 above).

158. Kaye Warrie and Joyce King told me¹³⁵ that Sylvia Allen was *wurruru* to Stanley Warrie (Kaye's brother). They affirmed that this is a special relationship which is sometimes glossed in English as 'midwife' and results in a special mutual life-long relationship of respect and care. 'You got to have respect for the *wurruru*' they told me. Yet, by their account, Sylvia took Stanley to court, along with Michael Woodley, over a dispute which they identify as 'the first court case' – being, by my understanding, the result of a dispute between YAC and WMYAC.¹³⁶ Both Kaye and Joyce said that this action was 'very hurtful' and that it contravened Yindjibarndi rules for proper behaviour. Kaye added, 'This was very upsetting for Stanley and for us too. They put cultural things aside and this is very sad. They [Wirlumurra] lost their culture.'

159. The two women added, that after the court case was over some members of the family said that Sylvia was never *wurruru* and so denied that it was a wrong thing.¹³⁷ My understanding of what I was told is that both women considered that the *wurruru* relationship was a fact and the incident was an example of the denial of Yindjibarndi customary kin arrangements that contravened the rules for such a relationship laid down in the Ngurra Nyujunggamu.

160. Yindjibarndi ritual practice has also been adversely affected by the split between the two communities. Michael Woodley spoke with me¹³⁸ about the divisions that have adversely affected the practice of Yindjibarndi ritual and the Birdarra Law. Michael explained that the rituals were now no longer conducted as a single community event, as they should be according to customary practice and, indeed, as they were conducted prior to the development of the divisions between the two groups. Rather, now, the Yindjibarndi and Wirlumurra alternate, so that one year the former conducts the Birdarra rituals at Woodbrook, the next year, the latter.¹³⁹ He expanded on the reasons for the disagreements between the two groups which extended to differences over matters of ritual practice.¹⁴⁰ I was also told about this disruption to customary ritual practice by

¹³⁵ KPFN, 13-14, Kaye Warrie and Joyce King. Data in this paragraph are derived from this source.

¹³⁶ Cf. Warrie [2017] FCA 803 [490].

¹³⁷ KPFN, 14, Kaye Warrie and Joyce King.

¹³⁸ KPFN, 44, Michael Woodley.

¹³⁹ KPFN, 44, Michael Woodley.

¹⁴⁰ KPFN, 44, Michael Woodley.

some of the younger men who described¹⁴¹ how, because of the split, there had been an agreement for some time now that Yindjibarndi and Wirlumurra take it in turns, year by year, to conduct the Birdarra rituals at Woodbrook.

161. The consequence of this partition of ritual action, in Michael's opinion, was that an important aspect of the practice of the Law (Birdarra, the Burndud along with the social consociation this ensures) is diminished and there is consequential social loss.¹⁴²

The younger men with whom I spoke explained¹⁴³ that this means that the Law rituals which are supposed to bring all Yindjibarndi (and other groups) together, now stand as a mark of the separation and split in the community. Michael was of the opinion that this goes to the heart of the disjuncture that FMG has generated.¹⁴⁴

162. Angus Mack also made comment on how the divisions have affected the practice of the Law at Woodbrook each year.¹⁴⁵ He commented that each side blames the other for not practicing the Law according to the mandates of custom. In Angus's view the breakdown in ritual practice means that all practitioners, from either side, no longer come together, as is required, prior to the ritual commencing, to settle differences in a process he calls, 'levelling' accomplished through consensus. This process is now entirely missing as there is now no way of coming together and achieving a consensus. This, Angus says, 'upsets the Birdarra' which should be conducted 'in the right way', that is according to the prescriptions of the Law. The split in the community has caused a rupture in these processes and so the Law cannot now be properly followed.

163. The division of the two groups exemplified through this separation of ritual observance has consequences for social associations. Ritual practice prescribes certain relationships between participants. I was also told¹⁴⁶ that initiates who submit to the Birdarra initiation together as age mates, are called *yulbu*. The *yulbu* relationship is a close one that lasts for the whole of a man's life from the time of his initiation. One of the men with whom I spoke likened it to a 'blood brother'. Your *yulbu* is not only the subject of a life-long close relationship but is marked by reciprocal caring and generosity. It was explained to me that you have to take care of your *yulbu* whatever eventuates and for the rest of your life. 'That's Yindjibarndi Law' they told me. However, Isaiah

¹⁴¹ KPFN, 40-41, John and Michael Woodley Jnr, Isaiah Walker.

¹⁴² KPFN, 44, Michael Woodley.

¹⁴³ KPFN, 40-41, John and Michael Woodley Jnr, Isaiah Walker.

¹⁴⁴ KPFN, 44, Michael Woodley.

¹⁴⁵ KPFN, 46-47, Angus Mack. The data in the rest of this paragraph derived from this source.

¹⁴⁶ KPFN, 41. John and Michael Woodley Jnr, Isaiah Walker. The data in the rest of this paragraph derive from this source.

Walker, one of those present during this interview has his *julbu* from the Wirlumurra group. This means he is now unable to speak with him or have much to do with him. They say that this is another example of how the split is breaking Yindjibarndi Law.

Injury, physical and emotional

164. I collected examples of physical violence that has resulted from the deep-seated feelings that have developed as a consequence of the events that have shaped relationships between the YAC and WMYAC. During the course of my field work I witnessed displays of strong emotion in this regard.¹⁴⁷ Charlie Cheedy spoke in general terms, saying,

Now there's fighting and carrying on and this is no good [because of the dispute between YAC and Wirlumurra]. It's like the bad vibes that people talk about, about Michael, things which are not true. It's pretty hurtful to say these things. 'He ripping the people off' 'money and all that'. They put the audit on us but they find nothing. If they didn't just follow Andrew Forrest and come to the table so we'd have done something together we'd have got somewhere, but no. They went their own way.

KPFN, 29, Charlie Cheedy.

165. I spoke with those who had been involved in physical assaults, two of whom have now served prison sentences as a consequence.¹⁴⁸ Prior to commencing the interview I did not know of the men's involvement and it was not information that I elicited. During our frank discussion I did not gain the impression that either man sought to excuse themselves. However, they were of the view that the events and their sequelae would not have happened had it not been for the division within the community. They felt that as a result they had spent time in prison when they should have been 'growing up and enjoying' themselves.¹⁴⁹ Michael Jnr also explained that he had had to serve part of his sentence in Perth, away from his family and friends. This was because a member of the Wirlumurra group was also serving a sentence and the authorities did not want them to be together in the same prison.¹⁵⁰ Michael Jnr felt that this was unfair on him. Again, this was, 'all because of the split'.¹⁵¹

¹⁴⁷ KPFN, 33, Michael Woodley.

¹⁴⁸ KPFN, 40, John and Michael Woodley Jnr.

¹⁴⁹ KPFN, 40, John and Michael Woodley Jnr.

¹⁵⁰ 'In jail too we were fighting with them'. KPFN, 40, John Woodley.

¹⁵¹ KPFN, 40, John and Michael Woodley Jnr.

166. Lorraine Coppin told me¹⁵² of more specific incidents resulting in actual physical assault that she alleged were a direct consequence of the dispute between the two groups.¹⁵³ Lorraine said that she was the victim of a physical assault and showed me the scar on her eyebrow where she was hit. She also alleged that a senior YAC member was ‘bashed’ at the airport, following a legal case. I also collected stories of fights between younger members of the two organisations.¹⁵⁴ Charlie Cheedy was of the view that at least some of these assaults were the result of alcohol.¹⁵⁵ Lyn Cheedy was particularly concerned about the effects the community division was having on the younger generation. She spoke¹⁵⁶ of her own grandchildren (she has 12 of them) who she considered are negatively affected by these events.

Young people see what’s been going on between the two groups ... and they get really upset. They get into fights over this saying this and that, saying bad things. [FMG] doesn’t see the physical side of things that’s going on. And this has been going on for a long time now. And there’s no resolution. The young people are really feeling the brunt of it. Young people like to go out and party and have fun but they end up having a fight. This is the hatred that’s been going on. They act it out. It’s not a nice thing to be going on for them.

KPFN, 21, Lyn Cheedy.

167. Social media was also cited as a source for harassment and insults. Charlie Cheedy told me¹⁵⁷ that he has no Facebook friends who are, ‘on the other side’ because he does not want to see the bad things they post. Margaret Read and Kaye Warrie considered¹⁵⁸ there was a concerted and deliberate campaign on the part of some Wirlumurra members to post material on Facebook that is strongly antithetical to YAC. They told me that these posts ‘just keep the fuel [to the dispute] coming’.¹⁵⁹ They showed me an example from Facebook which dates to the previous Christmas (2021) about money being distributed by WMYAC and querying whether, in contrast, anyone would get anything from YAC.¹⁶⁰

¹⁵² KPFN, 22, Lorraine Coppin.

¹⁵³ KPFN, 22, Lorraine Coppin.

¹⁵⁴ KPFN, 19, Lorraine Coppin; 14 Kaye Warrie and Joyce King.

¹⁵⁵ KPFN, 29, Charlie Cheedy.

¹⁵⁶ KPFN, 21, Lyn Cheedy.

¹⁵⁷ KPFN, 29, Charlie Cheedy.

¹⁵⁸ KPFN, 14, Kaye Warrie and Margaret Read.

¹⁵⁹ KPFN, 14, Kaye Warrie and Margaret Read.

¹⁶⁰ KPFN, 14, Kaye Warrie and Margaret Read.

168. While I saw a copy of this post on a mobile 'phone, during the interview, I was not able to review any other examples, posted by either YAC members or WMYAC. Consequently I cannot know the degree to which social media is used to cause emotional hurt and injury. However, Margaret Read told me¹⁶¹ that while she has only a few friends on Facebook on 'both sides', it was her opinion that there are many negative posts on Facebook, especially from younger people. Margaret considered that this negativity had become 'a real problem for young people' and had 'spread down from the older people to the children' and the result is fights that start with posts on social media.¹⁶²
169. A group of younger Yindjibarndi men told me¹⁶³ that they consider social media to be the 'main instigator' of tensions. This they consider is a result of the fact that 'people aren't bold enough to actually confront you but can do it via their mobile [phone] which makes them bold.' This they stressed is current practice. They gave examples of malicious gossip spread through social media, impugning the Yindjibarndi leadership and, sometimes, those who worked for them. On one occasion someone had posted that some of the Yindjibarndi were 'on drugs'. As young men of the community they now feel helpless to respond, even though they feel intensely annoyed at these posts. They told me, 'but if we react personally they'll get the cops on us. So we just got used to it and let it go.' These men now feel that the negative postings achieve nothing and that in reality they are 'all one mob'. For John, the insults he was facing on social media caused him to delete his Facebook page altogether.
170. Based on the field data I have presented it is evident, in my view, that it is the opinion of those who discussed the matter with me, that social media plays a role in perpetuating the divisions and the negative feelings associated with them. It is also at least possible that the use of social media in this way has promoted and exacerbated physical violence.

The sadness of spirit

171. *Wirrard* is an important Yindjibarndi word in a discourse of personal feelings. Glossed in the dictionary¹⁶⁴ as meaning '1) feelings. 2) emotions. 3) spirit' it was my field work experience¹⁶⁵ that it was often translated into English as 'spirit', meaning, by my reading of the data, an essential and non-physical part of a person which has life and

¹⁶¹ KPFN, 7. Margaret Read.

¹⁶² KPFN, 7. Margaret Read.

¹⁶³ KPFN, 41, John and Michael Woodley Jnr, Isaiah Walker. The data in this paragraph derive from this source.

¹⁶⁴ Juluwarlu Archive, n.d.

¹⁶⁵ E.g. KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness; 8, Pansy Cheedy; 21, Lyn Cheedy.

vitality, responding both positively and negatively, depending on circumstances, which informs its human abode. For the Yindjibarndi your *wirrard* is the seat of many emotions, including a sense of freedom and the happiness this evokes in country (*ngurra*).¹⁶⁶ Used in this context it refers to a spiritual force within a person. Pansy Cheedy explained the complexities of the meaning of *wirrard* in response to my asking what the word means.

PC. Well *wirrard* mean, that when I travel on the country I'm free because I see, see a hill that I recognise and I am connected to *ngurra*. My *wirrard* is connected to *ngurra* I'm I'm free. I can see that hill 'Oh hello [?] it's good to see you old friend'. I mean 'Hello hill', you know. When I go to a place where my father was born I see the hill I saw as a child. It's good to see it and it's still there and I'm connected. I remember these hills.

KP. So that word *wirrard*, how would you put it in English?

PC. *Wirrard* is not a softly spoken feeling. It ties in with the whole of your *ngurra*. Your *wirrard* is tying in with – its connected. When I see this hill still there my *wirrard* becomes strong – ah not strong but – it becomes exciting [excited] because it's still there. And I'm able to connect with it. Connect.

KPVR 1-2, Pansy Cheedy.

172. *Wirrard* can be damaged and broken by certain actions. The Yindjibarndi verb *wirnda* means 'to break'. I was told¹⁶⁷ that something that is *wirnda-rna* (the suffix is a past tense marker) cannot be easily fixed. Those with whom I was working added, 'and if you could [be fixed] it would take a long time'.¹⁶⁸ Wordick (1982, 370) defines *wirnda* as, 'cut; tear; tear into, e.g. ---- *nganangu*: pick a fight with or attack someone; break'. Wordick's definitions show that the word can imply aggressive action which results in damage. Its use then may flag more than the damage or destruction – it implies forceful, hostile action on the part of the agent inflicting the injury.

173. The phrase, *ngayu wirrardgu wirndarna* (literally, 'I spirit [obj] broken) could be rendered in English, roughly, as 'I am broken hearted'.¹⁶⁹ However, this fails to reflect the centrality of the *wirrard* to the Yindjibarndi concept of person and spirit, as well as the brutalising agency that effected the break. Apposite English terms for *wirnda* might be 'gut-wrenching'¹⁷⁰ or perhaps 'heartrending' both having the sense of active and forceful

¹⁶⁶ 'You go into your country with your *wirrard*. You free to go there.' KPFN, 8, Wendy Hubert and Pansy Cheedy.

¹⁶⁷ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

¹⁶⁸ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

¹⁶⁹ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

¹⁷⁰ I recorded this term from the Native Title Holders of the Timber Creek area, in the Northern Territory. See Palmer 2018, 235.

destruction.¹⁷¹ Accepting these understandings, the phrase *ngayu wirrardgu wirndarna* might better be rendered as ‘My inner-most spiritual self was ripped apart’. The Yindjibarndi phrase I was told could be used of a personal loss such as a death of a close family member.¹⁷²

174. The consequences of the division in the community were characterised by some in terms of damage to one’s spirit or heart. Margaret Read told me¹⁷³ that many Yindjibarndi elders had, ‘died heartbroken because of the rift’. She herself had suffered much heartache for the same reason.

175. Lyn Cheedy had provided me with an example of the broken relationships she now has with members of the Wirlumurra group (see paragraphs 139 to 141 above). I asked Lyn how these events and the social disjunctions they marked made her feel. In response Lyn spoke of her feelings and in this context used the word *wirrard* which she understood as your ‘spirit’. She explained that her *wirrard* is *waji-warni*. Lyn told me that this means ‘it gets sad and upset’ or ‘more sad’. ‘The person who turns the other way [in the street] is your own family and to deliberately ignore them or not recognise them as would be proper is very upsetting.’

176. The Yindjibarndi word *waji* is defined as meaning, ‘bad’, ‘evil’, ‘foul’ or ‘sour’.¹⁷⁴ *Warni* gives the sense of becoming or indicate a process¹⁷⁵ – thus literally, ‘becomes’ or ‘turns bad’ or ‘sour’. According to this analysis, ‘getting upset and sad’, being as it is a translation of an Yindjibarndi emotion, inadequately serves to convey the sense of the decline of one’s personal spiritual self, which is turning bad as a consequence of social disharmony. It is then rightly expressed as being an emotional state that is ‘more [than] sad.’

177. Lorraine Coppin told me¹⁷⁶ that the loss of her country at the Solomon Hub mine sites and the fighting caused by the division in the Yindjibarndi community caused her to fall into a deep depression by 2016. She and her husband, Michael, decided to go to Perth for a year – taking their children with them. Lorraine said that she felt she had no social support. ‘We wanted to get away from here.’ Now Lorraine feels a sense of brokenness in her community and that the events of the past decade or more have

¹⁷¹ Wrench: ‘a twisting or pulling aside; a violent twist or turn’. Rend: ‘to tear, to pull violently or by main force’. *Oxford English Dictionary*. Both words have numerous additional meanings.

¹⁷² KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

¹⁷³ KPFN, 6, Margaret Read.

¹⁷⁴ Juluwarlu Archive, nd.: *waji*.

¹⁷⁵ Wordick (2018, 86) describes this as an ‘inchoative verbaliser’; see also *ibid.*, 138 and 297, ‘*kurlu-warni* get warm or hot’.

¹⁷⁶ KPFN, 24, Lorraine Coppin.

caused there to be, 'lots of broken pieces for them to pick up' – a fact she directly attributes to the intervention in the community by FMG.¹⁷⁷

178. An additional aspect of the emotional pain and suffering which has resulted from the rift in the Yindjibarndi community, develops from a sense of failure to have been able to protect the elderly and so more vulnerable members of the community from the strife. As I noted above, Margaret Read told me¹⁷⁸ the results of FMG's involvement with the Wirlumurra group had been, 'very hurtful' since many elders had died heartbroken because of the rift. In this regard Margaret made mention of a senior Yindjibarndi man, now deceased, who was her mother's father. She had spoken of him in a public address which she gave at a conference in Broome some years ago, and talked of the anguish and tears and the heart ache he and other senior Yindjibarndi people had suffered because of the break. Lyn Cheedy also made mention of the fact that they were unable to protect senior community members from the social distress that community divisions had caused.¹⁷⁹

179. Overall, Margaret described her feeling to me¹⁸⁰ as a mixture of anger, helplessness and frustration. 'You feel you want to mend the rift but you can't ... I feel I was not in control.'¹⁸¹ Lyn Cheedy also spoke of her anger and sadness.¹⁸² Angus Mack told¹⁸³ of his emotion as being, 'a sort of sad feeling.' The alienation of individuals makes him 'feel for them too' and that as a result of the split members of the Wirlumurra group 'are missing out on things'. However, he added, 'But I also get angry about what they doing. They upsetting for all Yindjibarndi and for the country. They don't have respect'.

CONCLUSION AND OPINION: SOCIAL DISRUPTION AND CULTURAL LOSS

180. The finding of Rares J which I have reproduced above (see paragraph 110) defines the fundamental aspects that generate and now inform the intra-community conflicts that have been the focus of this chapter. WMYAC (the Wirlumurra group) came into being because some Yindjibarndi people disagreed with YAC's decision not to enter into an agreement with FMG over their mining on Yindjibarndi country. WMYAC had 'a very close relationship with FMG'. YAC is the legal representative of the

¹⁷⁷ KPFN, 24, Lorraine Coppin.

¹⁷⁸ KPFN, 6, Margaret Read.

¹⁷⁹ KPFN, 21, Lyn Cheedy.

¹⁸⁰ KPFN, 6, Margaret Read.

¹⁸¹ KPFN, 6, Margaret Read.

¹⁸² KPFN, 21, Lynn Cheedy.

¹⁸³ KPFN, 46, Angus Mack.

Yindjibarndi native title holders and while at least some members of WMYAC were also members of YAC, they did not command a majority. WMYAC then sought to ‘get control of YAC on a number of occasions’ but did not succeed.¹⁸⁴ There were then disagreements relating to three principal matters:

- (i) FMG’s offer for an agreement between the native title holders and the company;
- (ii) the continuing close relationship between WMYAC and FMG;
- (iii) attempts by WMAC to gain control of YAC.

181. These three points of contention had one root cause: the mines and the other developments at the Solomon Hub. The perpetuation of the divisions within the community were a consequence of FMG’s engagement with one Indigenous group and that not the body that represented the Yindjibarndi native title holders.¹⁸⁵ Some of the consequences for the Yindjibarndi community, both in Roebourne and elsewhere, has been social disruption, disharmony and conflict. The purpose of this chapter has been to provide examples of this fragmentation of Yindjibarndi society and the emotional as well as the spiritual response of community members. In reviewing the data available to me I am mindful that it represents the experiences of one group of the now fractured Yindjibarndi people (see paragraph 114 above). I make the assumption that the social dislocation and hurt felt likely applies to all member of the Yindjibarndi community, whether they owe their first allegiance to the WMYAC or the YAC. All are victims of the circumstances that have caused the division.

182. The oral account of the history of the division aligns, in broad terms, with the historical account. Accounts of the split between the two Yindjibarndi factions laid responsibility directly on FMG, sometimes personalised as Andrew Forrest in the accounts I have reviewed (see, for example, paragraphs 124, 126, 127, and 128). From the native title holder’s point of view, the events that led to the creation of the Wiru-Murra Yindjibarndi Aboriginal Corporation and the contrasting opinions and aspirations of their members was the result of the actions of FMG.

183. In terms of an anthropological analysis, attribution of blame in any discourse relating to emotional or physical suffering is relevant to remediation or the potential for such. This is because a known individual is capable of taking direct action, whereas a monolithic corporation, having no personal presence, is perhaps less likely to do so. I conclude, based on acceptance of this proposition, that the Yindjibarndi with whom I

¹⁸⁴ *Warrie* [2017] FCA 803 [393].

¹⁸⁵ Cf. *Warrie* [2017] FCA 803 [391].

worked, consider that FMG through the agency of Andrew Forrest is capable of rectifying the social disruptions they are asserted to have caused. His failure to do so exacerbates the hurt (see for example paragraph 129).

184. I have provided a summary of demographic and consequential social conditions that characterise the Roebourne Indigenous community (paragraphs 118 and 119 above). The data I have reviewed show that Roebourne represents a small community of Indigenous Australians. The system and manner whereby social associations and kinship are reproduced and sustained, particularly amongst those who share a common cultural heritage, results in relationships and the emotions and feelings associated with them, being a significant feature of daily living. Physically, people are proximate. Families have, over the course of several generations, inter-married. The close social bonds of a small, tight knit community provide a network of support. However, when relationships are fractured or disjuncted by external influences, the consequences are all the more keenly felt.

185. My account of the Yindjibarndi system whereby social relationships are defined and executed lends an additional and significant factor to the consequences of any fracture in those relationships. Both consanguineal and putative kin (that is those defined through blood, and those defined through the Galharra system or other forms of cultural ordination) owe allegiance to prescribed rules for interaction: obligations, duties, expectations and ways of doing things. These are not the dictates of mere good manners or an accomplished demonstration of social etiquette. These are the Law, the principles that underpin Yindjibarndi living as established by supernatural ordinance. Contravention breaks this Law.

186. In my opinion and based on my knowledge of the Yindjibarndi, neighbouring, as well as other Indigenous cultures, this contravention of the god-given Law is not only measured in terms of a deviation from a given path. It poses a threat to autonomy and the integrity of Yindjibarndi identity. Breaking what anthropologist Fred Myers called ‘a moral order’ (Myers 1986, 124) of social relationships will threaten the social value of relatedness (*ibid.*) which mediates an individual’s inclinations and the well-being of the community as a whole. The hurt is consequently not merely that which stems from the breaking of a conventional way of doing things. It goes to the core of what it means to be Yindjibarndi in upholding the moral order that represents the essentiality of an Yindjibarndi person. In my opinion the feeling of hurt that developed from the cultural

loss is of the sort identified by Sansom as ‘an epic emotion’ (see paragraphs 94 and 101 to 105).

187. The divisions occasioned by the split between WMYAC and YAC are also evident in the directly physical consequence of small-scale assaults and violence against individuals (paragraphs 164 to 165). I am not able to provide data that would demonstrate how common these acts of physical confrontation are. Based on the data reviewed I am in no doubt that they have occurred and have resulted in the incarceration of some of those involved. There is some indication, again based on my reading of the data I have collected, that children are also caught up in this conflict which is a matter of further concern to their parents. I have presented some data that support the conclusion that conflict that develops from the division is not limited to physical action – whether passive or active, but is also manifest through social media outlets, such as Facebook. Its incidence on other social media platforms is unknown to me. Given the apparent conflict between younger members of the Yindjibarndi community, I think it reasonable to conclude that it is likely that it informs other digital content.

188. The consequences for those Yindjibarndi with whom I have spoken of the division within the community is hurt and suffering, combined with anger and a feeling of lack of control and helplessness. Some have felt unable to acquit their duties as the now adult children of their senior Yindjibarndi people, others have suffered from depression. These emotions responses and feelings are well represented in the data reviewed (paragraphs 177 to 179).

189. In my opinion, in order to understand the full impact of these events on the emotions and feelings of those with whom I worked, it is necessary to step inside Yindjibarndi cultural acuties. For an Yindjibarndi person, based on my understandings of what I have been told, human feeling rest within a person’s *wirrard*. As I have explored in this chapter, this word is not easily translated into English (paragraphs 171 to 176 above). While it can be taken to mean a person’s spirit or feeling, Pansy Cheedy told me that, ‘*Wirrard* is not a softly spoken feeling’ (paragraph 171 above). I am of the opinion that Pansy was flagging to me that the word was both complex and strongly charged. Her next comment sought to explain the matter further. She stated, ‘It ties in with the whole of your *ngurra*. Your *wirrard* is tying in with – its connected.’ She went on to give an example of how when on her Yindjibarndi country she greets the hills that stimulate her *wirrard*. From this I conclude that for a Yindjibarndi person *wirrard* is far more than ‘emotion’ or even ‘spirit’. Rather it has its essence bound up in and

organically linked to country. This is consistent with the account I have provided above of Yindjibarndi beliefs about themselves and their country and the integration that characterises this relationship (paragraphs 90 to 95 and 98 to 100 above).

190. *Wirrard*, as the centre of a person's emotional response to the lived world of daily experience can, in certain circumstances, be broken. My analyses of the concept associated with this fracture leads me to the conclusion that such destruction is understood to be one of violence and brutalising (paragraphs 172 and 173). The emotion felt is one that goes to the heart of a person's emotional self and is significantly traumatic (paragraph 173). The *wirrard* becomes *waji*, that is it 'becomes' or 'turns bad' or 'sour'. Spirit is torn apart by the social disruption and this is heartrending. It is more than sadness.

191. The discussion I had with Yindjibarndi people regarding their feelings which have developed over the last decade and which they have continued to endure, are substantially consistent. All have expressed the opinion that the events of the division between the WMYAC and YAC have caused them to feel substantial emotional as well as, on occasion, physical pain. The nature of that pain, comprehended through the lens of Yindjibarndi concepts and expressions, shows that this pain extends to the core of a Yindjibarndi's personhood. But it also potentially hurts a relationship that the individual has through the agency of their *wirrard* with their own country. In this then the origins of the hurt and the consequences of the hurt, find their destination in the same physical location – the area of the mines of the Solomon Hub.

4. LOSS OF RIGHTS AND DUTIES OF AN OWNER OF COUNTRY

INTRODUCTION

192. In this chapter I explore the response of the Yindjibarndi native title holders to actions taken on their country without their permission. They perceive these unauthorized actions as contravening their Law. I seek to ascertain whether the loss, diminishment, impairment or other consequences of these acts has resulted in cultural loss and, to the extent that I am able, to describe the extent of that loss as represented by the Yindjibarndi native title holders with whom I worked.

193. In all matters relating to country there is for the Yindjibarndi a sexual division of roles. As the data I consider in this chapter mostly illustrate, issues relating to the governance of country is the jurisdiction of men. By 'governance' I mean acts of speaking about matters of Yindjibarndi Law that relate to country ('speaking for country'), making authoritative statements about land or dealing with the access of strangers (*manjangu*). Generally, the women with whom I spoke did not venture into these areas of responsibility, although they are, nevertheless, *ngurrara* – that is owners of Yindjibarndi country. Lorraine Coppin explained to me¹⁸⁶ that this division of roles was divinely ordained and its contravention was punished in the creative times. Lorraine stressed however that,

Women have their own Law, they carry the children and know all about the plants and foods. This is their role. These too are gifts from the Mingala.

KPFN, 23, Lorraine Coppin.

194. Consistent with this cultural precept much of the data I discuss in the chapter was provided to me by Yindjibarndi men.

LOSS OF DOMINION

Country and rights to country

195. Michael Woodley referred¹⁸⁷ to his rights in Yindjibarndi country and the cultural significance it holds for him as 'sovereignty'. For the purposes of my own account I adopt the word 'dominion' meaning the power or right of governing and controlling¹⁸⁸

¹⁸⁶ KPFN, 23, Lorraine Coppin.

¹⁸⁷ KPFN, 20, Michael Woodley.

¹⁸⁸ *Oxford English Dictionary*, 'dominion'. Cf *Warrie* (No. 2) [295].

which, according to customary principles, Yindjibarndi people command over their country.

196. In order to gain an appreciation of the nature of cultural loss resulting from forfeiture of dominion, it is necessary to understand the economic, social and cultural value placed upon country (*ngurra*) by the country owner (*ngurrara*). In an expert report I wrote in relation to the Yindjibarndi No 1 claim (Palmer 2014), I set out my opinion in relation to the customary rights that the Yindjibarndi people consider they hold in Yindjibarndi country. I wrote that, ‘a *ngurrara* has the right to enter, use and exploit his or her countryside. These rights, whether enumerated as to their detailed particulars or not, may be considered to encompass all activity that could be contemplated on the country in question’ (*ibid.*, 413).

197. Country is not only real property. It is understood to be a divinely sanctioned bestowal – as I have explained in an earlier chapter of this report (see paragraphs 58 to 64). This gift of country is understood in one account to be a ‘power’.

That’s the power given to us by the Mingala – this is your place; you got a right to control who comes here.

KPFN, 17, Michael Woodley.

198. Michael Woodley told me¹⁸⁹ that Mingala gave Yindjibarndi people Yindjibarndi country and the right to it during the creation time. Mingala also gave a set of rules to determine how the land was to be looked after and managed. In these primordial times Mingala departed from the earth with some of the beings he had created, leaving humankind behind.

he [Mingala] left the *ngaarda* [Yindjibarndi people] here now to look after the land for us – for him. And he said to them for you fellows to maintain your existence as the first *ngaardangali*, here’s the land, here’s who you are here’s your land and here’s the laws that comes with this land. And the Law is that the *ngurra* is your first responsibility. Secondly is your community, people, and then the languages and cultures and all that sort of stuff which he gave us.

KPVR, 6, Michael Woodley.

199. The Yindjibarndi native title holders with whom I have worked often speak of their rights to their Yindjibarndi country in terms of being the ‘owner’ of that country.

¹⁸⁹ KPFN, 17, Michael Woodley. Data in this paragraph are derived from this source.

For example, Pansy Cheedy¹⁹⁰ spoke of the requirement that a person speak with a ‘traditional owner’ prior to ‘doing anything’ on Yindjibarndi country. Michael Woodley spoke to me about the role of those with rights to country, referring to them as ‘owners’,¹⁹¹ while discussions about the way rights should be exercised and respected by others also included reference to the ‘owners’ of country as those with rights to it.¹⁹² Others¹⁹³ described the *ngurrara* as ‘belonging’ to Yindjibarndi country and that they were ‘heir to that place’, it being ‘your inheritance’.

Yindjibarndi country is like a house, and the house is where you truly live; there’s a boundary to your house too and the boundary is still [always] there. This, all within your boundary, is ‘belong to us’, and ‘it’s like your inheritance’.

KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

200. Michael Woodley¹⁹⁴ spoke of the country as being their own and marking it, on that occasion, with a ritual object some 1 metre in length he had carved called a *janjirn*.¹⁹⁵ He planted the *janjirn* in the ground next to where we held our discussions. I asked him why he had done this and I noted his reply as follows;

[The *janjirn* is] important like the area we are camping in is important. It’s all part of the culture and the significance, its all-embracing. The *janjirn*, like the *ngurra* was given to the Yindjibarndi by the Mingala. So it’s ours.

KPFN, 19, Michael Woodley.

201. That which is owned is a right (or a number of different rights) which, as I have noted above (see paragraph 195 above), includes the right to access and use the country, grant or withhold permission should a non-rights holder wish to enter the country (paragraph 62 above) along with a duty to look after both authorised visitors and the country itself in prescribed ways (see paragraphs 63, 68 and 96). I use the word ‘owner’ to mean a person who holds this dominion (customary rights within country). In this sense ‘owner’ can be understood as an English translation of the Yindjibarndi word *ngurrara*.

¹⁹⁰ KPFN, 8-9, Pansy Cheedy.

¹⁹¹ KPFN, 19, Michael Woodley.

¹⁹² KPFN, 37 and 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

¹⁹³ KPFN, 2, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

¹⁹⁴ KPFN, 36, Michael Woodley.

¹⁹⁵ KPFN, 36-7, Michael Woodley. A picture of this ritual object is shown on the cover of *Know the song. Know the country* (Juluwarlu Aboriginal Corp and F. Rijavec, 2004) held by a dancer pictured in the left-hand photo insert.

Those who do not have rights to country

202. In the expert report I wrote in relation to the Yindjibarndi No 1 claim (Palmer 2014), I wrote about those who do not have rights in country and how they are defined.

The second aspect of the possession of rights is the right to exclude others who are not Yindjibarndi and are consequently identified as *manjangu* [stranger]. This means that country is not shared with those who are outside of an owner's network of social and kin relationships unless he or she grants permission and invites those others in. Those who hold the rights in country have the power or function to exclude; that is to bar or keep out others who are outside¹⁹⁶ of the system whereby rights to country are defined. Definition of rights is made by reference to the normative operative system that characterises Yindjibarndi tenurial arrangements. Thus the system of rights to country, as I have set them out here, is 'exclusive'.

Palmer 2014, 414.¹⁹⁷

203. With respect to the Yindjibarndi No. 1 claim Rares J. found that, 'in the ordinary course, a *manjangu* must seek permission from a Yindjibarndi elder or elders to enter and carry out activity for a particular reason on Yindjibarndi country' (*Warrie (No. 2)* [111]). He further found 'that the Yindjibarndi have the exclusive right to control access to Yindjibarndi country and, in particular, to the claimed area' (*Warrie (No 2)* [151]). Rares J had also stated that FMG had 'an operating iron ore mine, known as the Solomon Hub mine, located in UCL 7 within the claimed area. That is near a sacred site and fresh water spring that the Yindjibarndi call Banggangarra and that FMG has named "Satellite Spring".' (*Warrie (No. 2)* [8].)

204. The Yindjibarndi word, *manjangu* was often cited as defining the divide between an owner (one with rights) and a non-owner (one with no rights)¹⁹⁸ Michael Woodley spoke with approval about the decisions of Rares J, who Michael considered had, 'got it right' in that his Honour had discussed the word *manjangu* on multiple occasions.¹⁹⁹ Michael stated,

Manjangu too. Yes, *manjangu*, whitefella's a *manjangu*. That's why our court case was very strong on the fact of *manjangu*, whitefella came to our country took our land, made laws over our laws.

KPVR, 6, Michael Woodley.

¹⁹⁶ Footnote in original: *Oxford English Dictionary*, 'exclude' and 'exclusive'.

¹⁹⁷ Cited and summarised in *Warrie v State of Western Australia (No 2) [2017] FCA 1299 (Warrie (No 2))* [313].

¹⁹⁸ The term occurs 24 time in my 2022 field notes and transcripts and 11 times in my 2014 field notes.

¹⁹⁹ KPFN, 32, Michael Woodley.

205. By my reading of Michael's comments, it was his opinion that the judge had gained an understanding of the divide between those with rights in Yindjibarndi country and those without. The use of the contrasting words *manjangu* and *ngurrara* signals and so differentiates those who lack rights from those who hold them. *Manjangu* are those who have no rights to the country in question and they are consequently unknown to *ngurrara* and are unfamiliar with and to the country. They are also potentially dangerous, unpredictable and volatile – above all unwelcome.²⁰⁰ Rules having jural-like properties govern the rights of the *ngurrara* as well as the requirement that *manjangu* seek and gain permission prior to entering, exploiting or in any way taking action on Yindjibarndi country. Those who do not seek permission are regarded with suspicion as potentially dishonest, seeking to steal by stealth.²⁰¹ It is my opinion that the fact that non-owners should seek permission from owners prior to entering the latter's country lies at the foundations of the native title rights of the Yindjibarndi people. It is also my opinion that the sustaining or contravention of these rights and the laws that are believed to ordain and uphold them according to Yindjibarndi customary practice are the social and religious context that informs the Indigenous response to the mining tenements and the consequential mining activities.
206. Based on these data as well as my earlier accounts of these perceptions as referenced above I am of the opinion that the concepts of owners (*ngurrara*) and non-owners (*manjangu*) encompass subtle yet diverse meanings. *Ngurrara* evokes the command of rights and the exercise of dominion over land. In addition, that which is owned (*ngurra*) is an inheritance, a home, a part of an all-embracing culture and significance. I was told that the name of the Yindjibarndi settlement Ngurrawaana means, 'going back home'²⁰² and is an example of how the word *ngurra* can be used to identify the concept of home – where you belong, where you live'.²⁰³ Above all, it is god-given. For a Yindjibarndi person "Ngurra is a temple to us".²⁰⁴ The concept of 'home' is in my opinion, irrefutably an exclusive possession.
207. The Yindjibarndi concepts of *ngurrara* and its stem *ngurra* along with *manjangu* have been explored in an earlier chapter of this report (see paragraphs 58 to 64). I also discussed these concepts and other aspects of customary rights to country in my 2014

²⁰⁰ Palmer 2014, 397. KPFN, 2014, 10, Michael Woodley.

²⁰¹ KPFN, 19, Michael Woodley.

²⁰² *Ngurra*, home, plus suffix *-wanna* which, so I was told, gives the sense of 'going back' (KPFN, 17, Michael Woodley with Middleton Cheedy. Kevin Guinness).

²⁰³ KPFN, 17, Michael Woodley, Middleton Cheedy. Kevin Guinness.

²⁰⁴ KPFN, 20, Michael Woodley.

report (Palmer 2014, chapter 7; see in particular paragraphs 388-399 and 406-415).

These understandings and the opinions I have derived from my data are relevant to the opinions I here provide relating to the subject of this present report.

208. Based on my work with the native title holders I am of the opinion that it is evident that they perceive that the recognition of their native title rights to the claim area by the courts has finally established in Australian law what they had always held as a sacred truth. However, they also perceive that the granting of the mining lease, the subsequent mining and related activities at the Solomon Hub area, is a contravention of Yindjibarndi Laws in that *manjangu* are present without permission. Moreover the *manjangu* are conducting themselves not only in an unauthorised but also in a destructive manner.

Theft, dominion and cultural loss

209. These underpinning beliefs explain why Middleton Cheedy sees the loss of dominion over parts of Yindjibarndi country to be the result of theft. He told me,

The country was stolen. They didn't even talk to us. They were stealing the country from under our feet. We got to witness this as a child. But now it's started to happen to us.

KPFN, 4, Middleton Cheedy.

210. Middleton saw direct parallels with the building of the Harding River dam (officially opened in 1985) which was constructed despite significant opposition from the Yindjibarndi people.²⁰⁵ The consequences of building the dam for the Yindjibarndi elder in whose country the dam was situated is believed to have been ultimately fatal.²⁰⁶ The development of the Solomon Hub was then, for Middleton Cheedy, something of a *déjà vu*. Charlie Cheedy also saw the loss of dominion as an act of trespass and stealth.

a man wouldn't like me going into their yard and start pulling trees out of their back yard. You know. I'd go to the jail, go to the thing. Go to Court or something, go to prison. But when it comes to Indigenous people of the land we still got nothing to stand on, you know. Because they don't understand *ngaarda* way of life but they only been going this whitefella way.

²⁰⁵ <http://inherit.stateheritage.wa.gov.au/Public/Inventory/PrintSingleRecord/c42a105e-8f87-4dd0-b18e-c5f037641409#:~:text=However%2C%20as%20work%20on%20the,opened%20on%2028th%20May%201985>.

Accessed 16 May 2022.

²⁰⁶ A full account of Long Mack's response to the building of the dam was given to me by Michael Woodley; KPVR, 9-10. See also KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie; 45, Angus Mack.

Our rules didn't change, never change. That's how it stood and that's how it is.

KPVR, 11, Charlie Cheedy.

211. Theft is characterised as surreptitious and an act of stealth.

Nobody told me, I never made a decision. So you get up one day and see a man over there – you say 'Well, who told you to come here? What do you want? No one ever told us about this. What are you doing?'

KPFN, 17, Michael Woodley.

212. Stanley Warrie, Middleton Cheedy and Kevin Guinness discussed Yindjibarndi words for what they termed, 'doing something illegal' which they rendered as *mundamunda*. The word for 'to steal' which they also raised in the context of this discussion was *myyagu*.²⁰⁷ The action of stealing also contravenes a fundamental Yindjibarndi value of sharing (*nyinyaard*) since, by the act of theft, benefits of the property are denied to the rightful owner. Senior Yindjibarndi men told me²⁰⁸ that as owners of their Yindjibarndi *ngurra* they had to honour the principle of *nyinyaard*.

The *nyinyaard* should kick in if someone takes your land; *nyinyaard* got to be shared. It all belongs to everyone. FMG took our land without our consent and they have taken all the money and given us nothing. This breaks our Law.

KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

213. Michael Woodley and other senior Yindjibarndi people with whom I discussed these matters²⁰⁹ understand the loss of the right to country and the requirement that strangers seek permission as a significant loss of their dominion over Yindjibarndi country. Michael pointed out²¹⁰ that following the eventual success of the native title application, their understanding had been that their rights to the country had not been extinguished and were now formally recognised. Given these circumstances he expressed dismay and some bewilderment as to how it was that these rights could now be so fundamentally disregarded. Michael stated, drawing parallels from the international events,

²⁰⁷ KPFN, 3 and 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness. Wordick 1982, *myya-* to steal, kidnap, plus suffix *-gu* giving present tense. I have not located a dictionary entry for *mundamunda*.

²⁰⁸ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

²⁰⁹ Examples include: KPFN, 20, Michael Woodley; 7, Margaret Read, 10, Middleton Cheedy, 16, Stanley Warrie.

²¹⁰ KPFN, 20, Michael Woodley.

We've been denied our control over our own land. ... We've got no balance in the power, no influence – we just lost our land.

KPFN, 20, Michael Woodley.

214. The evident frustration and lack of control over country was also expressed by Stanley Warrie during an interview I had with him and others on our visit to an area of Yindjibarndi country close to the Solomon Hub mines.²¹¹ This area, including the mines, is often referred to by the Yindjibarndi as Ganyjingarringunha, the name of a creek, valley and gorge.²¹² In my discussions with Stanley Warrie I was seeking to gain field data relating to the travels of Dreaming beings through what is now the Solomon Hub area when Stanley interrupted and asked me why it was necessary for him to justify himself as a *ngurrara* and reveal all his Law and culture to whitefellas. I tried (perhaps not very successfully) to explain once again the process necessary to prepare for a compensation claim. He told me that he understood but still felt it was unjust. 'Why do I have to show them that this is my country?' he asked.

215. For Michael²¹³ the theft of country and the activities now conducted upon it break his Yindjibarndi Law by operating contrary to his rights as the owner of the country. A group of senior men²¹⁴ expressed this same sense of loss and Law-breaking, telling me that *manjangu* have committed trespass but have also now denied the *ngurrara* their god-given right to access and use the country and give or withhold permission. This breaks the Law and in Yindjibarndi thinking is punishable by death.

216. Loss of dominion also translates in practical terms to a loss of physical access. This is an issue to which I will return in the next section of this chapter, considering an incident I witnessed as part of my field work observations.²¹⁵ Issues of rights to country, permission and trespass are central to this account – but here I focus on the underlying principle of loss of control and authority. Michael Woodley commented²¹⁶ during a discussion of our field trip to Ganyjingarringunha and Banggangarra (in the vicinity of the Solomon Hub) that such excursions serve to reunite community members and allows them to reconnect with the spirits of their country. However, given the circumstances,

²¹¹ KPFN, 38, Stanley Warrie. Data in this paragraph derived from this source.

²¹² KPFN, 8, Wendy Hubert and Pansy Sambo.

²¹³ KPFN, 35, Michael Woodley.

²¹⁴ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

²¹⁵ Lyn Cheedy told me of an incident during a flora and fauna survey in which she participated at the Solomon Hub mine area. For reasons she did not understand, part-way through the survey they were suddenly ordered to leave the area. Lyn told me she felt as though someone had had a shot-gun and told them to get off. 'We were just told to get out. But it's our country'. She found this 'all very upsetting'. KPFN, 22, Lyn Cheedy.

²¹⁶ KPFN, 44, Michael Woodley.

the occasion also reminds them all that the development of the mine means there are limits to where they can now go. I infer from this that while there is emotional and spiritual satisfaction in trips to country, the pleasure is tempered by both the reality of what has happened to their country and the physical impediments to access.

217. I recorded the following discussion with Stanley Warrie, who focussed on the practical limitations imposed by the mine and its infrastructure. I asked Stanley about the possibility of recording archaeological or ethnographic sites in the mine area that had so far escaped attention.

SW. No, I don't think there's any chance [?] of the mine. Because its expanding and stopping everyone from ...

KP Can you go there? ...[interruption] ...So you can't go there. Not easily? They won't let you in?

SW. You simply can't go there even if you [some background conversation]. You can't seem to go where you really wanted to go. Where's the thing? It's under – you know, you know in a mine, it's very dangerous. Explosion. You know might be blown up or thing. Go there. You just can't seem to go there.

SW. In that area, yes, but you can't go in there in that area where now it's all a big mine. That's the sort of thing, what we've you know when we standing from here and looking at, you just simply can't go there. [?] You know I think mine's got their own laws and things, you know.

KPVR, 4, Stanley Warrie.

218. In seeking to explore this aspect of cultural loss with the native title holders I asked Michael Woodley to explain to me about the loss of Ganyjingarringunha or those parts of it that have been destroyed by the mine – or he can no longer access. He told me²¹⁷ that the loss was a loss of authority. This he stressed was a loss not just for him but for all Yindjibarndi people. But he also apprehended this loss as a diminishment of himself as an Yindjibarndi person.²¹⁸ He said, 'It's a loss to you as an independent person, to make decisions and control the land.'²¹⁹ He went on to say that he felt a sense of worthlessness because he has lost this authority and right to speak for Yindjibarndi country. This is especially hurtful for a man because men have the principal responsibility of Yindjibarndi country. He now feels this particularly acutely as all the earlier senior Yindjibarndi men are now deceased, so it is up to Michael and the other

²¹⁷ KPFN, 19, Michael Woodley.

²¹⁸ KPFN, 17, Michael Woodley.

²¹⁹ KPFN, 17, Michael Woodley.

men who survive to represent themselves as fully realised Yindjibarndi men – something which he is unable to do given the circumstances of the mine. Michael says that talking about this makes him emotional.

219. I recorded a discussion in which the speakers²²⁰ made a similar point.

MC. That man wasting away, [inaudible].

MW. We feel the loss of control, we lost our responsibility to care for country and to make our decisions. So we then, we quickly find no place in it. We find no place and if we don't find the strength to tell ourselves that this is not our doing, you know, then you can still find strength to move along and navigate through this Western culture, systems and laws. But if you don't find the strength then you always walking round with the blame that you let the Mingala down, you let the spirits down, you let the old people down. You let your country down, you let your *ngurra* down. And you just fade away,

MC. Fade away, yes.

MW. You know, you know fade away till you die.

[9:38.132]

KP. So you get this idea your feeling, you said, feeling blame, is that like feeling guilty that you didn't. ... do what you had to do?

MW. That's the other loss see. Yes, that's the other loss, losing our place in our society as the decision makers. That's a big loss to us.

KPVR, 7, Michael Woodley and Middleton Cheedy.

MW. But it makes you feel that you become worthless.

KP Worthless?

MW Yes. That you haven't you haven't you know, you haven't exercised your authority as an Yindjibarndi person, man especially. Isn't it?

MC. Yes. Because a man got to always head.

MW. Because man is the head of the *ngaarda*, the *nyambali* [boss, leader]. He's a *mirranga* [lead spokesperson²²¹].

²²⁰ KPVR, 8, Michael Woodley and Middleton Cheedy.

²²¹ KPFN, 47, Michael Woodley.

KP. And alright, is that just you or is it ...?

MW. No, everybody,

KPVR, 8, Middleton Cheedy and Michael Woodley.

Opinion

220. My understanding of these data is that for the Yindjibarndi the development of the Solomon Hub has resulted in the loss of their property, along with all the rights and obligations that go with it. In short, this area of their country is now denied to them. The denial of right to country results in an economic loss. There has been no agreement made to direct a part of the value of the land and all that it contains to its owners, according to the principle of *nyinyaard*. The denial of a god-given right to have dominion over Yindjibarndi country also results in a deep hurt. The denial of rights to the country cuts the essentiality of Yindjibarndi religious belief: that Mingala allocated country along with a multitude of cultural attributes that serve to identify and define the Yindjibarndi as an autonomous people, identified by reference to their country and Law. The alienation of the area of the Solomon Hub fractures this identity and breaks the integrity of the Yindjibarndi *ngurra* and so too, of the Yindjibarndi person. The use of the words ‘stolen’ and ‘stealing’ reflect the feeling that real property has been appropriated by another, which property has value and worth, now lost. A practical consequence of this alienation and loss of dominion is the inability to access and use the country of the Solomon Hub, with a consequential diminishment of culturally related activities – a matter to which I return in the next section of this chapter (see paragraph 222 following below).
221. Loss of country, the bestowal of which is believed to have been a consequence of divine ordinance, its perceived theft and the seeming impossibility of gaining access to the area of the mine, informs feelings of cultural loss that relate to identity, autonomy and personal status (paragraphs 209, 212- 214). This loss of dominion consequently results in a significant personal loss for senior Yindjibarndi men in particular (paragraph 219). The men with whom I worked expressed the view that they now feel diminished in terms of their expected role as senior Yindjibarndi men, whose individuality and identity is defined in terms of their role in the practice of the Law (paragraphs 218 to 219) – which includes, as I have discussed in an earlier part of this report, looking after and having authority over all of Yindjibarndi country (see paragraphs 58 to 64). Based on the data I have reviewed above, this is a cultural loss that results in personal emotional hurt, a loss of identity and self-worth with consequential physical decline and perhaps even

death (paragraphs 210, 219, 261 and 263). By my reading of the field data I have collected, this constitutes a significant component of the cultural loss, as native title holders represented it to me.

Observing and experiencing loss of access: a case study

222. During the period of my field work I travelled with Yindjibarndi native title holders to Ganyjingarringunha and Banggangarra.²²² Ganyjingarringunha is a gorge and river valley in the Hamersley Ranges, the southern portion of which is now occupied by the Solomon Hub mining complex. Banggangarra is the name of a western tributary of the Ganyjingarringunha valley having at its head a gorge, permanent spring, waterfall and pool. Ganyjingarringunha and Banggangarra are of substantial cultural significance to the Yindjibarndi people for reasons I explain in detail in a subsequent section of this report (see paragraphs 348 and 349 below). The Yindjibarndi native title holders took the Federal Court to this area and restricted men's evidence was taken at Banggangarra.²²³
223. Based on my examination of Google Earth²²⁴ the Banggangarra pool is approximately 2.25 kms n.n.w. (319°) of the Solomon Hub. In 2015 vehicular access to Ganyjingarringunha and Banggangarra was effected by the Federal Court and parties via an access track that skirted the western perimeter of the mine.²²⁵ By the time the field work reported here was undertaken (2022) the general view of the Yindjibarndi men was that access to Ganyjingarringunha and Banggangarra was no longer possible via the track we had used in 2015 because it was now destroyed or covered with tailings.²²⁶ While access through the mine site is, presumably, possible, this would have required authorisation and supervision from FMG, as it is an active mine site. The Yindjibarndi native title holders were not willing to adopt this option,²²⁷ for reasons I explore below. Consequently, it was suggested and agreed that access to the area be gained via Ganyjingarringunha gorge, entering it from the Fortescue plain at its northern terminus and driving west and then south down the gorge to Banggangarra.²²⁸ This proposed itinerary would not involve entering or crossing the mining lease. It had been agreed that

²²² 3rd to 5th May 2022. KPFN, 34 – 44.

²²³ *Warrie* (No. 2) [8], [39], [59], [99], [144], [157], [236], [292], [293] and [295].

²²⁴ 2019 imagery.

²²⁵ *Warrie* (No. 2) [157].

²²⁶ KPFN, 15, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

²²⁷ KPFN, 35, Stanley Warrie. By my observation the option of seeking permission from FMG to enter Yin country was never entertained as an option.

²²⁸ KPFN, 33, meeting of field trip participants.

FMG be advised of the proposed field trip and the itinerary, which I understood had been done the day prior to our proposed departure.²²⁹

224. As an observer of the events as they unfolded, I was not a party to the various emails, texts or other communications that followed. However, I was present when they were read out or discussed. Consequently, I consider that the following account of what transpired is broadly correct. As an observer I was also witness to a range of emotions and feelings expressed by the Yindjibarndi native title holders in response to the replies of FMG to the communications provided to them of the proposed visit to Ganyjingarringunha and the itinerary to be adopted. I here give a summary of how I understood these exchanges to have taken place since they provide the necessary context to an understanding of the emotions and feelings which developed from a proposal to visit Yindjibarndi country by those who hold native title rights therein.

225. I recorded the following in my field notes.

Juluwarlu centre, Roebourne.

Michael [Woodley] calls everyone together after most of the packing and sorting has been done to tell them that we have received a text (may have been an email, I'm not sure) from FMG. This was in response to Phil [Davies] having sent the relevant FMG employee an email saying that we planned to visit Yindjibarndi country over the next couple of days and outlining our proposed itinerary – that is to say we would approach Ganyjingarringunha from the north by means of the access track alongside Rio Tinto's new railway line to Koodaideri (I think it is). We would then proceed up the gorge to Banggangarra. This would not require us to enter the mining lease and the itinerary was entirely on UCL. Phil read out the reply which was long and complex but in summary stated that the Solomon Mine area was a working mine and consequently dangerous and that there were active operations in close proximity to Banggangarra that would make the proposed visit unsafe.

KPFN, 33-34, field trip participants.

226. My observation, was that it was apparent that the author (or authors) of the response had taken no account of the itinerary proposed, assuming only that the party proposed to access Ganyjingarringunha via the Solomon Hub mine site, which was not the case. I observed the response of senior native title holders to the FMG reply.

Yindjibarndi native title holders present were concerned at what they took as a denial of their right to visit their country (not within the mining lease). In particular some of the senior women made it clear (Margaret Read and Pansy Cheedy I noted in particular) considered it a huge affront to have to

²²⁹ KPFN, 33, meeting of field trip participants.

seek permission from FMG to enter their own land. Some spoke at length about how hurtful this reply was and how impersonal, while others thought it a deliberate ploy to try to frighten them off.

KPFN, 34, field trip participants.

227. After some discussion it was agreed that Phil Davies would reply to FMG seeking to clarify our proposed route and confirming our intentions to visit Banggangarra by the route already described. We left Roebourne in a convoy of some 8 vehicles at about 3.00 pm and drove to Buminyjinha, site of the old Tableland Police Station and ration depot where we camped the night.²³⁰ Once camped up, discussions continued as to the best course of action and additional attempts were made to contact FMG by telephone from the railway camp at 'Ti Tree'.²³¹ I noted again that the native title holders were agitated and angry at what they felt was a deliberate attempt by FMG to prevent them from accessing their own country.²³²

228. Michael Woodley arrived at Buminyjinha somewhat later than the main party as he had business to attend to in Roebourne. He reported on his arrival that he had received a call from the police that evening²³³ following a complaint made by FMG with respect to the Yindjibarndi's proposed trip to Ganyjingarringunha. Michael considered the call to the police an unnecessary and rather aggressive attempt to try and prevent the trip.²³⁴ Later Michael expressed the view²³⁵ that the action was a serious affront. He told me (and other present) that, 'it's unjust to have the police after you just because you want to visit your own country – how would a whitefella feel if on visiting his own block he got reported to the police with a consequential 'phone call?' I observed that the telephone call to the police caused considerable distress as well as anger on the part of adult members of the group.²³⁶

229. The following morning (4th May 2022) the field trip participants gathered for another meeting to decide what should best be done. I wrote in my field notes, ‘

We have a meeting with all present about our plans and in particular what should be done about what is now being regarded as a threatening response from FMG. Once again there's a good deal of anger and frustration. Options are explored including taking a different route and not visiting

²³⁰ KPFN, 34, field trip participants.

²³¹ KPFN, 34, personal observation.

²³² KPFN, 34, personal observation.

²³³ Michael Woodley advised: 'Mark Barrat (Senior Sargent) call[ed] me on Tuesday 3rd [May 2022] at 5:19 pm'. 12 May 2022, KPFN, 50, Michael Woodley and KPFN, 34, personal observation.

²³⁴ KPFN, 34, Michael Woodley.

²³⁵ KPFN, 35, Michael Woodley.

²³⁶ KPFN, 35, personal observation.

Banggangarra at all – but there's little or no support for this because they all feel strongly that going to Banggangarra and up the gorge is their right.

KPFN, 34-5, field trip participants.

230. I had indicated publicly at this point that I considered it essential to settle the arrangements with FMG because it could otherwise compromise my anthropological inquiries as an independent researcher with a primary duty to the Court. I also felt it was essential that we ensure the safety of the party.²³⁷ After some discussion and strongly voiced opinions and emotions it was agreed that we would drive to Ti Tree (approximately 25 kms distant) where there was mobile reception. There it was planned to contact FMG with a view to again making clear the proposed itinerary and so seek to resolve the matter to the satisfaction of all.²³⁸ While driving from the camping place to Ti Tree, Stanley Warrie expressed his anger over these events. I wrote of his statements,

[Stanley] sees it as completely unacceptable that they have to seek permission from FMG to enter their own *ngurra*. He says that FMG are the *manjangu* and they should be the ones who should be asking. This he says (and the others too, back at the meeting) is something they have lost as a result of the mine; the right to be asked and having [now] themselves to ask to access their own land. This was not the way the Mingala had ordained it.

KPFN, 35, Stanley Warrie.

231. On arrival at Ti Tree and the gaining of telecommunications, the whole narrative changed. I wrote,

At Ti Tree we all get out and mill about. Phil [Davies] and Michael [Woodley] are able to get their emails and there appears to be a change in FMG's position. It seems that they now have a better understanding of our intended route up Ganyjingarringunha gorge. They now say they are accepting of our intended visit – just that we provide a contact in case of an emergency (which I assume Phil does) and our eta so they will make sure we are not in any way disturbed.

KPFN, 35, personal observation.

232. Michael later told me that the employee from FMG had also rung him to apologise for alerting the police.²³⁹

²³⁷ KPFN, 34, 35, personal observation.

²³⁸ KPFN, 35, personal observation.

²³⁹ KPFN, 35, Michael Woodley.

233. We subsequently proceeded as planned, visited Ganyjingarringunha and Banggangarra, where we camped the night, returning to Roebourne next day (5th May 2022). However, the loss of dominion was further brought to the fore of the Yindjibarndi's emotions during the morning we spent at Banggangarra, following our night's camp there. I had taken the opportunity to collect field data during the morning and was speaking with the men to one side.²⁴⁰ I wrote the following account of what happened.

Our discussions are then interrupted by a huge blast which shook the ground followed by a dust cloud that spread over the valley to our immediate south east. This had a significant effect on all present and there was much shouting and running round. Pansy came up (even though she would normally not do this as we were having a men's session) warning us of possible danger and saying that this was a deliberate act by FMG to try and warn us off – because they knew we would be here. People continued to express dismay at the explosion during the rest of the trip and I judge this to have added greatly to their disquiet about not only the mining but to their perception of FMG's attitude to the Native Title holders.

KPFN, 38, personal observations.

Opinion

234. The blast was a reminder to all (myself included) that the Yindjibarndi could no longer enjoy their country 'care for it, ... establish themselves, and exercise dominion, over not only the particular place but the whole surrounds so as to connect with their country and its spirits' as his Honour Rares J had regarded as their right.²⁴¹ There was also the feeling, that I too experienced, that where we were might not be altogether safe with blasting so (apparently) close by.
235. In reviewing the data I gathered during this field trip and FMG's initial response to it in particular, I form the opinion that a principal hurt develops from what is seen as a loss of dominion over what the Yindjibarndi regard as rightly their own. In this the role of *ngurrara* and *manjangu* have become reversed so that the stranger demands that the country owner ask permission not, as it should be according to Yindjibarndi Law, the other way round. Moreover, the response of FMG was regarded as an attempt to prevent access altogether and to frighten the native title claimants off their country – the report made to the police further entrenching the view that FMG regarded that they held the powers of the state at their command. Those with whom I worked held a strong

²⁴⁰ KPFN, 36-40, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

²⁴¹ *Warrie* (No. 2) [295].

sense²⁴² that not much has changed over the decades. They remain the ones who have their land denied to them while recourse to the police evokes the early station days when the pastoralists held sway over their land and lives. This in particular raises many sore issues about the role of the police and the denial of their rights to their country over the past decades and even centuries. The Yindjibarndi told me²⁴³ that these events mean that there is no trust any more in FMG. 'The trust is gone. We don't trust them any more'.

236. These intersecting and ultimately negative circumstances are directly at odds with Rares J's. observation (cited above) that as part of their regular cycle of visiting and caring for their country the Yindjibarndi visit places on their country and exercise dominion over not only a particular place but the whole locale. In this way they are able to connect with their country and its spirits.²⁴⁴ By my observations, FMG's change of position and apology for the call to the police did not alter the Yindjibarndi response nor change the fundamental fact that a substantial portion of Ganyjingarringunha was either inaccessible or no longer in existence. I judge this, based on these data and my knowledge and experience working with Indigenous Australians over many decades, to represent substantial cultural loss.

LOSS OF THE RIGHT TO BE ASKED

237. In an earlier chapter of this report I discussed the relationship between owners of country and those who lack rights of owners there (paragraphs 62 and 63 above). This is also a matter I have reviewed at the commencement of this chapter (see paragraphs 201 to 207 above). Underpinning the Ganyjingarringunha case study is the fact that the proponents of the Solomon Hub do not seek permission from the native title holders to undertake their activities. The rule of 'you ask first' is vacated. The Yindjibarndi understand this divestment of their rights as a cultural loss.

238. The cultural significance of the 'you ask first' rule was defined and expanded upon for my benefit by Michael Woodley.²⁴⁵ Like other aspects of Yindjibarndi culture the 'you ask first' rule is of supernatural ordination. Yindjibarndi belief is that it was the Mingala that gave them authority and the right that no one goes on to Yindjibarndi land without permission. I noted Michael's comments as follows.

²⁴² KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

²⁴³ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

²⁴⁴ *Warrie* (No. 2) [295].

²⁴⁵ KPFN, 19, Michael Woodley.

You ask first. This is the first loss and the other things that are lost come behind that. In Yindjibarndi the word *manjangu* has a particular meaning relating to being a 'stranger' that is someone who is not belonging to the country and comes from elsewhere.

KPFN, 19, Michael Woodley.

MW. The first rule is that no one goes on to anybody's first country without you first before you go and see the that mob and ask them permission.

KP. And does that rule apply to white fellas?

MW. For everyone.

KPVR, 6, Michael Woodley.

MW. Well the problem is that [FMG] broke our Law. By going up there in the first place without asking our permission, and asking that you can do what you want to do up there in terms of mining and exploiting and making money by our country. [FMG] broke our Law.

KP. So how bad is it to break the Law?

MW. Death.

KPVR, 7, Michael Woodley.

239. For Michael, the adherence to the rules for gaining permission to enter someone else's country is an indicator of good intent.²⁴⁶ Failure to follow these rules signals bad faith. Michael commented, 'a *manjangu* will always take something from you if he doesn't come the right way. ... it's like a door. You have to come the proper way'. In times past there were rules as to how a *manjangu* would approach another person's country which Michael sketch out for me. Today, it is expected that *manjangu* ask before entering another person's country. This is 'the proper way' and 'though the door'. For Michael, a *manjangu* who does not come 'the proper way' (that is, by seeking permission first) is 'coming to take something from you. That's why we are wary of *manjangu* until we know what they want'.

240. There is an additional aspect of the loss of the right to be asked which also has implications in identifying cultural loss. The right to be asked is encumbered by a concomitant duty which develops from the spiritual presences within the countryside. The owner of the country is believed, according to customary Yindjibarndi credo, to be

²⁴⁶ KPFN, 19, Michael Woodley. The data in this paragraph derive from this source.

equipped to manage this spirituality. This is effected through a specific ritual practice called in Yindjibarndi, *wuthuru*.²⁴⁷ Kevin Guinness explained this to me²⁴⁸, saying, ‘You show them how to greet the country, so they can learn. In the country there are *nyuga* or spirits. They can be bad.’ Keven then added, ‘you let the old people [spirits of ancestors] know you are there. You say who you are. By singing you can let them know.’ The greeting should be in the Yindjibarndi language so the spirits will understand.²⁴⁹ Rares J noted the importance of the *wuthuru* ritual both for the Yindjibarndi and *manjangu*.²⁵⁰ His Honour reported Michael Woodley’s belief that if Yindjibarndi did not perform the *wuthuru* ritual for a *manjangu* the later would be in danger because ‘the spirits in the country ... wouldn’t be viewing him in the same way that [they] viewed the *ngurrara*’.²⁵¹ His Honour also noted²⁵² that Michael’s grandfather, Woodley King, had told Nicholson J in 1999 that the performance of the *wuthuru* was a part of Yindjibarndi Law serving to identify the rights of a *ngurrara* to the country. Consequently it had to be performed when accessing the resources of that country.

241. I observed this ritual of greeting several times during my periods of field work in 2022.²⁵³ I collected accounts of the presence of spirits in the Solomon Hub mine site area and their negative consequences on those who encountered them. For example, Margaret Read told me²⁵⁴ that her own grandson had encountered a spirit while working at the mine, and had advised him how to greet the spirit and so remedy the situation. Others have not been so well advised and now will not work there.²⁵⁵ Charlie Cheedy told²⁵⁶ of how a Noongar man was killed in an accident at the mine, while others are frightened and will not work at night for fear of the spirits. Others told²⁵⁷ of how the spirits have affected the European workers at the mine, three of whom had ‘lost their minds’ over confrontations with spirits and arrangements had to be made to ‘get a Yindjibarndi person working there to speak with the spirits to stop them tormenting

²⁴⁷ See, for example, KPFN, 3, Stanley Warrie, Middleton Cheedy and Kevin Guinness. Wordick 1982, 372, *wuthuru-ngka*. ‘blow water out of the mouth in a spray’. Suffix *-ngka* locative or derivational (*ibid.*, 320).

²⁴⁸ KPFN, 3, Kevin Guinness. I do not find *nyuga* in the dictionaries consulted but I am familiar with the term used in this sense from my previous periods of field work in the region. See Palmer 1981, 337-339.

²⁴⁹ KPFN, 17, Michael Woodley.

²⁵⁰ *Warrie* (No. 2) [144-147].

²⁵¹ *Warrie* (No. 2) [146].

²⁵² *Warrie* (No. 2) [146].

²⁵³ E.g. KPFN, 17, Michael Woodley; 29, Michael Woodley, Middleton Cheedy and Stanley Warrie ; 36, group visit to Ganyjingarringunha.

²⁵⁴ KPFN, 7, Margaret Read.

²⁵⁵ KPFN, 7, Margaret Read.

²⁵⁶ KPFN, 28, Charlie Cheedy.

²⁵⁷ KPFN, 42, women participants in field trip to Ganyjingarringunha.

these men'.²⁵⁸ The women with whom I spoke told me many different stories about confrontations with the spirits in the mine area, which they had heard about over the last few years.²⁵⁹

Opinion

242. Based on my evaluation of these data I conclude that Yindjibarndi men and women with whom I worked classify FMG as *manjangu* who did not 'come through the door' and in 'the proper way'. A stranger who gains illicit entry is by definition one whose purpose is to steal. According to Yindjibarndi cultural concepts, by not seeking permission according to the precepts of Yindjibarndi Law, FMG defines itself as untrustworthy and potentially of bad intent. The illicit entry has now also resulted in a denial of the rights of the Yindjibarndi to their country in the several ways discussed in this chapter and highlighted by the case study set out in the previous section.
243. The accounts of confrontations with spirits reflect, by my reading of the data I have collected, the belief that the ancestral spirits are in a state of disquiet following the destruction of their habitat – the caves and deep valleys of the mine area. In addition, it is also evident, again in my opinion, that the confrontations are also considered to be a consequence of the lack of any opportunity by the *ngurrara* to manage the spirits of the landscape, according to customary ritual practice, as is their duty.
244. The deprivation of the right to be asked has then a double element of cultural loss. First is the loss of the right to control the entry of others onto your land and the use of that land by giving or withholding permission. The second element is the privation of the exercise of the duty to protect strangers from the spiritual forces of the country. Based on my understanding of the data I have here reviewed this is a key aspect of how Yindjibarndi people manage their rights to country. Its denial to the Yindjibarndi in the current circumstances is an example of cultural loss.

LOSS OF THE RIGHT TO TEACH OTHERS AND THE DUTY TO DO SO

245. For the Yindjibarndi, as for all other Indigenous Australian with whom I have worked who hold customary belief and value, landscape and country are testament to eternal truth and a witness to the normative structures of contemporary living. The attestation of place is regarded as being a key component of the ability to ensure the

²⁵⁸ KPFN, 42, women participants in field trip to Ganyjingarringunha.

²⁵⁹ KPFN, 42, women participants in field trip to Ganyjingarringunha.

continuity of these beliefs through successive generations. In short: to see is to believe; to believe is to understand.

246. Stanley Warrie, in a recorded discussion, spoke of this principle and the consequences the Solomon Hub has for its perdurance.

SW Young fellas? Well, you see now you can't even go into the mine. It's really out of the question.

KP So is that important? I mean, is it important to take the young people back to country?

SW. I think it's like what we've been saying, the song lines and everything. You know, goes goes through that mine whereas before, we had plenty of, you know – if you were living back in the country you had the thing to go to the thing and teach your children and explain. Take them to the area and all that things, you know, happen back in the Dreamtime stories been handed down. Song lines. You can't go there now, show where the things used to be, hills. It's all gone.

KPVR, 4, Stanley Warrie.

247. Stanley Warrie also told me²⁶⁰ that the country 'holds a lot of things. The teaching',

It's all to be lost. The whole history of the Law and culture. There's a lot of areas haven't been recorded. We can't go there because of the mine. So all that is lost forever. We can't teach our next generation.

KPFN, 16, Stanley Warrie.

248. On yet another occasion he said,

If you don't have the landscape you don't have the story and you can't explain the story together [as a whole] for the young fellows. A big part has been taken out. You make the *jawi* meaningless if the country is gone. The *jawi* tells you of the significance of the *ngurra*. Without the *ngurra*, the country, you make the significance weak.

KPFN, 31, Stanley Warrie.

249. I have discussed the meanings and implications of the Yindjibarndi word *jawi* in an earlier chapter of this report (see 70 to 72). In summary, a *jawi* is a series of songs believed to be of supernatural origins, given to a person through the dream of natural

²⁶⁰ KPFN, 16, Stanley Warrie.

sleep. A *jawi* is then an agent whereby the metaphysical world informs human experience by articulating spirit, human and country.

250. Charlie Cheedy made much the same point as Stanley Warrie.

When they tell the story, when they take people out, the young fellow out, you show them that this *murnda* [hill]. ... in the Burndud you sing this song. But if they put a mine in it and destroy it there's no evidence of it. All you've got is a big hole in the ground. While it was there before [its] finish now.

KPVR, 12, Charlie Cheedy.

251. Charlie gave me a particular example of a hill called Barngkawinha, located approximately 15 kms west of the Solomon Hub airport. Barngkawinha is the subject of a Dreaming narrative I recorded.²⁶¹ It has a particular significance in Yindjibarndi Law and is celebrated as a part of the Birdarra rituals. In my opinion based on what Charlie told me, the hill, the beliefs expressed in the narrative and the rituals associated with these events, are all conceived of as constituting a single whole. The country bears testament to this metaphysical unity. Charlie said,

This is part of the culture now. It is very special for the *ngaarda*. If this is dug up, how can we still teach the young people, but you can't see it. You can't teach the young people because they won't be able to see it.

If these places are destroyed they will not provide the evidence of these things happening in the Dreaming, Ngurra Nyujunggamu.

KPFN, 26, Charlie Cheedy.

252. Charlie likened the attestive qualities of the countryside to the Bible of Christian practice.²⁶² He was of the view however that Yindjibarndi country, formed during the events of the Ngurra Nyujunggamu, was considerably older than the Whiteman's Bible which 'come from overseas'. For Charlie then Yindjibarndi country, as a testament to spiritual events, was to be valued above the Bible, despite the latter's asserted authority in courts of law.

253. The Yindjibarndi women who participated in the field trip to Ganyjingarringunha were also mindful of the significant role of country in ensuring the continuity of cultural

²⁶¹ KPFN, 26, Charlie Cheedy; 29-30, Michael Woodley; 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie. Barngkawinha is not affected by the Solomon Hub mines.

²⁶² KPVR, 12, Charlie Cheedy. Data in this paragraph are derived from this source.

knowledge over the generations.²⁶³ They told me that camp sites, now destroyed, stood as testament to the eternal nature of Yindjibarndi occupation of their country. 'They tell us that we are the people who have been here for ever – passed down from generation to generation, through the oral traditions.' They then reminded me that the old camping places within the mine site are now all gone. Pansy Cheedy gave additional detail.

Country was a story place. There's ochre and other things for men – but now we have no access and we can't teach our kids about these places and what they mean to the culture. So now we can't teach here. It was a story place [but not any more].

KPFN, 42, Pansy Cheedy.

Opinion

254. In my opinion and based on these data these accounts highlight the fact of the loss of country and its cultural and spiritual attributes. The cultural loss is that of the right to teach younger Yindjibarndi by reference to the landscape and places within it. According to Yindjibarndi normative values teaching requires close referencing to country. The veracity of eternal truths lies within the *ngurra*. The area of the mine represents a part of the totality of Yindjibarndi country. However, the whole of the country, along with social and ritual actions, are understood to form a single organic and spiritual whole (see paragraphs 98 to 100 above). The loss of a portion diminishes the whole and so too the integrity of both the cultural knowledge and the relationship with country. It also means that the laws and customs of the Yindjibarndi people can no longer be handed down intact and unbroken. My reading of these data is that the concern expressed by those with whom I worked indicates that they perceive this to pose a threat to the sustaining of the integrity of Yindjibarndi cultural beliefs and knowledge for future generations. In my opinion this represents a cultural loss.

LOSS OF THE RIGHT TO LOOK AFTER COUNTRY

255. In an earlier chapter of this report I set out field data that demonstrate how, according to Yindjibarndi belief, land was given to the Yindjibarndi people and a condition of this bestowal was that they must 'look after it' (paragraphs 47 and 48, 58 and 59 and 96 and 97). I noted that this was then a 'sacred trust' and also a significant responsibility with respect to the country. The Yindjibarndi, 'have a duty to ensure its

²⁶³ KPFN, 42, women participants in field trip to Ganyjingarringunha. Data in this paragraph are derived from this source.

integrity through the generations' (paragraph 96). I understand this to be both a right as well as a duty, according to Yindjibarndi customary arrangements.

256. The Yindjibarndi men and women with whom I worked recognise that the Solomon Hub mines and associated infrastructure have destroyed a part of their country or rendered it unrecognisable. Stanley Warrie, Middleton Cheedy and Kevin Guinness told me²⁶⁴ that they have a duty to look after the country and the spirits that are believed to reside there. The responsibility includes performing rituals at certain places. The exercise of care for the country is a part of their duties as 'bosses' (*nyambali*) and as *tharagangarli*, keepers of Yindjibarndi Law. These men are also aware that the Solomon Hub may have additional consequences that extend beyond the confines of the mining tenement. Stanley Warrie reported²⁶⁵ that they are concerned about other action relating to the mine. He made particular mention of the water being pumped out of the ground as part of the mining operations which he considered was resulting in the countryside round about drying up. I noted that when we drove up Ganyjingarringunha Gorge, Stanley repeatedly remarked that the trees and plants we passed appeared to be very dry and there was an absence of bird life.²⁶⁶ Threats to the water supply and the spring at Banggangarra were also identified by Charlie Cheedy, who worried that 'the *jinbi* [spring] will be finished'.²⁶⁷

257. Michael Woodley spoke²⁶⁸ more generally about the down-stream consequences of the mining operations on Ganyjingarringunha *wurndu* (creek). He expressed concern both about the drainage as well as the fact that the animals and plants at the head of the catchment were now all destroyed (in the Solomon Hub) or, with respect to the animals, had had their source of food destroyed. Kevin Guinness described²⁶⁹ the network of creeks that originally characterised the area where the mine is now and that together fed Ganyjingarringunha *wurndu* (creek) as the 'veins of the country'. These fed all things with water and so with life. However, these creeks are now destroyed and the miners are 'sucking out the water'.²⁷⁰

258. Michael Woodley spoke to me²⁷¹ of his feeling about the development of the mine in general. He said that an acute sense of responsibility for what was happening to

²⁶⁴ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

²⁶⁵ KPFN, 4, Stanley Warrie.

²⁶⁶ KPFN, 36, 38, Stanley Warrie.

²⁶⁷ KPFN, 28, Charlie Cheedy.

²⁶⁸ KPFN, 34, Michael Woodley.

²⁶⁹ KPFN, 37-38, Kevin Guinness.

²⁷⁰ KPFN, 37-38, Kevin Guinness.

²⁷¹ KPFN, 19, Michael Woodley. The data in this paragraph are derived from this source.

the country was upper-most in their minds. Michael iterated his belief that the duty to care for their country was a responsibility given by the Marga. Consequently, he said, 'If you fail in your responsibility there'll be a consequence because you have failed to do what the Marga told you to do.' The consequence, he believes, will be of a supernatural nature. In my opinion and based on these statements a cultural loss develops from the inability to discharge a sacred trust. On another occasion and in company with others Michael responded to my question about the effects of the mine on the Dreaming tracks. He stated,

We care deeply about this, it's important because we have to hand it on, in good condition. But now it's broken. They [FMG] mined without our consent and we've failed.

KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

259. Angus Mack made a similar point, telling me that

You have a belonging and a responsibility for country and what's in it. You see the mining happening you have a role to play – you come to have responsibility for it. You feel for the country. You protecting the whole of Yindjibarndi country including the area where mining happening.

KPFN, 45, Angus Mack.

260. For Angus Mack having a 'belonging to country' reflects a unity of person and country. Since looking after country is also looking after self, there is an immediate imperative to act.

The birds, animals and plants, you part there and the *ngaarda* put there to make it work. By burning [the country] and so looking after country, that's why you've been put there. Every living thing. If something is missing from there, *ngaarda* been missing and the country got overgrown, because it wasn't burnt. It's the missing link. You feel for that.

KPFN, 46, Angus Mack.

261. Angus Mack expressed his frustration, anger and powerlessness to look after the country in the Solomon Hub area²⁷² because, 'with the mine there's nothing left to sing or practice or burn'. Moreover, from a practical point of view, 'the entrance is blocked' so they are unable to access the area of the mine even if it were now possible to look after the country which has been irreversibly altered and destroyed.²⁷³ He added that

²⁷² KPFN, 46, Angus Mack.

²⁷³ KPFN, 46, Angus Mack.

‘you got a feeling for all this’. Angus referred to his father’s experiences with the Harding River dam (see paragraph 210 above) and likened his own feelings of despair with those of his father who is believed to have died of grief as a consequence of the loss of his country which he was unable to protect under the waters of the dam.²⁷⁴

Opinion

262. Rares J recounted the importance of the duty of looking after country for Yindjibarndi people, and that it was of supernatural ordination, following the explanations of these matters by Michael Woodley.²⁷⁵ In my expert report prepared for the Yindjibarndi No. 1 claim I concluded that, ‘There is also evidence that claimants consider they have a duty to look after the country’ (Palmer 2014, 378).
263. Based on the data presented in this section I am of the opinion that responsibility for country is a deep-seated aspect of the relationship Yindjibarndi people have with their land. As with other aspects of Yindjibarndi belief and practice, the duty and the right to exercise it is endowed with supernatural origins. This means that the loss of the ability to discharge this duty and exercise the right is burdened with the feelings that result from a failure to maintain a sacred trust. The inability to discharge the duty, even if it is beyond the control of the individual concerned, is hurtful at a personal and spiritual level. It is then, by this account, reflective of ‘epic emotions’ (see paragraphs 101 to 105 above). The references in my data to the experiences of Long Mack and the Harding River Dam²⁷⁶ support the opinion that for the Yindjibarndi the loss of the ability to look after country may result in personal anguish and even death. Consequently it is my further opinion that the development of the Solomon Hub has caused both the loss of an ability to exercise a fundamental Yindjibarndi right and duty, but the loss has occasioned substantial personal pain.

²⁷⁴ See *Exile and the Kingdom*, part 2, 44.30 to 44.50. Having shown Lilla Snowball (now deceased) speaking on site of the cultural losses that were a result of the dam, the narrator says, ‘And then in 1983, when he knew the fight was lost, Long Mack, a rainmaker for the country and the man who fought hardest to save it, died. He died of grief.’ <https://ictv.com.au/video/item/1064> accessed 19 May 2022. See also KPVR, 9-10, Michael Woodley. Michael says it was because the cultural loss was on ‘his watch’ and that it was ‘his responsibility’ that caused him the heaviness of spirit that resulted in his death.

²⁷⁵ *Warrie* (No. 2) [52, dot points 3, 6 and 7]; [53], see also [73], [234] and [248].

²⁷⁶ There are 6 in my field notes to either the Harding River or Long Mack and 3 in the transcriptions of the voice recordings.

5 LOSS OF SPIRITUAL CONNECTION WITH COUNTRY

INTRODUCTION

264. In an earlier chapter of this report I set out what I consider to be fundamentals of Yindjibarndi (and, more generally, Indigenous Australian) relationships with country (see paragraphs 90 to 97). I wrote there that Yindjibarndi religious experience is, ‘first and foremost about a relationship with country; the possession of country as well as a possession by country’ (paragraph 97 above). Accordingly, person and country stand in a mutual relationship of spiritual cohesion and correspondence. Person and country are believed to be indissolubly linked through the agency of *wirrard* – an important Yindjibarndi concept I have explored above (paragraphs 171 and 172 and 189 to 191). The sentience of country through the agency of the *wirrard* (paragraphs 101 to 105 above) is believed to frame an individual’s identity, sustains their autonomy and gives meaning to life through the enlivening of the individual spirit. The interplay between person and country also extends to the animals and birds of the countryside, all of which are believed also to have been endowed by Mingala at birth with their own *wirrard*.²⁷⁷ Stanley Warrie told me that you can see a dog’s *wirrard* in its eyes when it looks at you sometimes.²⁷⁸

265. The Yindjibarndi people with whom I have worked are of the view that the destruction of their country through the operations of the Solomon Hub and its associated mines and infrastructure have resulted in a loss and diminishment of their spiritual relationship with country. The loss is perceived to result in personal hurt because for the Yindjibarndi diminishment of country also diminishes a person. It is the purpose of this chapter to explore further these beliefs and consequential emotions of cultural loss and hurt.

PERSONAL SPIRITUAL DIMINISHMENT AND LOSS

Country broken, *ngurra* marred

266. The Yindjibarndi with whom I worked sometimes characterised the metamorphosis of the country of the Solomon Hub as a phenomenon. It represents such a change in the natural environment of their *ngurra* as to render them, by one account, speechless. Stanley Warrie told me²⁷⁹ of a time he and some others had visited

²⁷⁷ KPFN, 35, Stanley Warrie.

²⁷⁸ KPFN, 35, Stanley Warrie.

²⁷⁹ KPFN, 3-4, Stanley Warrie.

the mine. Stanley said that as they traversed the site, they were all very quiet. 'No one said anything'. When they came out 'on the other side, at the train loop, again no one said anything. There was just silence. They just stood there and had a look.' Angus Mack, speaking of the same (or perhaps another trip) told me²⁸⁰ that on visiting the mine areas members of the group, 'just couldn't believe what they saw. It seemed to get just bigger and bigger'. The mine, 'was too huge'. Margaret Read described²⁸¹ the Solomon area as simply, 'a big open cut mine'.

267. Middleton Cheedy²⁸² (KPVR, 1) likened the mine to a festering boil or a cancer which spreads insidiously and, if unchecked, is eventually fatal. Middleton said,

MC. It's like a growing cancer. You know, it just fester, it's just growing and growing and growing.

KP. What happens in the end with cancer?

MC. Cancer is, it kills you. If it's not treated.

KPVR, 1, Middleton Cheedy.

268. Pansy and Wendy Hubert described the area of the Solomon Hub as *wirnda-na*, which means 'broken' and cannot be fixed.²⁸³ The country is consequently 'marred', 'spoiled' or 'ruined' an attribute expressed in Yindjibarndi as *wajimangulinba*.²⁸⁴ This, they say, is the same way as they now perceive the Harding River Dam.²⁸⁵

Feelings of loss

269. Middleton Cheedy attributed²⁸⁶ the silence of those who visited the mine sites (described in paragraph 266 above) to their 'sadness of heart'. He continued, 'your heart, you feeling ripped up inside.' He added, 'it's very hard to explain'. Angus Mack told me²⁸⁷ that seeing or hearing about this destruction of his country, 'brings sadness to me

²⁸⁰ KPFN, 45, Angus Mack.

²⁸¹ KPFN, 7, Margaret Read.

²⁸² KPFN, 1, Middleton Cheedy.

²⁸³ Wordick 1982, 370, *wirnrta-* cut, tear, tear into, (as in attack someone), break. In the example I have cited the speakers added the suffix I recorded as *-na*. (cf. Wordick 1982, 122)

²⁸⁴ *Waji* – 'bad, no-good, evil, foul' (Wordick 1982, 367). See paragraph 176 above. I recorded in my notes the second part of the word as *mungalinya* which I am advised is properly *-ma-* (factitive verbaliser) giving 'make bad, defile, pollute', plus *nguli-nba*, being the passive past tense. Thus 'was ruined' I thank Juluwarlu linguist Ms Vicki Webb for providing this analysis.

²⁸⁵ KPFN, 8, Wendy Hubert and Pansy Cheedy.

²⁸⁶ KPFN, 4, Middleton Cheedy.

²⁸⁷ KPFN, 45, Angus Mack.

too'. I asked Stanley Warrie how he feels looking at his country which was now 'all a big mine' and generally not accessible to him or others. Stanley answered,

That makes us feel er, really thing and all mixed up, no good inside. That's the sort of thing, when you want to you know, thing. You want to see, you know, you want to teach your thing - Children, and you know have them to carry this thing on you know. But you know it's sort of a losing, you starting to lose everything, you know. Everyone start, you know, like I was saying. You losing your identity.

KPVR, 4, Stanley Warrie.

270. Speaking of the same experience, Margaret Read stated,²⁸⁸ 'It made you feel inside your heart, no good because you know your land is being destroyed. Everything significant is being destroyed'.²⁸⁹ She said she had mixed feeling about visiting the area now 'as it might break her heart to see it'.²⁹⁰

The compass of cultural loss

271. Broken country occasions feelings of loss, variously articulated in the data set out above. Those with whom I worked expressed their feelings of loss by reference to cultural beliefs which, in my opinion, serve to assist in an understanding of the intensity of the feelings associated with the loss and its significance to Yindjibarndi people. In the accounts that follow it is evident that it is not merely the physical country that has been marred. There is within the destructive physical process also a spiritual diminution.
272. The relationship of self with country through the agency of *wirrard* is in my opinion a significant one in defining Yindjibarndi emotions, as I have referenced above (paragraph 264). Margaret Read told me²⁹¹ that when we camped at Buminyjinha²⁹², 'we feel like we were coming home, welcome to the spirits. It's good for the little kids, we feel rejuvenated.' On another occasion²⁹³ she told me that your *wirrard* develops as you are a child and you have country to go with it because both come from your parents. She said²⁹⁴ that 'the old people' (her immediate forebears) taught her that you must never hurt a tree, 'because trees are our companions'. She added, that when she goes out onto country 'it's a feeling for healing'.

²⁸⁸ KPFN, 7, Margaret Read.

²⁸⁹ KPFN, 7, Margaret Read.

²⁹⁰ KPFN, 7, Margaret Read.

²⁹¹ KPFN, 42, Margaret Read.

²⁹² Approximately 63 kms north west of Solomon Hub and not affected by mining.

²⁹³ KPFN, 42, Lyn Cheedy.

²⁹⁴ KPFN, 42, Lyn Cheedy.

273. Later during the same trip and camping at Ganyjingarringunha, but not in sight of the areas affected by the mining, Pansy Cheedy told me²⁹⁵ that if a person has been away from their country ‘for too long’, their *wirrard* ‘gets frightened’ because the *ngurra* will chide their *wirrard* for its prolonged absence. Middleton Cheedy added that when you return to the country after an absence it has the appearance of being happy, being bright and alive, ‘sort of almost smiling at you’ because,

it’s pleased to see all the *ngurrara* after such a long absence. ... The country is responding through its *wirrard* to our *wirrard* so we too feel light and happy. ... This place, where we camping, it’s come alive. It’s as if it’s pleased to see you.

KPFN, 36, Middleton Cheedy.

274. On another occasion Middleton told²⁹⁶ of an incident when visiting a place called Pigeon Camp (within the Yindjibarndi No. 1 area) and being greeted by a cloud of rock pigeons. These, he explained, were greeting them. ‘And were saying to them all, “we haven’t seen you, we haven’t heard your voices for a long time. It’s been silent”’.

275. The relationship between person and country manifest through the agency of *wirrard* was the subject of further explanation by Staley Warrie whose comments I paraphrased in my field notes as follows.

... everything is connected. It’s going back to that heart thing. Our heart is in our house [i.e. *ngurra*]. It’s a connection. You put your *jina* [feet] in this *ngurra* and you feel connected. In other places you never fit in [that is, in someone else’s country]. But when you step onto your own country, it’s ours. It’s a privilege.

KPFN, 37, Stanley Warrie.

276. Others present²⁹⁷ said that they too feel connected to their country (*ngurra*). Angus Mack spoke to me²⁹⁸ about what he termed, ‘your feeling and mind and spirit’. He understood himself to be, ‘a part of that of everything on country. You, as a *ngaarda* you are from the country’. In his understanding the Yindjibarndi (*ngaarda*) as owners of the country are also responsible for managing it by burning the long grass and looking after it. The link between person and country is then also a practical one, designed by the

²⁹⁵ KPFN, 36, Pansy Cheedy.

²⁹⁶ KPFN, 10, Middleton Cheedy.

²⁹⁷ KPFN, 36, Michael Woodley, Middleton Cheedy, Kevin Guinness.

²⁹⁸ KPFN, 46, Angus Mack.

ordaining god 'to make it [the order of the environment and humankind's place within it] work'.

277. These positive feelings and emotions are absent from all encounters with the Solomon Hub area. Senior Yindjibarndi men told me²⁹⁹ in the context of our discussion about the emotions of their relationships with their country that, 'we lose it in the mine'. Margaret Read remarked of the country of the Solomon Hub³⁰⁰, 'the spiritual wholeness has been taken out of it. Part of my home is lost but the rest remains.' This recognition that something essential had been taken from the country in the area of the Solomon Hub was also remarked upon by Pansy Cheedy who told me³⁰¹ of a hill that was formerly in the Solomon Hub area but is now flattened. Pansy stated however that 'the name is still there'. My understanding of this statement is that the word that frames a geographic feature remains, but the object itself is now gone – leaving a vacuum which has no essential substance. The state of destruction means that 'you can't send your *wirrard* [spirit] there'.³⁰² Pansy told me the consequences of this part of Yindjibarndi country being destroyed.

PC. ... like I been saying, it's been marred, it makes my, my *wirrard* breaks too.

KP. OK. So you used that word 'marred'. What did you have in mind when you used that word? What's been 'marred' here?

PC. You no longer see a hill but you see ruins. Ruins. People have just gone in there and taken – and it's in ruins. Like, even the ground that is been dug up and there's a hole there. It marred.

KP And how does your *wirrard* feel then?

PC. Your *wirrard* feel like you missing part of you. You're missing it. You missing that, it's been something that's been taken away from who I am as an Yindjibarndi person. It's been taken away. Like, its marred. I can use my imagination now to remember that this *murnda* [hill] was there. But still Ganyjingarringunha but it's not the same as that strong *wirrard* ... it's part of you is missing.

KP. OK. And so how does that make you feel?

²⁹⁹ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

³⁰⁰ KPFN, 7, Margaret Read.

³⁰¹ KPFN, 8, Pansy Cheedy.

³⁰² KPFN, 8, Wendy Hubert and Pansy Cheedy.

PC. It makes you feel like as though you lost a part of you. You lost it, it's almost like having the same feeling as losing your child.

KPVR, 2, Pansy Cheedy.

278. Angus linked his feeling of frustration and his anger at what was happening to his country with his *wirrard*, telling me, 'It's to do with your *wirrard*'.³⁰³ Angus recognises direct parallels between the experiences of his father before him with respect to the country where the Harding Dam was built.³⁰⁴ I recognised and note in his voice a real sadness about these turn of events.³⁰⁵
279. Middleton Cheedy also remarked³⁰⁶ on the elimination of spirit from the countryside of the Solomon Hub. He told me that despite any attempts at revegetation, this did not restore the spirituality of the countryside. Middleton stated, 'the land is altered, something is lost, it's no longer the same.' Middleton linked this eradication to himself and his own sense of loss since, by my understanding and based on these data, there is a perceived inter-dependence between personal spirituality (*wirrard*) and that of the countryside. Middleton told me³⁰⁷ that as a consequence, 'you get to feel you are losing hope for yourself too' and that there is, 'a hopelessness as this is such a loss'. Michael Woodley understood the loss of country to diminish himself and all others as Yindjibarndi people.³⁰⁸ His own spiritual form, as found in the natural world and embodied in the *jaburunggu* or eaglehawk, is now excluded from the area of the Solomon Hub because of the disturbance of the mine and loss of habitat. Michael told me that this, for him, is a personal loss³⁰⁹ On another occasion he told me³¹⁰ that *wirrard* is linked to country and in the way that your heart beats so too does the country. If you lose you *wirrard* you lose your country and *vice versa*.
280. While camped at Ganyjingarringunha and not long after the explosive blast had been the cause of so much disquiet amongst members of the field trip, I asked the women participants how they felt about these circumstances. Pansy Cheedy commenced the discussion and she made a short statement which I noted. The following is taken from my field notes where I recorded her comments.

³⁰³ KPFN, 46, Angus Mack.

³⁰⁴ See paragraphs 210, 261 and 263.

³⁰⁵ KPFN, 46, Angus Mack.

³⁰⁶ KPFN, 10, Middleton Cheedy.

³⁰⁷ KPFN, 10, Middleton Cheedy.

³⁰⁸ KPFN, 17, Michael Woodley.

³⁰⁹ KPFN, 18, Michael Woodley.

³¹⁰ KPFN, 33, Michael Woodley.

There's that realisation that now, at that moment, some more of your country is gone. It rattles your spirit, you thinking that your country isn't there any longer. It's sad, it's like a valuable part of your body is gone. It's got to do with your *wirrard*. You hear it [the blast] and it affects your *wirrard*.

KPFN, 41, Pansy Cheedy.

281. Margaret Read also contributed to the discussion.

It's heart wrenching. Your *wirrard* is shattered. Your *wirrard* is crying out inside. You saw the country before and now it's gone. *Wirrard* is like a child – you give it life; everything we see has life and it speaks to us; the trees, all things. If a tree loses its *wirrard* it dies. So when you look at country it corresponds to *wirrard*. That's why we go back to *ngurra* because it relates to and revives our *wirrard*.

KPFN, 41, Margaret Read.

282. Lorraine Coppin³¹¹ expressed these feelings of spiritual loss in terms of loss (*jimbayi*) and metaphorical suffocation through deprivation of breath.³¹² This is explained as follows. 'The Yindjibarndi word *ngayanyi* means 'breath'.³¹³ Lorraine explained that the word is also used, 'for Law and culture and everything to do with it. This was part of the gift which Old Woodley gave to us when he started up the community [Ngurrawaana].' Lorraine told me that as a consequence of the Solomon Hub and its mines she feels they are losing part of their culture which is also a part of their identity. She likened this to being unable to breath, or *ngayanyi burdad*.³¹⁴ She finds it hard to acknowledge that this is really happening to her.

283. Later, during the same interview, Middleton said³¹⁵ that their sadness and other emotions are because they now perceive the country as being, 'incomplete' and 'a hollow thing'. Consequently, 'We feel no good, feel a loss for it'. The concept of hollowness and emptiness is also used to describe a person with no feeling, no heart or soul.³¹⁶ Yindjibarndi employ the word *yarlu* to convey this concept, which means a person is like a hollow log which is full of sand and has no life or meaning. I was told that the word is only used of people, not of natural objects.³¹⁷

³¹¹ KPFN, 24, Lorraine Coppin.

³¹² KPFN, 25, Lorraine Coppin.

³¹³ Wordick 1982, 320, 'ngayiny. Breath (coll.) spirits, feelings'.

³¹⁴ Wordick 1982, 344, *purtat*. 'Cannot'.

³¹⁵ KPFN, 4, Middleton Cheedy.

³¹⁶ KPFN, 5, Middleton Cheedy.

³¹⁷ KPFN, 5, Middleton Cheedy. I take this to mean in its duplicate form. I discuss the use of the word *yarlu* in paragraph 302 below.

Opinion

284. In my opinion the accounts I have examined comprehend destruction of country as resulting in personal pain and a sense of loss. This develops firstly because country has been unalterably changed or destroyed. However, loss is also understood as a fundamental dislocation of the nexus between person and country through the agency of the *wirrard* which is a spiritual quality common to all life and the country itself. In this sense, country is marred. The spiritual links and correspondences between person and country which underpin the data I have discussed in this section of my report belong to the same concepts that inform beliefs and practices that serve to articulate this person-land relationships. These are relationships I have explored in an earlier section of this report (see, for example, paragraphs 88 to 89, 98 to 100).

285. Physical destruction of country fractures the relationship between person, country and other living things and so diminishes the self. It is a loss that directly affects all Yindjibarndi people who have spiritual links to Yindjibarndi land. It is understood to diminish the Yindjibarndi self and consequently occasions acute pain and distress. As Pansy Cheedy put it, it is a case of 'you missing part of you'. Consistent with such a response, it is a loss likened to the death of a child and the sorrow and pain that such an event occasions. Such emotions, like other consequences of the development of the Solomon Hub mines, are epic emotions, in the sense I have identified them above (see paragraphs 101 to 105).

YINDJIBARNDI SPIRITS AND THE SOLOMON HUB

Homeless spirits

286. In an earlier chapter of this report (paragraph 70 above) I described how the Yindjibarndi native title holders understand the spirits of their forebears to both inform the landscape and act as an agent of spiritual communication between the living and the spiritual domain. Michael Woodley told the court when he gave evidence in relation to the Yindjibarndi No. 1 claim that, in this context, 'we always connected ... through our ceremonies'.³¹⁸ Michael identified these spirits as *tharnga-ngarli*, that is ritual leaders who, while now in spirit form, command the abiding spirituality which is believed to inform the Yindjibarndi world, past and present, and communicate it to the living. I concluded above that for the Yindjibarndi a belief in the spiritual presences within the country

³¹⁸ WAD6005/2003, 07.09.15, p 53. Michael Woodley. Xn Mr Hughston.

inform their relationship with that country, how they act when visiting it and so serve as a signal to others of their dominion over it (paragraphs 89 and 95 above).

287. These spirits are understood to be encountered as real entities, although they are in essence spiritual. They are then to be distinguished from the spiritual noumena which informs the country as *wirrard*. These spirits of the country are identified by generic names. During the field work I undertook in preparation for writing this report I noted several terms for the spirits of the country. For example, Stanley Warrie, Middleton Cheedy and Kevin Guinness referred to them³¹⁹ as *nyugangarli*.³²⁰ These are the ‘spirit of the countryside’ and are ‘found in the caves’. They explained that these spirits are harmless and the name can also be used of the ancestors. These men told me that they have a duty to look after the country for the sake of these spirits.³²¹ Michael Woodley explained³²² that spirits can also be called *juju-ngarli*, which means ‘old people together’.³²³ He explained,

They are everywhere. They kind of follow you. They also like a ‘guardian angel’. It’s their home, the whole of Yindjibarndi country is their home. They are the ones that still occupy the land. They see you, even if you are by yourself. So you have to be careful what you do. They see them round Solomon.

KPFN, 18, Michael Woodley.

288. Michael stated that these spirits are the Yindjibarndi ancestors, including the apical ancestors of the native title claims whose names they know. Michael represented the relationship with the ancestors as a personal one, so not only do the Yindjibarndi know what they are but they feel for them particularly since it is evident by their understandings and experience that the spirits are in distress because of the mine. Michael Woodley stated, ‘The ancestors and us that’s always there. They tell us how they feel’.³²⁴ This relationship between person and the known past, personified in spirit forbears, was further emphasised by a group of women with whom I spoke while camped at Ganyjingarringunha.³²⁵ I had asked what was the best Yindjibarndi word for the spirits of the countryside and was told, *ngurrara*, that is ‘country owners’. The fact these *ngurrara* are dead in body does not lessen the perceived reality of their presence and

³¹⁹ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

³²⁰ Cf. Wordick 1982, 325, *nhuka*. The initial consonant might better be represented as *nh*.

³²¹ KPFN, 4, Stanley Warrie, Middleton Cheedy and Kevin Guinness.

³²² KPFN, 18, Michael Woodley.

³²³ Wordick 1982, 359. *Tjutyu*: mature man or person, old fellow.

³²⁴ KPFN, 18, Michael Woodley.

³²⁵ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

the relationship that the living are believed to have with the spirits of those from whom they trace descent.

289. The spirits of the countryside are believed to be ubiquitous and their presence is palpable. I observed that care must be taken when visiting the country, particularly places known to contain the remains of forbears, that correct procedures are observed to prevent the spirits from following you when you depart.³²⁶

290. Margaret Read told me³²⁷ that the area of the mine has many spirits – proof being in the number of people who have encountered them there. Her own grandson had encountered a spirit while working at the mine, while others too who were not Yindjibarndi has also seen them. Margaret stated,

The spirits are still there, we say to them [others who visit or work at the mine] the, ‘the eyes are watching you’. They watch everything you do. If they do anything bad they’ll show themselves to you. The mine has made the spirits restless and they can’t understand what’s happening. They may be unhappy.

KPFN, 7, Margaret Read.

291. Kaye Warrie also remarked³²⁸ on the belief that the spirits are watching the workers at the mine, speaking in particular about, ‘one old fella on top of a hill, he keeps watching. He’s a spirit for the *ngurra*.’ She also stated that the spirits are ‘not happy about’ the mine. Similar views were expressed by others – the *nyugangarli* are watching and are unhappy about the development of the mine.³²⁹ This sadness of spirit is further identified in an incident I was told about that occurred some years ago when some native title holders were camping at Ganyjingarringunha. We too were camping in the same location. My field note of what I was told runs as follow.

Later round the fire they speak of the time they were here some years ago when they heard this wailing, like a woman wailing as though she had lost a loved one. I ask what this was and they say it was a *nyugangarli* (spirit people – although the story is told as a singular spirit). It was wailing because of the loss of the country which has been destroyed by the mine. The spirit now is homeless.

KPFN, 36, Michael Woodley and others.

³²⁶ KPFN, 43, personal observation; Pansy Cheedy and Michael Woodley.

³²⁷ KPFN, 7, Margaret Read.

³²⁸ KPFN, 11, Kaye Warrie.

³²⁹ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

292. Charlie Cheedy believes that the spirits remain at the mine sites despite the destruction of their natural places.³³⁰ Some of those with whom I worked took the view that the spirits are now more visible because of the mine since they now have nowhere to hide.³³¹
293. Margaret Read told me she considers the situation with respect to the Solomon Hub area to be, 'sad, it's very sad, like for Yindjibarndi you feel the ancestors' tears coming from their eyes, because they are sad.'³³² The restlessness of these spirits is deemed to be a consequence of the loss of their natural habitat.³³³ They no longer have a home as the caves and deep valleys where they formerly lived have been destroyed.³³⁴ The spirits are now homeless as they have been frightened out of their country.³³⁵ One consequence of this is that the spirits have now moved into the accommodation units where they confront and frighten mine workers.³³⁶
294. The disquiet of the spirits has a consequence: some are believed to be antagonistic, even dangerous. Middleton Cheedy told me³³⁷ that there were some workers at the mine who were experiencing 'mental problems' as a result of the *nyuga*. The death of one worker, a member of the Noongar people from the south west of Western Australia, in an accident was also attributed to the vengeful side of spirits. Charlie Cheedy also made mention of the fatal accident and added that some people were too frightened to work at the mine during the hours of darkness.³³⁸ Others too remarked on workers who had, 'lost their minds' over these confrontations with the spirits, requiring the intervention of a Yindjibarndi person to stop the spirits, 'tormenting' these men.³³⁹ I was told a number of stories about these confrontations between the spirits and the mine workers and judge them to constitute a substantial body of oral tradition that reflects contemporary belief.³⁴⁰
295. The loss of the immediacy of the link between present and a spirit represented past is manifest in a practical example of the consequences of the Solomon Hub

³³⁰ KPFN, 28, Charlie Cheedy.

³³¹ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³³² KPFN, 7, Margaret Read.

³³³ KPFN, 10, Middleton Cheedy and Joyce King.

³³⁴ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³³⁵ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³³⁶ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³³⁷ KPFN, 10, Middleton Cheedy with Joyce King.

³³⁸ KPFN, 28, Charlie Cheedy.

³³⁹ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³⁴⁰ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

development. Women with whom I spoke told me³⁴¹ that spirits of the area of the mine are now not able to interact freely with Yindjibarndi people the way they used to before the disturbances occasioned by the mine. One result is that these ancestors are no longer able to provide song lines or *jami* to the living through the dream of natural sleep. Those with whom I spoke saw this as a significant and vital link between the living and the spirit world which is now broken. Consequently, the songs and narratives embodied in the *jami* and likened to ‘children’ which make manifest the contact between the spirit world and the living are lost. This they tell me is yet another casualty of the mine.³⁴²

296. Pansy Cheedy also spoke to me about this matter.³⁴³ Pansy stated,

... the hill was there it had all these spirits that lived up there. And these spirits were respected by us regarded by us as the ones that came and gave you the corroborees and things. So, to ruin a hill you have scattered your child, your children. You scattered them.

KPVR, 2, Pansy Cheedy.

297. Pansy then went on to tell³⁴⁴ how immediately after mining commenced a woman she knew started to gain the first elements of a *jami*. However, it did not come to fruition and remained unformed and incomplete. By my reading of the transcript, Pansy was of the opinion that the mine was responsible for the failure of the spirits to deliver the *jami* in full and finished form.

298. Michael Woodley, when giving evidence at the Yindjibarndi No. 1 trial, described the process whereby the ancestors gave the living *jami* (or song lines) through the agency of sleep the means whereby they ‘always stay – stay connected to the country’. Loss of that process, which the Yindjibarndi consider to be a consequence of the mine, diminished not only the ability of an individual to gain access to a *jami* which can subsequently be performed for others, but lost too is another aspect of staying connected with country.

Opinion

299. Based on these data I am of the opinion that the Yindjibarndi regard the unquiet spirits as a manifestation of a departure from the divine order set down in the Ngurra Nyujunggamu. Country is home to people and so too to their spirit whether the person

³⁴¹ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others. The data in this paragraph derive from this source.

³⁴² WAD6005/2003, 07.09.15, p 53. Michael Woodley. Xn Mr Hughston.

³⁴³ KPVR, 2, Pansy Cheedy.

³⁴⁴ KPVR, 2, Pansy Cheedy.

is living or deceased. Spirits belong to country where they have a role and a purpose: they watch out for wrong action, imperil *manjangu*. They represent part of the order laid down by the Mingala. The loss of their natural habitat and the highly intrusive nature of the mine has caused this state of affairs to fall out of balance. The spirits are not gone, but they are rendered homeless. They are as a consequence angry and prone to cause harm. They have lost the immediacy and vitality which characterised the direct and immediate relationship that Yindjibarndi people believe they have with the spirit of the countryside, manifest as their own forbears and their link with the metaphysical world of timeless spirituality. One consequence of this is the loss of the medium of the *jawi* whereby the spirit world communicates with the living.

300. The cultural loss experienced by the Yindjibarndi, as I understand it based on my field data is one that develops from the realisation that one aspect of the spiritual integrity of the countryside is now thrown out of kilter. The spirits of the *ngurra* in the Solomon Hub area are diminished. This represents a loss to a portion of the spiritual world which is believed to be the birth-right of the Yindjibarndi people.

CONCLUSIONS AND OPINION: SPIRITUAL LOSS

301. These various data speak to a countryside that is altered not only in its physical form but also in its spiritual dimensions. In my opinion and based on these accounts, this represents a significant aspect of Yindjibarndi belief, practice and how relationships with country are perceived and executed.
302. Those with whom I worked³⁴⁵ identified this loss of spiritual immediacy with an emptiness and vacating, accompanied by a deep sadness. These men used the Yindjibarndi word *yurluwa*³⁴⁶ to express this emotion. They explained that *yurluwa* has a variety of meanings and pointed to the gas bottle at the BBQs where we are sitting outside the old Millstream Homestead. A gas bottle with no gas can be called *yurluwa* – as too can a person who has no cultural knowledge, a river with no water or a tree with no fruit. While each is empty, the condition also evokes disappointment and loss. They said to me, ‘It’s like a loss, a sadness, a disappointment’. This, they added is what they now feel about Ganyjingarringunha (the area of the mine). ‘It’s empty, depleted, all gone and so full of sadness.’

³⁴⁵ KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie. The data in this paragraph are derived from this source.

³⁴⁶ Wordick 1982, 378, ‘*yurlu*: nothing, none, nil, no, e. g. ---- *pawa pakita*: no water is in the bucket (LOC); zero, null; empty, e.g. ---- *pakit pawayk*: empty bucket of water’. Suffix *-wa* is perhaps emphatic or a verbaliser (Wordick 1982, 384).

303. The ancestral spirits are not only called, generically, spirits (*nyuga*) but also *tharngan-garli*, (ritual leaders), *juju-ngarli* (the old people) and *ngurrara*. These names evoke both the living as well as the dead and in my opinion serve to situate those people of the past within present action, responsibility and prowess. The spiritual link between those who live and those who preceded them is an important part of what it is to be in essence a Yindjibarndi person. It is a part of the viability of being an autonomous Yindjibarndi person today. The diminution of the spirits in the Solomon Hub area is consequently understood as a loss and such recognition is accompanied by feelings of sadness.

6 LOSS OF CULTURE AND PLACES AND THE FORFEITURE OF YINDJIBARNDI HERITAGE

INTRODUCTION

304. The Solomon Hub has resulted in the transformation of a landscape. Mining is an extractive industry and open cut operations, tailings, associated infrastructure (roads, railways, conveyor belts, crushing plants), administrative and accommodation facilities mean that little if any of the original landscape remains untouched – and much of the original form is destroyed. I base this preliminary comment on my observation of several areas of mining activity I have viewed over my years of undertaking anthropological field research in Australia. This includes viewing parts of the area of the Solomon Hub.³⁴⁷ I do not consider such an observation to be controversial. Mines destroy Indigenous cultural heritage. Some instances of this destruction are more spectacular than others.³⁴⁸ Additional examples are not hard to find.³⁴⁹
305. My purpose in this chapter is to provide an expert view on the impact these events have had on the Yindjibarndi people with whom I worked and how they have perceived this in terms of cultural loss.
306. To this end I first examine the responses, as I have recorded them in my field data, to the destruction of the places which were identified in heritage surveys³⁵⁰ some of which I have mentioned above. Second, I turn attention to those places associated with the mythic being of the Ngurra Nyujunggamu (the Dreaming) which have high cultural value because of this association.
307. In any consideration of the nature and extent of cultural loss occasioned by the physical operations of the Solomon Hub the extent of the disturbance is relevant. I was provided with a map of the ‘Solomon Footprint – Overview’ (Yindjibarndi Aboriginal Corporation 2021) showing the areas of ground disturbance in purple. The map is dated 2021. However, I do not know the date of the imagery upon which it is based. I have

³⁴⁷ *Warrie* (No. 2) [157]. I visited Banggangarra prior to the Yindjibarndi No. 1 hearing as well as during the hearing. I also visited it during the field work I undertook in 2022 (KPFN, 43, personal observation).

³⁴⁸ The now notorious destruction of Juukan Gorge is perhaps the best known of recent years. See, for example, <https://www.theguardian.com/australia-news/2020/may/26/rio-tinto-blasts-46000-year-old-aboriginal-site-to-expand-iron-ore-mine> accessed 23 May 2022.

³⁴⁹ See, for example <https://www.abc.net.au/news/2020-06-11/juukan-gorge-aboriginal-heritage-site-just-one-of-many-destroyed/12337562> accessed 23 May 2022.

³⁵⁰ Commonly, field surveys for sites that contain evidence of past activities and include camping sites, artefact scatters including former working areas, petroglyphs and pictographs, burial sites, scarred trees and other places of which are in one way or another the product of the cultural and economic activities. Surveys for such sites are generally conducted by archaeologists in response to the provisions of the Western Australian *Aboriginal Heritage Act* (1972).

reproduced a copy of this map as Figure 6.1 which is on page 106 below. The yellow line running diagonally across the map marks the southern boundary of the Yindjibarndi native title claim area.

308. The map which is Figure 6.1 when rendered in colour is helpful in showing the extent of ground disturbance. However, if it is reproduced in black and white it has little value. The mine footprint is irregular, presumably as it follows the ore bodies, and from the imagery would appear, to some extent, to follow the river valleys. I am unable from this map to calculate the area of the disturbance, beyond noting that at its widest the footprint extends west to east about 17 kms and north south approximately 10 kms.

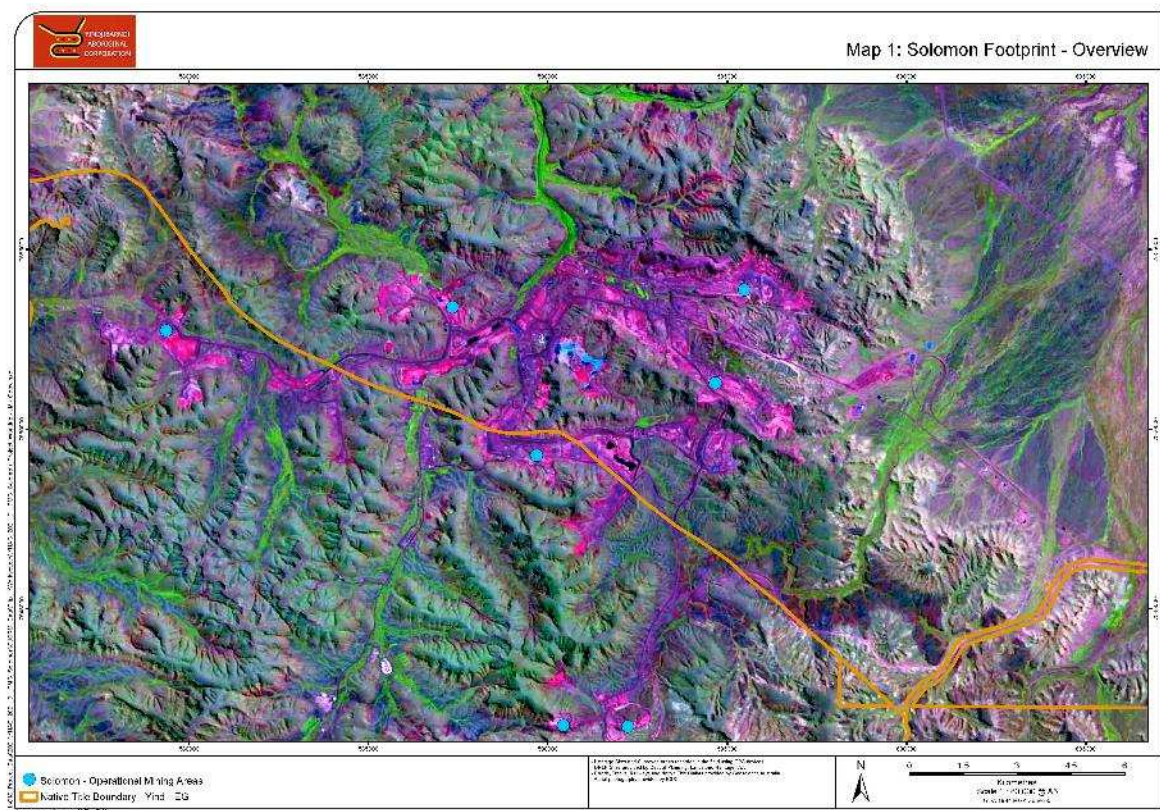


Figure 6.1: Solomon Footprint – overview.

Note: map should be viewed in colour.

Source: Yindjibarndi Aboriginal Corporation, 2021.

309. I have also viewed the Solomon Hub on Google Earth (imagery dated March 2019). I drew a polygon round the perimeter of the areas disturbed, as viewed on the imagery, including the railway loop. By this means I was able to ascertain³⁵¹ the extent of the disturbance (as it was in 2019). This adds up to 45 sq. kms, a figure that does not

³⁵¹ Google Earth calculates the dimensions of a polygon drawn on the map, including its surface area.

include the roads, airport and accommodation areas.³⁵² As the map which is Figure 6.1 shows, not all of this disturbance is within the Yindjibarndi claim area. I have reproduced the map I have created on Google Maps as Figure 6.2 which is on page 107 below. On this map the river valley and gorge of Ganyjingarringunha is marked extending north from the Solomon Hub and Banggangarra is shown at the head of a westward tributary to the main valley, again a short distance north of the mine.

310. I am advised (Appendix A, Services required, addendum, letter dated 24th May 2022, item 2) that the mines of the Solomon Hub together have a production capacity of 75 million tonnes of iron ore per annum. I consider it reasonable therefore to conclude that in the period from 2019 (the date of the satellite imagery) to the time of writing (May 2022) the area of the mine has increased.

311. By way of comparison 45 sq. kms is equivalent to an area in Sydney drawn from Potts Point to North Bondi to Maroubra Beach to Alexandria (45.6 sq. kms). In Melbourne it is the equivalent of the area contained by a line drawn from Southbank to Brunswick to Ivanhoe to Hawthorne (45 sq. kms).

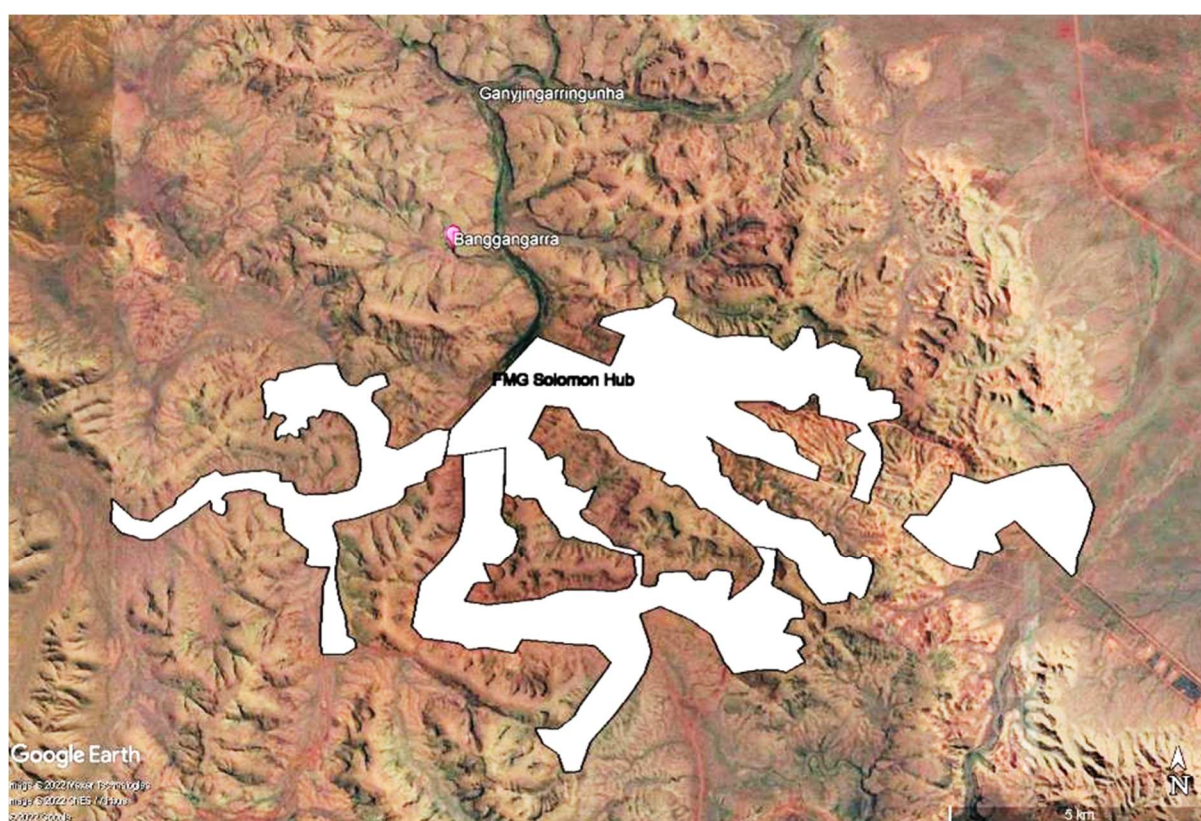


Figure 6.2: Google Earth image of Solomon Hub areas of disturbance.

Source: adapted by author from Google Earth imagery (2019).

³⁵² Also excluded is the western extent of the disturbance as the satellite imagery available for this area predates the development of the mines.

MINING AND THE YINDJIBARNDI SENSE OF PLACE

Sites and the cataloguing of place

312. The nature of surface mining has the consequence that anything within or on the landscape is destroyed. Some indication of the destruction of places of significance to the Yindjibarndi people can be gained from an examination of a chronology of events provided to me by the YAC.³⁵³ The document contains details of a letter written by Andrew Forrest and dated 22 August 2007. The letter reads in part,

I write to express my regret for an impact caused by FMG to an area of significance to the Yindjibarndi People. The area of significance is a natural spring, which the Yindjibarndi people wished to protect from impact through Fortescue's ground clearing activities. I can imagine the hurt caused to the Yindjibarndi people from this clearing and I apologise that it occurred. The Fortescue family wants to ensure that areas significant to the Yindjibarndi people are protected.

Letter to the Yindjibarndi people from A Forrest, 22 August 2007. In Irving 2012, 5.

313. The chronology also provides details of applications made to destroy other archaeological sites within the Solomon Hub area. This includes 9 places in February 2011 (Irving 2012, 28), 21 places in August 2011 (*ibid.*, 48, 53, 55), 16 places in September 2011, 6 in October 2011 (*ibid.*, 58, 68), 22 places plus 9 additional sites reported in November 2011 (*ibid.*, 64), 15 in December 2011 (*ibid.*, 69), 20 places in January 2012 (*ibid.*, 71) and 8 in June 2012 (*ibid.*, 79). The total number of sites documented for destruction is by these accounts 126. This is in a period of approximately 18 months. The mine has been operating since these dates to the present, a period of just over a decade.
314. An example of an archaeological site found during surveys conducted over areas proposed for mining impact is also to be found in the minutes of the Wirlu-Murra Yindjibarndi Aboriginal Corporation, publicly available on the internet.³⁵⁴ The minute records that the board was advised by the archaeological consultants Terra Rosa that it had 'just received the results of a recent investigation of a site at Solomon. The bottom date of an artefact at one site was confirmed to be 35,000 years. The research data is indicating that Aboriginal people have occupied the area continuously for a very long

³⁵³ 'Yindjibarndi Chronology' 2012. Compiled by George Irving, Legal Services Director, Juluwarlu Group Aboriginal Corporation (Juluwarlu); Solicitor and In-House Counsel, Yindjibarndi Aboriginal Corporation RNTBC (YAC).

³⁵⁴ <http://yindjibarndi.com/wp-content/uploads/2015/08/WMYAC-Minutes-Extracts.pdf> accessed 19 May 2022.

time, including fry [*sic*; dry?] periods.’ The minute is silent on what happened to this site. Surveys undertaken by archaeological consultants generally target areas likely to be destroyed or heavily impacted by proposed development activities (see paragraph 322 below).

315. Others have sought to document some of the archaeological and other survey work that has been undertaken with respect to the Solomon Mine hub (Cleary 2021, 97-123). The Yindjibarndi Aboriginal Corporation has also undertaken their own research, and in 2014 Philip Davies, the organisation’s General Manager of Culture and Heritage, wrote a statement regarding ‘Yindjibarndi heritage features located in the mining tenements M47/1473 and M47/1475’ (Davies 2014). Apart from documenting his own training and experience working with the Yindjibarndi people (*ibid.*, 1-9), Davies documented 66 places in M47/1473 and 49 in M47/1475 (*ibid.*, 10-17).³⁵⁵

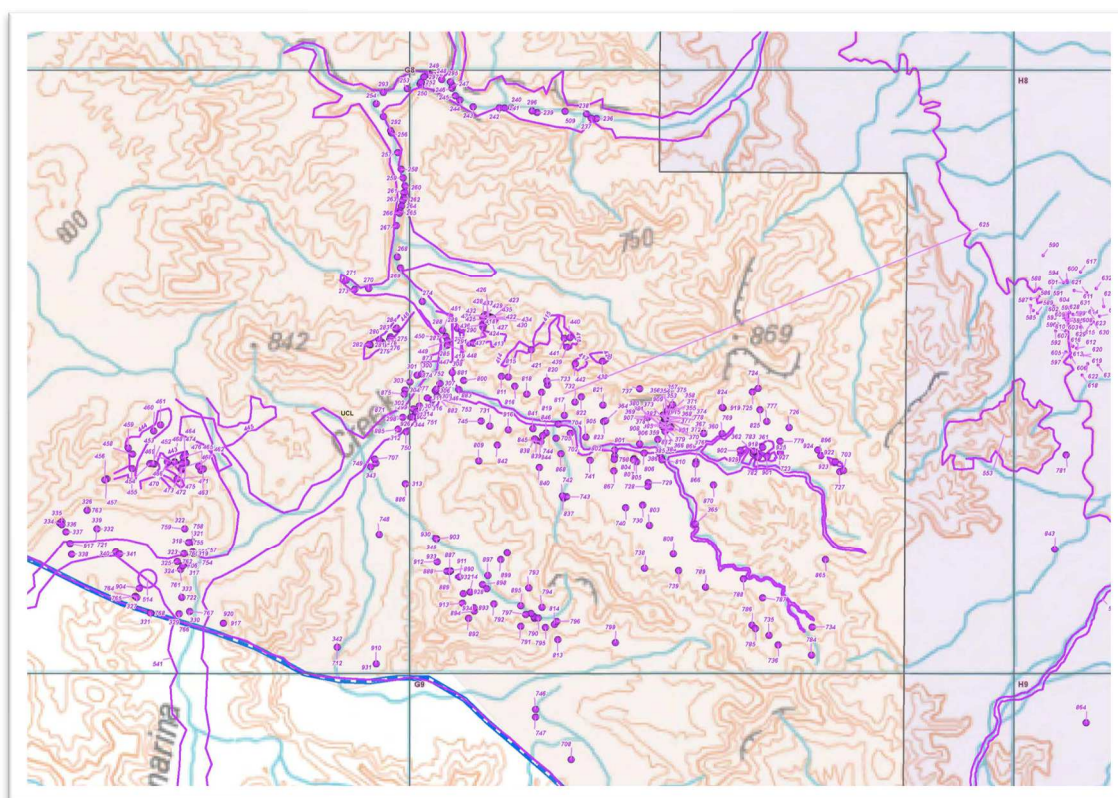


Figure 6.3: Sites in Ganyjingarringunha (including area of the Solomon Hub). Detail (insert) from YAC map 2015.

316. YAC has also undertaken subsequent research and mapping and provided me with a copy of a map showing sites across Yindjibarndi country.³⁵⁶ An inset map shows

³⁵⁵ Two of these lie outside of the tenement but are closely related to a place that is within the tenement.

³⁵⁶ Yindjibarndi Aboriginal Corporation RNTBC 2015, ‘Yindjibarndi #1 Claim (WAD6005/2003) Area Map including Topography, Tenure and All Sites’. Hereafter ‘YAC 2015’

those recorded in the Ganyjingarringunha area, and so includes the area of the Solomon Hub. This inset map shows multiple sites recorded (too many to easily count), particularly in the river valleys. I have reproduced this inset map as Figure 6.3 which is above.

317. Figures 6.2 and 6.3 can be compared. Such a comparison reveals that a substantial number of the places recorded on Figure 6.3 are subject to mining activities. I consider it a reasonable inference to draw, based on these data, that a substantial number of them have been destroyed by the mining activities of the Solomon Hub.

318. I was also provided with a copy of a report, authored by the Yindjibarndi Aboriginal Corporation (2018) that had as its focus the drainage basin of the Tharndibirndinha *wurndu* (creek) which occupies south eastern portions of the Solomon Hub area and which was then scheduled for mining. The report documents 23 places of significance to the Yindjibarndi people in this area and notes 11 previously recorded by heritage survey teams directly commissioned by FMG. In addition the report notes a number of additional sites previously recorded in the area, referencing the reports where these were documented.³⁵⁷

319. It is not my purpose here to document the places that have been recorded during multiple 'heritage surveys' as being significant to the Yindjibarndi people in terms of their cultural values. This is a commission best left to those with access to the details of the many surveys that have been done across the area – a task I understand at the time of writing this report to be under consideration by YAC and would be the subject of a separate report.

320. This brief review of some of the sites or areas of significance that have been documented within the Solomon Hub area to date provides, in my view, a reasonable basis to conclude as follows. The area of the Solomon Mine has within it many places of cultural significance and that at least some of these have been destroyed.

Country as history of Law and culture

321. Stanley Warrie told me³⁵⁸ that he valued Yindjibarndi country (the Solomon Hub area included) because it was the repository of 'a lot of things; the teaching. It's all to be lost. The whole history of the Law and culture. There's a lot of areas haven't been

³⁵⁷ Yindjibarndi Aboriginal Corporation 2018. See for example page 16. There are multiple reference to previously recorded sites in the report.

³⁵⁸ KPFN, 16, Stanley Warrie.

recorded.’ Stanley also told me³⁵⁹ that, ‘country holds everything, you know. The history and you know – the country holds your identity. It [?] who you are. It’s your identity’. ‘Recording’ was not now possible for the Solomon Hub area because, ‘We can’t go there because of the mine. So all that is lost forever’³⁶⁰. Michael Woodley made a similar point.³⁶¹ Michael regards the archaeological record as documenting a part of Yindjibarndi culture. The artefacts and other evidence of occupation, indicating where and how his forebears lived, show the presence on the land of those who are now spirits. He told me that the loss of sites and the consequential destruction of his heritage is a significant cultural loss.³⁶²

322. Others also made mention in our discussions of the importance of country as representation of cultural history. A group of women told³⁶³ of a cave found by a Wirlumurra heritage survey team some years ago. They thought it was subsequently dated to about 25,000 years ago (cf. paragraph 314 above). However, the cave was destroyed long before the date came back. I recorded the following comments made in this regard:

Now it’s gone, there’s no respect for these places.

Our culture is a part of us. It’s being destroyed; all the old camp sites.³⁶⁴

323. I was told,³⁶⁵ in response to my questioning, that the camping places are significant because they serve to affirm that the Yindjibarndi are the people who have been in the country, ‘for ever – passed down from generation to generation., through the oral traditions.’ This they see as a process of succession to country and knowledge of country that has continued uninterrupted up until today. The reality of the present is that this record of the past and the heritage it evokes is all gone. Pansy Cheedy said,

country was a story place. There’s ochre and other things for men – but now we have no access and we can’t teach our kids about these places and what they mean to the culture. So now we can’t teach here. It was a story place [but not any more].

KPFN, 42, Pansy Cheedy.

³⁵⁹ KPVR, 3, Stanley Warrie.

³⁶⁰ KPFN, 16, Stanley Warrie.

³⁶¹ KPFN, 20, Michael Woodley.

³⁶² KPFN, 20, Michael Woodley. I wrote in my field notes that it was ‘important’. The context of our discussion was cultural loss so I understand Michael to have meant that it was an ‘important’ (that is ‘significant’) cultural loss.

³⁶³ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³⁶⁴ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

³⁶⁵ KPFN, 42, Pansy Cheedy, Margaret Read, Lyn Cheedy, Kaye Warrie and Lorraine Coppin and others.

324. The Solomon Hub and adjacent areas contain the human remains of Yindjibarndi ancestors. These are typically found in niches within rock shelters.³⁶⁶ Kaye Warrie was of the view³⁶⁷ that the ‘miners’ had ‘dug up all those bones. They found them in caves.’ This made her feel ‘really sad’. She added, ‘To do that with our ancestors. They must be Yindjibarndi people from the olden times. They must be Yindjibarndi people, those bones.’ Lorraine Coppin told of a specific incident which she witnessed some years ago.³⁶⁸ Lorraine visited the Solomon Hub area as a result of some skeletal materials having been found in a cave. She and her husband, Michael, were asked to perform a smoking ceremony which they did. However, following this the bones were removed and they had no knowledge of what happened to them subsequently. ‘It was handled by Wirlumurra. We never knew what happened. It was very upsetting.’ I noted at the time Lorraine told me this that she was visibly upset about the incident.
325. During my period of field work I was taken to a cave situated in Ganyjingarringunha gorge, some 2.75 kms north north west of the mine area. I observed an elaborate ritual³⁶⁹ conducted by those with whom I worked which allowed us to visit the place and inspect the remains in a respectful manner. The ritual served to ensure the safety of those visiting (including myself) from the spiritual forces of the place, as well as showing the children present something of the history of the area. In my opinion such ritual visits are an important part of sustaining and perpetuating Yindjibarndi culture and associated practice.³⁷⁰ I have also observed similar rituals conducted on Yindjibarndi country during my earlier period of field work.³⁷¹
326. Charlie Cheedy described³⁷² the Ganyjingarringunha area (that is, the area of the Solomon mines) as a complex of ‘roads’ that followed the creeks – from the east, from the west, north and south. In the past, before the arrival of the European settlers, when the Yindjibarndi used their country they might travel from the Wirlumurra Creek (to the west) up the valley to reach more open mulga flats and a camping area on Ganyjingarringunha creek. Such mulga areas are known as *wirndamarra*.³⁷³ This was a cross-roads with a track going east affording a route through the hill country to Rio

³⁶⁶ Charlie Cheedy knew of two such places which he located on a sketch map he drew on a white board (KPFN, 27, Charlie Cheedy).

³⁶⁷ KPFN, 11, Kaye Warrie.

³⁶⁸ KPFN, 25, Lorraine Coppin. The data in the rest of this paragraph are derived from this source.

³⁶⁹ KPFN, 43, personal observations.

³⁷⁰ See also KPFN, 44, Michael Woodley.

³⁷¹ KPFN (2014), 17, personal observations.

³⁷² KPFN, 25-26, Charlie Cheedy.

³⁷³ The name for the Mulga tree (*Acacia aneura*). Yindjibarndi Dictionary, Juluwarlu Archive, n.d., *wirndamarra*.

Tinto Gorge. To the south the Ganyjingarringunha valley led to the open flats (where the Solomon airport is now located) and to the north, down the gorge, to the Fortescue River flood plain.

327. Charlie Cheedy related the manner of this former use of the country of the mine to the creative period of the Dreaming – Ngurra Nyujunggamu.³⁷⁴ He told me that in the ‘Marga days’ everything in the countryside was made.

Why they put this road here like this [points to whiteboard where he had drawn a mud map of the mine area]. There’s a reason. You can go *burni* [stay, stop³⁷⁵] in this flat here. Stay there, there’s a *bawa* [water³⁷⁶] there not far. It’s a gathering place. You gather here.

KPVR 13, Charlie Cheedy.

328. Charlie said that ‘men used to sit down in these areas, there are seed grinding places there too’.³⁷⁷ Michael Woodley described³⁷⁸ Ganyjingarringunha as a ‘trail’, saying that Yindjibarndi people used to walk up and down through the valley. It provided for ‘a safe-passage, in the creek’. This, he added, is no longer the case as the whole valley is ‘blocked off’ by the mines. Charlie Cheedy drew a sketch map of the Ganyjingarringunha area on a small whiteboard. I copied this onto my note pad and annotated it as he spoke, ascertaining the location of particular features, consistent with the account provided here.³⁷⁹

329. In Figure 6.4 I have drawn the ‘roads’ or foot walking tracks on a topographic map of the Ganyjingarringunha area. The areas affected by the Solomon Hub mines are shown on the map which is Figure 6.2 (page 107 above). A comparison of the two maps shows the extent to which the representation of how the country was used in time past has been affected by the development.

³⁷⁴ KPVR, 12-13, Charlie Cheedy.

³⁷⁵ See Wordick 1982, 332, *parni-* (V0) 1. sit, e.g. + -ngumarnu: sit down. 2. Cease moving, stop, stay, remain, dwell. 3. be situated, be found. 4. be, exist [also Ku and Nm].

³⁷⁶ *bawa* N. 1) fresh water. 2) solutions, water solutions esp. drinkable. Yindjibarndi Dictionary, Juluwarlu Archive, n.d. *bawa*.

³⁷⁷ KPFN, 26, Charlie Cheedy.

³⁷⁸ KPFN, 31, Michael Woodley.

³⁷⁹ KPFN, 27, Charlie Cheedy.

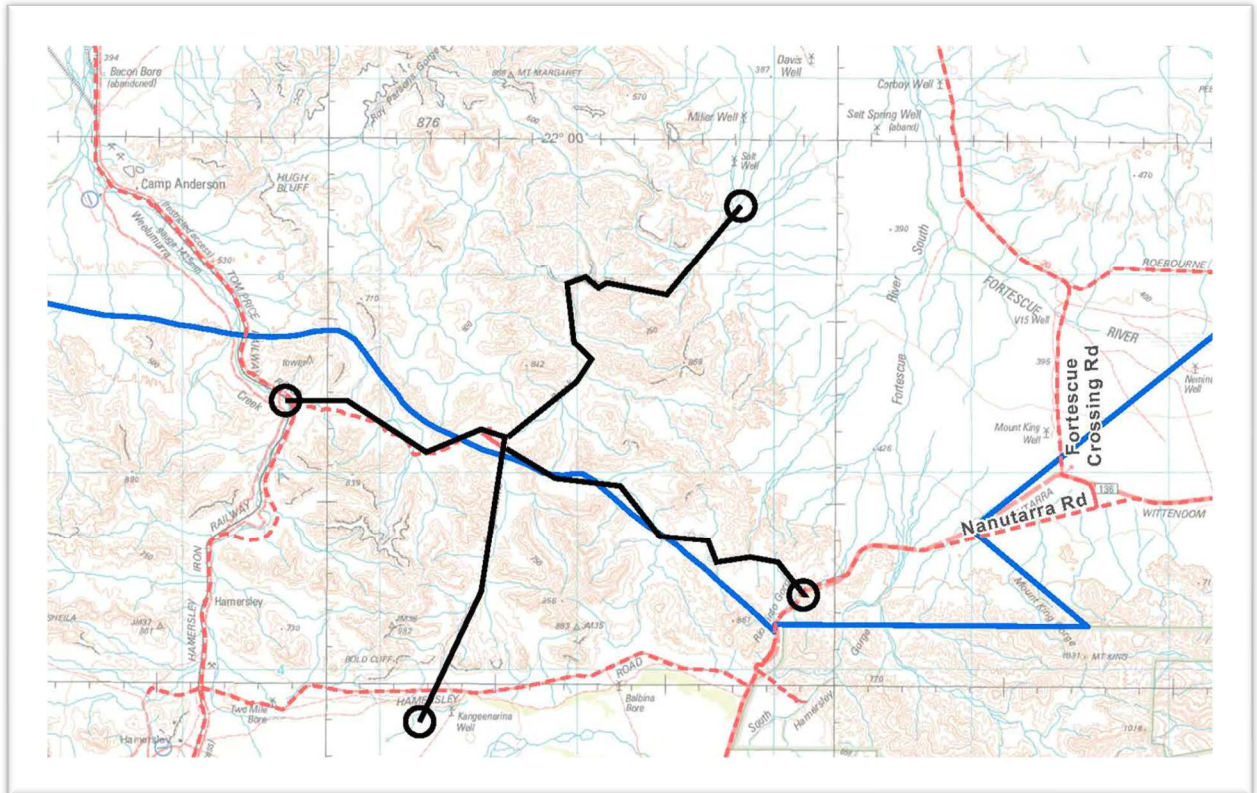


Figure 6.4: Ganyjingarringunha through routes

Note: the black lines show the pathways or tracks followed by Yindjibarndi ancestors in times past.

Source: Charlie Cheedy, KPFN, 25-26.

330. Charlie expressed his own opinions about the degree to which the mine has destroyed the areas used by his ancestors. Charlie understands that much of this original human geography is now lost. Having some familiarity with the Solomon Hub area as it now is, he overlaid this original account with the names of the various mines, camps and other infrastructure that has transformed the country. He remarked³⁸⁰ that now the camping area in the mulga has been destroyed. The tributary to the Wirlumurra which runs west is 'all dug up' so that the *wurndu* [creek] is gone. The track that extended from Ganyjingarringunha Creek to the railway loop is now Firetail Mine while Queen mine, 'heading back towards the Rio [Tinto] line, 'all that *wurndu* is dug up'. Tharndibirndinha is the name of a creek (*wurndu*) and associated catchment which drains south eastern portion of the Solomon Hub before turning north to flow into the Fortescue north of

³⁸⁰ KPFN, 25-26, Charlie Cheedy.

Yijigarrinha (Rio Tinto Gorge). It was his understanding that the Tharndibirndinha catchment was scheduled to be mined soon.³⁸¹

331. Charlie spoke³⁸² of painting sites, burial places and seed grinding places which were currently outside of the mined areas, but threatened by dust, blasting and future expansion.
332. Some places within Yindjibarndi country are understood to be the source of specific natural products which have value in terms of their cultural significance. One example of this is ochre, found in deposits where the mineral has been exposed.³⁸³ There are examples of these resource sites within the Solomon area which are now believed to have been destroyed. I was told that the use of ochre for body decorations is a significant and essential aspect of the performance of the Birdarra Law. Without ochre the rituals could not be performed. Another resource found within the Solomon area is used for male restricted sections of the ritual and it was suggested that I not write about this directly in my report. However, it represents a second example of a culturally significant resource which was formerly derived from the Solomon area but is now no longer available from this place. There are other places in Yindjibarndi country where these resources can be obtained. However, my reading of the comments made by those with whom I discussed this matter³⁸⁴ was that their ability to perform the rituals was diminished because the totality of the link with Yindjibarndi country, which the use of these items in part symbolises, has been broken. It is then now incomplete and the integrity of the Burndud brought into question.

Opinion: sites and the ethnography of place

333. In my opinion the reason why much survey work has had as its focus the identification and cataloguing of 'sites' is likely to be a consequence of the archaeological and sites-based focus of much of the survey work that has been undertaken to date, being a response to the provisions of the Western Australian *Aboriginal Heritage Act* (1972). As I have discussed elsewhere (Palmer 2018, 12-13) such legislation had significant limitations as it sought to protect small pockets of land ('sites') thereby ignoring the pervasive nature of the Indigenous relationships with country that defy neat and restrictive boundaries.

³⁸¹ See also, Yindjibarndi Aboriginal Corporation, 2018, 6, 8, 36, 37. The report contains multiple references to these names.

³⁸² KPFN, 25-26, Charlie Cheedy.

³⁸³ KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

³⁸⁴ KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

334. The account I provided in the previous chapter relating to the spirits of the countryside, illustrate clearly in my opinion the limitations of the site-based approach to evaluating heritage values and any subsequent assessment of the diminution of those values through site destruction. I have shown above that, for the Yindjibarndi a principal emotion relating to country is that it all potentially contains the spirits of the *nyugangarli*. These beings are not site-bound since they may be found almost anywhere across the country.
335. Based on the data I have considered in this section I am of the opinion that Charlie Cheedy understands the former use of his country to reflect not only the manner whereby it was used as a totality, but also as a consequence of a spiritual ordination owing its origins to the Ngurra Nyujunggamu. In this, Charlie has presented a view of country and its cultural significance that treats country as a whole rather than comprising an aggregation of special ‘sites’ which can be enumerated and catalogued.
336. Michael Woodley opposed the quarantining of what he regards as arbitrarily defined areas as sites because it is the totality of Yindjibarndi country that is important. The loss of sites and the destruction of the cultural heritage represents a significant loss, because of their role in documenting the Yindjibarndi past and as a contemporary representation of Yindjibarndi cultural and heritage. However, this loss cannot be singularly defined in terms of this site or another. Michael’s view is that an over emphasis on ‘sites’ ignores the totality of Yindjibarndi land as cultural property and the infringement of his rights as a *ngurrara*.
337. As the data I have reviewed show, it is true that some places are singled out as having particular attributes that are significant (ochre and other mineral resources, burial) but the principal impact of the mine on Yindjibarndi people and their consequential feelings of loss develops from an appreciation of the totality of country and the degree to which it has been diminished, fractured or destroyed. Based on this analysis, it is the destruction of the country understood as a whole, albeit comprising different component parts, that lies at the core of the Yindjibarndi feelings of cultural loss. ‘Sites’ are one of those component parts.
338. The same understanding should, again in my opinion, be applied to an appreciation of the cultural significance of sites relating to mythology, ritual and the spirituality of the country. This is a matter to which I now turn

MINING AND THE YINDJIBARNDI CREATIVE BEINGS: BURNDUD

339. In chapter 2 of this report I described aspects of Yindjibarndi belief relating to the formative period of the Ngurra Nyujunggamu. This included an account of the institution of the Burndud songs and associated rituals (paragraphs 50 to 57) and the activities of a number of mythic beings including the Marga, Burlinyjirrmarra (paragraphs 66, ‘Bargunyji, Olive Python’) and the Water Snake, Barrimirndi (paragraphs 66, ‘Barrimirndi’). As I demonstrate in that section of my report, both Burlinyjirrmarra and Barrimirndi can be understood to have travelled – that is to say the narrative of their activities and their consequences relate to specific areas of Yindjibarndi country which they are believed to have traversed. These tracks commemorate their activities and, in my opinion, represent a significant aspect of Yindjibarndi belief that links creative beings specifically to tracts of Yindjibarndi country. As such these tracks and the beliefs and narratives associated with them, are often represented as paths or footprint (*jina*). They are as footprints across the country, a tangible part of Yindjibarndi culture. They are consequently esteemed by Yindjibarndi people.

340. The Burndud, as I explained above, commemorates life-giving events that are believed to have occurred at particular places, a few examples of which I have noted (paragraphs 54 and 55). As I will show in the data I here review Burndud is sung according to an order that is defined by place, as the spirituality of the song is believed to have traversed the country. However, it is also, by my understanding, regarded as being far more pervasive than a line of songs that follow a single path, since it is, in my opinion as I expressed it above,

believed to reference all living things which were a product of its instigating performance. Burndud resonates with the totality of Yindjibarndi *ngurra* and the people, plants and animals that are a part of it.

Paragraph 56 above.

341. In the following paragraphs of this report I consider the impact that the Solomon Hub mines have had on the Burndud narratives and beliefs. I will then turn attention to the Marga, Burlinyjirrmarra and the Water Snake, Barrimirndi and how the cultural appreciation of these beings has been impacted by the mines.

The narrative and the song

342. Based on the materials I reviewed in chapter 2, the Burndud comprises constituent parts represented as individual songs. The songs are sung in order, specific

geographic references providing an anchor for each place which situates the song, usually, within Yindjibarndi country. The songs together may then rightly be called a ‘song line’ since they are both sequential and are conceptualised as following a line across the country. In what follows I have presented the order of the narrative which is conveyed through the performance of the Burndud, although the field data upon which this account is based it was seldom provided in strict sequence.

343. Some of the texts of the songs of the Burndud, relevant to the area of Yindjibarndi country which is the subject of this report were provided to me by Michael Woodley, translated into English.³⁸⁵ I reproduce one of these below by way of example (see paragraph 349). The text is notable for its economy and is accompanied, by my understanding, with substantial narrative explanation, which is cumulative over time – as exposure to the Burndud is not a single event but is repeated throughout a man’s adult life.³⁸⁶ Moreover, the places celebrated in the Burndud are subject of comment and observation during visits to the country, and this too is a part of the learning process.³⁸⁷

Birlinbirlin to Hamersley Ranges

344. I stated above that according to Yindjibarndi belief, the Burndud song line commenced at a site called Ganyirranha located on the Birlinbirlin (flat rocks) of the Fortescue River (paragraph 55 above). The song line then is sung to follow the Fortescue River to a place near Gregory Gorge (paragraph 54) and thence in an easterly direction to what is now Hooley Station.³⁸⁸ The song line then approached the Hamersley Range (Gamburdayinha) where it becomes directly relevant to this present account.

The Hamersley Range and the rain cloud

345. Michael Woodley told me³⁸⁹ that one of the Burndud songs is about the many clouds forming and building up over the Hamersley Ranges (Gamburdayinha).³⁹⁰ The area that features in the song includes the current location of the Solomon Hub. The Burndud songs include reference to ‘all the birds and other animals’ too.³⁹¹ The songs are thereby, by my reading of these accounts, ordaining animal life across Yindjibarndi country.

³⁸⁵ KPFN, 48-50, Burndud text (transcribed by Michael Woodley).

³⁸⁶ I base this opinion on my understanding of both the Burndud and associated Birdarra ritual and related traditions over an extensive period working in the Pilbara. See also Palmer 1981, 120-133, 139 (last quarter) – 143 (first third), 146 (last quarter) -149. The pages or part pages omitted from this reference are gender restricted.

³⁸⁷ KPVR, 12, Charlie Cheedy.

³⁸⁸ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

³⁸⁹ KPFN, 38, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

³⁹⁰ KPFN, 48-50, Burndud text (transcribed by Michael Woodley).

³⁹¹ KPFN, 26, Charlie Cheedy.

Wanduwarranha (Roy Parsons Gorge) to Barngkawinha (Split Hill)

346. Charlie Cheedy described³⁹² how following the songs relating to the birds and animals, the song line features a ‘tabletop’ hill, Mumiyanha³⁹³ (a hill with a flat top), in the vicinity of Wanduwarranha (Roy Parsons Gorge). Burndud is then understood to accommodate a narrative that relates to Barngkawinha (also known as Split Hill) which is located a short distance east of Weelumurra Creek and the Tom Price railway line and access track and some 15 kms west of the Solomon airport.³⁹⁴ This narrative relates to a fight between two Marga (see also paragraph 347 and 356 and 357). Charlie stated that from Barngkawinha the Burndud ‘comes back around’ to Banggangarra.³⁹⁵ Charlie explained,³⁹⁶ ‘The line is written on the country where the mine is now. This is like a *jina*’ (footprint³⁹⁷).

347. Michael Woodley also spoke³⁹⁸ of the hill Mumiyanha at Wanduwarranha. Later Michael provided a fuller explanation of the meaning and significance of the song for this place, which gave the rules for the categorisation of kin and their subsequent roles in the Birdarra ritual.³⁹⁹ Michael added, ‘this is all in the song’. The song next travels to a place called Jilunjilun, ‘the next hill in the range’.⁴⁰⁰ From Jilunjilun it goes to the Barngkawinha (Split Hill) which is commemorated by a song about the boomerang (*wirra*; see paragraph 351 below) while they ‘follow the Burndud line’.⁴⁰¹ The line then travels down the Ganyjingarringunha *wurdu* [creek] to Banggangarra.⁴⁰²

Banggangarra

348. Middleton Cheedy told me⁴⁰³ that Banggangarra is named for the *barnga*, a young goanna, yellow and black in colour, which is ‘quite large’.⁴⁰⁴ He told me that the *barnga* was ‘in the country and that’s why they sing about him’.⁴⁰⁵ The song is then specific to a place in the country, as the more detailed accounts of the associated narrative

³⁹² KPFN, 26, Charlie Cheedy.

³⁹³ The Burndud song text has ‘Mamanha’ as the name of this hill, in juxtaposition to Wanduwarranha. KPFN, 48-50, Burndud text (transcribed by Michael Woodley).

³⁹⁴ See paragraph 251 above.

³⁹⁵ KPFN, 28, Charlie Cheedy.

³⁹⁶ KPFN, 28, Charlie Cheedy.

³⁹⁷ Wordick 1982, 356.

³⁹⁸ KPFN, 29, Michael Woodley, Middleton Cheedy and Stanley Warrie.

³⁹⁹ KPFN, 38, KPFN, 38, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁰⁰ KPFN, 29, Michael Woodley, Middleton Cheedy and Stanley Warrie. Jilunjilun is site 40 on the Yindjibarndi No. 1 site map and is also called Mt Parsons.

⁴⁰¹ KPFN, 48-50, Burndud text (transcribed by Michael Woodley).

⁴⁰² KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴⁰³ KPFN, 15, Middleton Cheedy, with Stanley Warrie, and Kevin Guinness.

⁴⁰⁴ Wordick 1982, 332. *Parnka* female sand goanna. Yindjibarndi Dictionary, Juluwarlu Archive, n.d. lists *barnka* N. 1) goanna. 2) female bungarra, indicating it can be used for reptiles of either sex.

⁴⁰⁵ KPFN, 15, Middleton Cheedy, with Stanley Warrie, and Kevin Guinness.

demonstrate. One detailed account was provided to me by Charlie Cheedy,⁴⁰⁶ another was given by Michael Woodley, Middleton Cheedy and Stanley Warrie.⁴⁰⁷ The song text, which was provided to me by Michael Woodley⁴⁰⁸ contains the essential but minimal components of the narrative which must be narrated in full, as accompanying exposition. Charlie told me that *barnga* travelled up the Ganyjingarringunha creek to Banggangarra. Following his exploits there, which included making the spring and pool, as well as the natural feature of the gorge, 'he went everywhere into the country. That's the place where the *banga* comes from. He went everywhere. Across where the mine is now'.⁴⁰⁹ Middleton Cheedy explained⁴¹⁰ that 'The *barnga* moved out from there and there's various paths to take and you can follow each in turn [through the songs]. It's like following the roots [of a tree or plant].' Kevin Guinness told me⁴¹¹ that the process of performing the Burndud is, 'like singing a map. It tells the story of what's happening in the country – tells you all the Law, what's recorded in our tribe in that Burndud now.'

349. As I noted above, Michael Woodley provided me with the translated text of some of the Burndud songs. I reproduce below the song that celebrates the *barnga*, the creation of Banggangarra, its water and the dispersal of *barnga* throughout Yindjibarndi country. This I understand to represent a portion of the exegesis that might accompany the ritual performance of this song and which the elemental qualities of the song evoke.

4. *Barnga* – [Sand goanna] traveling through Yindjibarndi Ngurra and finish at Banggangarra.

Barnka nha	nharrabarnka	yarruli
Sand goanna	Covered in earth/dirt	moist with (sweet/water)

Yirrgarinbagula	yirrgariny bargula
Claw	(clawing his way through)

Burndud text, *Barnga*. Translated by Michael Woodley, KPFN, 49, song 4.⁴¹²

⁴⁰⁶ KPFN, 28, Charlie Cheedy.

⁴⁰⁷ KPFN, 29, Michael Woodley, Middleton Cheedy and Stanley Warrie. I recorded another account on a third occasion. KPFN, 38, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁰⁸ See KPFN, 48-50, Burndud text (transcribed by Michael Woodley).

⁴⁰⁹ KPFN, 28, Charlie Cheedy.

⁴¹⁰ KPFN, 15, Middleton Cheedy, with Stanley Warrie, and Kevin Guinness.

⁴¹¹ KPFN, 15, Kevin Guinness, with Middleton Cheedy and Stanley Warrie.

⁴¹² I have reproduced the song as an interlineal text. The original has the translation placed immediately after the text.

Excursion into Gurama country and return

350. The next song is about the spear thrower or *warbarra* and relates to three stones standing in Gurama country some distance to the south west⁴¹³ and later described as 'somewhere near Duck Creek'.⁴¹⁴ My sense of the field note is that these stones are believed to represent the mythic proto-type of all spear throwers, and so find their place in the Burndud through which they were ordained in the Ngurra Nyujunggamu. The spear thrower was believed to have been brought into Yindjibarndi country through the agency of the song.⁴¹⁵

351. A parallel narrative, also identified in the Burndud song line, relates to two boomerangs. I recorded the following in my field notes,

I did not get the originating place but it was raised in the context of a discussion of Roy Parsons Gorge. The boomerangs were sent (travelled) across the Hamersley Range into Gurama country and all the way to the place called Wakathuni (now a small community on the Tom Price to Paraburdoo road). These songs also follow the *jina* that traverses the mine area and environs.

KPFN, 45, Michael Woodley.

352. The Burndud song line then returns to Yindjibarndi country across the country where the Solomon Hub mine is now to the Fortescue River flats⁴¹⁶ where it 'caught up with the young girls – *gurri* – they were running'.⁴¹⁷ The *gurri* were given three songs in the Burndud as they travelled, running out of Yindjibarndi country and into Banjima country.⁴¹⁸ I was told that Mingala gave the *gurri* 'three songs in the *jina* [footprints]' since they 'covered a big distance'.⁴¹⁹

The order of the song line

353. Based on the data set out above I think it reasonable to conclude that the Burndud song line traverses country by reference to named locations – although not all of these are mentioned in the song but are supplied through the accompanying exegesis

⁴¹³ KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴¹⁴ KPFN, 38, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie. Duck Creek has a catchment on the southern and south western flanks of the Hamersley Ranges and is a tributary of the Ashburton River.

⁴¹⁵ '[the spear thrower] which came from Gurama country'. KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴¹⁶ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴¹⁷ KPFN, 38-39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴¹⁸ KPFN, 49-50, song 6 (three songs). Burndud text (transcribed by Michael Woodley).

⁴¹⁹ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

which is a significant part of the manner whereby cultural knowledge is communicated.⁴²⁰

Charlie Cheedy told me⁴²¹ that with respect to the singing of the Burndud, ‘you got to follow that the right *jina*. We’re going *jina burdina*.’⁴²²

354. Michael Woodley also described the Burndud as a *jina*.⁴²³ However, while *jina* is designated by song and commentary the track is neither singular nor confined. I noted the following with respect to comments made by Michael Woodley.

There are then a complexity of ‘lines’ which they can choose to follow and Michael gives me some additional details of these that are too hard for me to follow.

KPFN, 30, Michael Woodley with Middleton Cheedy and Stanley Warrie.

355. Michael then expanded on this by saying that the places named or referred to in the Burndud are not the only places that are important. He stated,

It’s like if there’s a storm coming across and it’s going to rain on everything. When the Burndud song line is sung it’s seeing it as taking in everything. It’s regenerating the whole landscape and *ngurra* [country] just like the rain regenerates the country. It covers the whole country, not just single places. That’s what the song line is.

KPFN, 30, Michael Woodley with Middleton Cheedy and Stanley Warrie.

Other mythic references

356. The narrative associated with Barngkawinha (see paragraph 346 above) is commemorated in the Burndud and, by my understanding of the data I have considered,⁴²⁴ is not a part of the discourse of the songs. It is however rehearsed through the traverse of the *jina* across Yindjibarndi country. I recorded the narrative as follows,

... linked to this [the Burndud song line] is the story of the hill Barngkawinha which was made when two Marga had a fight, the one throwing a boomerang which however missed the other but instead cut the ground creating the distinctive shape of the hill now. If these places are

⁴²⁰ ‘Birdarra is the beginning of a young man’s life time of learning and life-time responsibility to play their part in the renewal and management of all life in their Ngurra according to principles of Yindjibarndi Law.’ <https://juluwarlu.com.au/our-beliefs/law-ceremony/> accessed 27 May 2022.

⁴²¹ KPVR, 13, Charlie Cheedy.

⁴²² *Burdina*. Possibly the sequence clitic, *-purtaa* (Wordick, 1982, 133). The last phoneme (*na* or perhaps *nha*) is unexplained. Based on the examples Wordick provides (*ibid.*) this would give the sense that the *jina* were sung in turn. E.g ‘we’re going by sequential *jina*.’

⁴²³ KPFN, 38, Michael Woodley with Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴²⁴ KPFN, 29, Michael Woodley with Middleton Cheedy and Stanley Warrie.

destroyed they will not provide the evidence of these things happening in the Dreaming, Ngurra Nyujunggamu.

KPFN, 26, Charlie Cheedy.

357. The narrative has also been recorded elsewhere.⁴²⁵

Mapping *jina*

358. During discussion I had with senior Yindjibarndi men while we were camped at Ganyjingarringunha I requested that they show me on a topographic map the approximate track of the Burndud song line as it traversed the country in the vicinity of where we sat.⁴²⁶ The map I had available did not show the Solomon Hub and associated mines, but did have the southern boundary of the Yindjibarndi No. 1 claim delineated. I also pointed out and marked in pencil Banggangarra (and so where we were camped), Roy Parsons Gorge and Barngkawinha. We had also discussed other beings of the Ngurra Nyujunggamu relevant to the area, which I discuss below. I then noted that which I observed.

I have the map open in front of us, on the ground sheet with rocks on the corners. I ask Michael to show me these various travels, which he does with a stick, marking the paper a bit. After he's done this I ask him to mark it again with the stick while I follow his stick with a pencil, then adding Texta colours to make it clear. Thus green is the travels of the Barrimirndi while pink is the travels of the Burndud. I note that the Burndud (pink) goes from Banggangarra south or south west to somewhere near Duck Creek (and so off the map) before coming back into Yindjibarndi country again and so across the mine area to the Fortescue River flats where it meets the *gurri* and the three songs that are given to them as they travel.

KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

359. I have reproduced this map as Figure 6.5 which is on page 124.

360. I have added to the original map as produced in the field the names Wanduwarranha (Roy Parsons Gorge), Banggangarra and Barngkawinha (Split Hill) to assist when relating the map to the accounts I have provided above. I have also added a key to the tracks recorded (bottom right hand corner) and an attribution (bottom left hand corner).

⁴²⁵ Facebook post texts, provided by Phil Davies, 2022, 15-16. Other places discussed here described in this post are Banggangarra (*ibid.*, 3-4); Gumanha Hill, Gregory Gorge, Fortescue River (*ibid.*, 113-14); Marga engraving at Hooley Station (*ibid.*, 14-15).

⁴²⁶ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

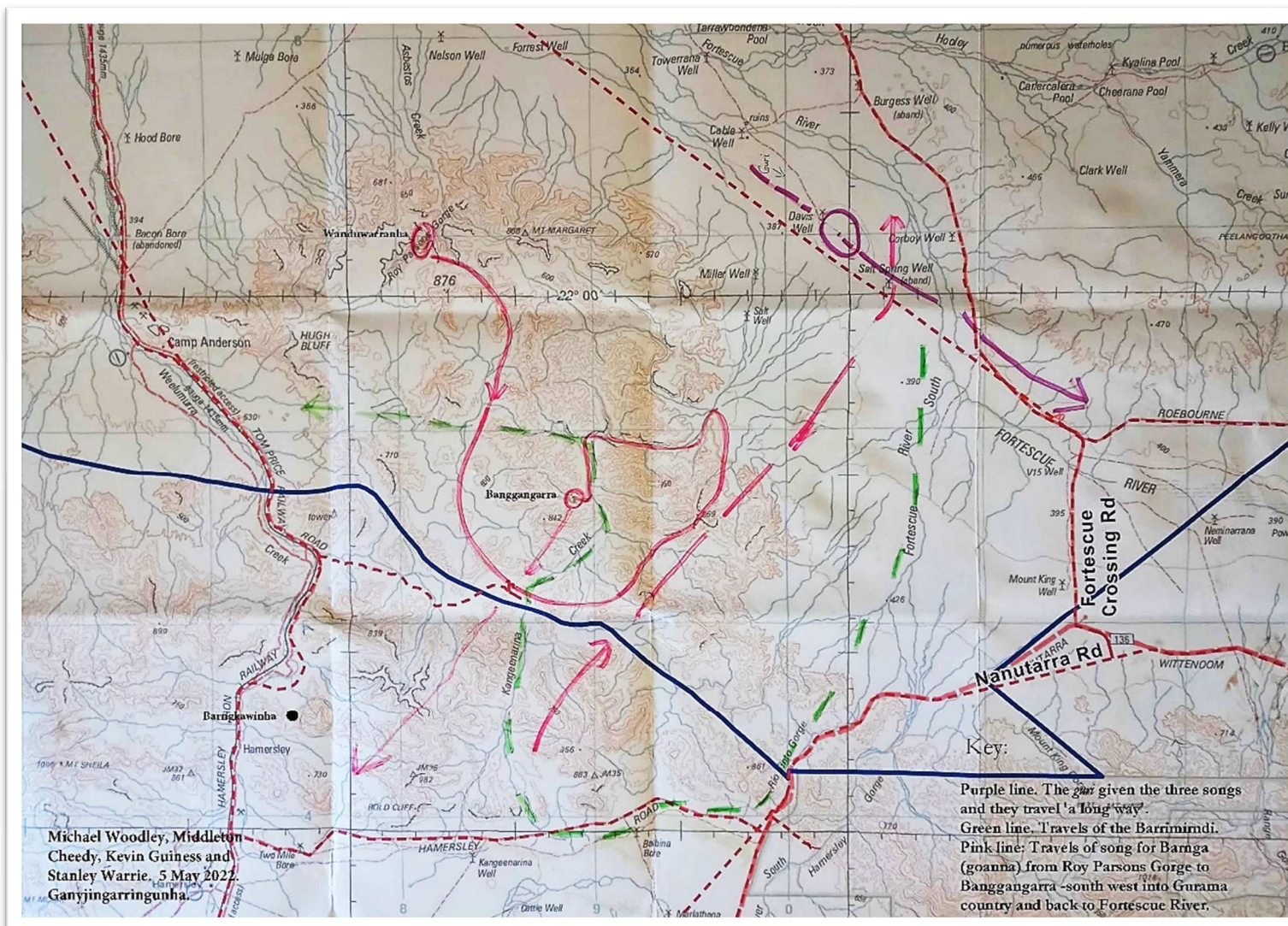


Figure 6.5: Tracks of Burndud and mythic beings.

Source: KPFN, 51, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie

361. On the map which is Figure 6.5 the pink line represents the track of the Burndud song line, with arrows marking the direction of travel. As can be seen the track commences at Wanduwarranha and then circles south before turning north of Barngkawinha. It is then shown going north to the mouth of the Ganyjingarringunha gorge and then travelling up the creek to Banggangarra. This shows some variation from the accounts provided above which have the track travelling down the Ganyjingarringunha creek to Banggangarra. The song line then goes south west, accommodating the spear thrower episodes and the boomerang verse, the latter which also accord with the narrative of Barngkawinha. The Burndud song line then returns to Yindjibarndi country traversing the Tharndibirndinha catchment (see paragraph 318 above) and areas to the immediate east of Ganyjingarringunha valley. It then travels to the Fortescue River flood plain where three Burndud songs were given to the three *gurri* (girls) who were travelling some distance and into Banjima country to the south east.
362. Based on a comparison of this map of the Burndud track with that of the Solomon Hub mine areas (Figure 6.2, page 107), I am of the opinion that the mines and associated activities have intersected with the *jina* of the Burndud. I am further of the opinion that the *jina* is the representation and embodiment of the Burndud song line. The bases upon which I found this latter opinion are set out in the following section.

Missing pieces: the impact of the mine and the song lines

363. Verses of the Burndud are sung by the men who keep time with sticks which they beat on an up-turned hollow log or dish (*yandi*)⁴²⁷ while the women dance.⁴²⁸ Michael Woodley told me⁴²⁹ that when they sing the Burndud and beat time with sticks on the *yandi*, the vibrations of the singing and beating reverberate through the ground and spread across all of Yindjibarndi land. These vibrations serve to revivify the country, so the singing and syncopated beating of the hollow log is a means whereby they renew the energies of the countryside and so cause natural renewal. This he explained was a part of the purpose of the Burndud and part of their duty as *ngurrara*.
364. The Burndud and the performance of the Birdarra rituals are the means whereby young men are made into men through ritual process.⁴³⁰ The Burndud is part of a *rite de*

⁴²⁷ KPFN, 20, Michael Woodley. *Yandi*, 'N. 1) hollow log. 2) wooden vessel', Juluwarlu Archive, n.d. *yandi*.

⁴²⁸ KPFN, 15, Middleton Cheedy, Stanley Warrie, and Kevin Guinness.

⁴²⁹ KPFN, 20, Michael Woodley.

⁴³⁰ I base this opinion and the statement in the following sentence on my long term experience working with the Yindjibarndi and adjacent groups. Ritual induction and the process of making men of boys was also a principal theme of my Ph.D. research (Palmer 1981). For a more recent reference see Juluwarlu Aboriginal Corp and F. Rijavec 2004, 1, 3.

passage whereby members of the younger generation learn of the spiritual mysteries of the Yindjibarndi world and how the natural world is sustained through the rehearsals of songs that evoke revivification of spirit. Additionally, and by my reading as an anthropologist, the Burndud also prepares youths for manhood, marriage and procreation.⁴³¹ Burndud is then about the continuity of country, humankind and social relationships, through the agency of the spirituality it is believed to embody and evoke.

365. Stanley Warrie who considers that parts of the song lines have been destroyed by the mines, told me, 'Song lines. You can't go there now, show where the things used to be, hills. It's all gone'.⁴³² A consequence was the loss of place as testament to the events of the Ngurra Nyujunggamu.

... the song lines and everything. You know, goes goes through that mine whereas before we had plenty of you know if you were living back in the country you had the thing to go to, the thing and teach your children and explain. Take them to the area and all that things, you know, happen back in the Dreamtime stories been handed down. Song lines. You can't go there now show where the things used to be, hills. It's all gone.

KPVR, 4, Stanley Warrie.

366. Charlie Cheedy made a similar point saying that the singing of the Burndud needs to be complemented by showing the young men the evidence in the country. 'But if they put a mine in it and destroy it there's no evidence of it. All you've got is a big hole in the ground while it was there before, finish now'.⁴³³ Charlie also commented on what I read to be his annoyance at the lack of understanding on the part of the miners as to what they were doing.

... and this song line that we sing they don't even understand it, they don't believe in our song lines. *Ngaarda* song lines which is very familiar to us, the country is familiar to us, the trees, the birds, the feed [?] animals that live on country ...

KPVR, 11, Charlie Cheedy.

367. This loss of country as a means to ensure the integrity of the teaching and instruction of the Law to future generations is a matter I have discussed in an earlier section of this report (see paragraphs 245 to 254).

⁴³¹ <https://juluwarlu.com.au/our-beliefs/law-ceremony/> accessed 26 May 2022.

⁴³² KPVR, 4, Stanley Warrie.

⁴³³ KPVR, 12, Charlie Cheedy.

368. In the accounts of the Burndud I have discussed above, frequent reference is made to the song line as a footprint or *jina*. The Yindjibarndi word *jina* has been defined⁴³⁴ as meaning means ‘foot’ as well as ‘footprint’ and ‘track’. In my opinion it is this latter sense (as a track and trail) which is meant in these accounts of the significance of the Burndud. As with animal and human tracks evident in the natural Pilbara environment in dusty and sandy soils, *jina* are the proof of past passage and an earnest of what is to come. In these senses I judge the use of the word *jina* to be more than a trope. By my reading of the ethnography and based on my training and experience as an anthropologist, it is through the singing of the Burndud, following a particular lineal track, that the spirituality of the creative times of the Ngurra Nyujunggamu are evoked and country and people are revived.

369. The content of the Burndud, as I have presented it based on my field work and research is essentially informed by country. When I asked, during my field work, how the Burndud relates to the country I was told that ‘it relates to the country like a jigsaw’.⁴³⁵ On another occasion while detailing Burndud songs relevant to the Ganyjingarringunha area, Michael told me⁴³⁶ that along with the ‘story telling’ (the accompanying exegesis and related narratives) ‘the jigsaw which the Burndud puts together, piece by piece. This language of the Burndud was the first language’.⁴³⁷ He also remarked,

If you don’t have all the songs you can’t put the pieces together. And, if the country is bugged up, you can still sing it but it’s not the same feeling [message] that we give out to the land and to the young people [who we are teaching].

KPFN, 30, Michael Woodley with Middleton Cheedy and Stanley Warrie.

370. Banggangarra is a significant place within the Burndud tradition. It has not been directly impacted by the Solomon Hub mines. However, senior men told me that it is now not the same as it was because the area round it is destroyed.⁴³⁸

371. These data show a complex interplay between the form and content of the Burndud and it can be understood to have multiple attributes and consequently several sorts of cultural significance. It is believed through its enactments to stimulate country

⁴³⁴ Wordick 1982, 356.

⁴³⁵ KPFN, 30, Michael Woodley with Middleton Cheedy and Stanley Warrie.

⁴³⁶ KPFN, 38, Michael Woodley.

⁴³⁷ KPFN, 38, Michael Woodley.

⁴³⁸ KPFN, 30, Michael Woodley, Middleton Cheedy and Stanley Warrie.

as it revivifies participants. It is the critical and indispensable component in the great life-changing ritual which marks the transition of youth to man. The veracity of its potency in these regards is judged to lie in the ability of those who today command its performance to demonstrate the actuality of its powers by reference to the attestation of country. The path of the Burndud, represented as *jina*, brings the spirituality believed to reside in and to be evoked by the Burndud to tracts of country. In this the Burndud is likened to a jigsaw – made of multiple component parts all of which are required to bring satisfaction and a sense of completion. When just one piece is missing, the whole is marred.

372. The language of the Burndud is considered to be an old language no longer spoken, as Michael Woodley noted above (see paragraph 369). This was a feature of the song line noted by Rares J. who wrote that its use could be, ‘compared to the use in many nations, including Australia, in the Roman Catholic church of Latin rituals until the mid-20th century when services were permitted in the domestic language.’⁴³⁹ His Honour was writing in the context of an understanding of the Burndud and performance of the Birdarra Law as ‘the defining ritual of making uninitiated (mostly young) males pass formally into manhood’.⁴⁴⁰ This was based upon his Honour’s experiences having observed men’s restricted evidence given at Banggangarra. By my reading His Honour accorded the Burndud the same sort of cultural and spiritual value to its practitioners as those who practice the rites of the Christian church.

373. The impact of the activities of FMG in mining areas of Yindjibarndi country in the vicinity of Ganyjingarringunha are, by the claimants’ account, indicative of loss in terms of their cultural heritage, spiritual well-being and yield uncertainty to their ability to sustain their beliefs and practices undiminished through successive generation. In my opinion and based on the data I have considered, this amounts to a significant loss. This opinion accords with an understanding of the Burndud and observance of the Birdarra Law as commensurate with the belief and practice of other great religions.

OTHER YINDJIBARNDI CREATIVE BEINGS

374. The map which is Figure 6.5 shows two additional tracks or *jina* which are believed to represent the travels of mythic beings in the Ngurra Nyujunggamu. These are the Barrimirndi (see paragraph 66, ‘Barrimirndi’) and the Girls (*gurni*). The Girls are

⁴³⁹ *Warrie* (No. 2) [39].

⁴⁴⁰ *Warrie* (No. 2) [39].

believed to have travelled along the southern side of the Fortescue flood plain in a south easterly direction. Based on the field data I gathered and reviewed above, their path does not cross the Solomon Hub area and has not been impacted by the mines. Consequently I do not discuss this aspect of Yindjibarndi belief further in this report. The Barrimirndi, on the other hand, can be seen to have travelled across country which is now impacted by the Solomon Hub.

Barrimirndi

375. The travels of the Barrimirndi in the Ngurra Nyujunggamu are celebrated in a *jami* which came to a man called Old Blind Billy or Bambardu,⁴⁴¹ who is now long deceased.⁴⁴² According to the account rendered in the *jami*, the Barrimirndi came up the Sherlock River, and then up the Hooley Creek, thence to Rio Tinto Gorge. From the southern end of the gorge 'he cut across where the mine site is now [Solomon]. And then he went down the Ganyjingarringunha creek'.⁴⁴³ I was later given a more detailed account of the travels of Barrimirndi.⁴⁴⁴ This included references to some additional places on the track including Garrthangunha, the Yindjibarndi name for a creek that runs into Yijigarrinha where it joins the Fortescue north of the range. Yijigarrinha is the name of the creek that flows through Rio Tinto Gorge, being also the name of that gorge.⁴⁴⁵ Barrimirndi travelled down Ganyjingarringunha to the point where it turns abruptly east,⁴⁴⁶ where he went west to eventually find the Sherlock River and so returned to the sea.⁴⁴⁷
376. This track was represented on the map which I have reproduced as Figure 6.5 on page 124 above and is shown by the green line. It is evident that the track of this being has been impacted by the Solomon Hub mines and part of the track in the central portions of Ganyjingarringunha creek are now obliterated or destroyed.
377. Stanley Warrie made the same point about the destruction of this Dreaming track as he and others had about the Burndud.

If you don't have the landscape you don't have the story and you can't explain the story together [as a whole] for the young fellows. A big part has been taken out. You make the *jami* meaningless if the country is gone. The

⁴⁴¹ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴⁴² Two of Toby Bambardu's *jami* are reproduced in a Juluwarlu publication (Juluwarlu Aboriginal Corporation and F. Rijavec 2004, 3 and 19). A biographic note states that Toby Bambardu died in 1934 (*ibid.*, 19).

⁴⁴³ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴⁴⁴ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁴⁵ Yindjibarndi No. 1 site list, 168. Yindjibarndi Aboriginal Corporation 2018, 6, 8, 25, 36, 37.

⁴⁴⁶ This is at 22 3.992' S and 117 51.996' E.

⁴⁴⁷ KPFN, 39, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

jawi tells you of the significance of the *ngurra*. Without the *ngurra*, the country, you make the significance weak.

KPFN, 31, Stanley Warrie.

378. I have written an account of *jawi* above (see paragraphs 70 to 72). Based on this research and the conclusions I have drawn from it I am of the opinion that a *jawi* is believed to bring the spirituality of the otherworldly domain and the activities of those who populated the Ngurra Nyujunggamu into present lived experience. The narrative of the Barrimirndi is consequently laid upon the countryside through the agency of the *jawi*. The integrity of the *jawi* song line and the narrative it presents is according to those with whom I worked, diminished by the damage to the country through the operations of the mines at the Solomon Hub.

Burlinyjirrmarra

379. There is an additional being whose multiple travels included areas within what is now the Solomon Hub and is consequently relevant to a consideration of cultural loss. This is a Marga who is known as Burlinyjirrmarra who I have noted in an earlier section of this report (paragraph 66, 'Barganyji'). The travels of Burlinyjirrmarra are not portrayed on the map which is Figure 6.5.
380. The Marga Burlinyjirrmarra features in a narrative set out above (paragraph 66, 'Barganyji') and told to me several times in the course of my field work.⁴⁴⁸ A feature of the narrative is the pursuit of the Marga by Barganyji the python – then a fierce and meat-eating beast. Barganyji encountered the Marga in the vicinity of Tambrey station, which is on the northern side of the Fortescue flood plain, when the latter was preoccupied with taking a drink from a pool.⁴⁴⁹ The Marga, in seeking to escape from his attacker, 'ran down across the country everywhere to escape'.⁴⁵⁰ By my understanding of the narrative the chase is represented as covering large areas of the Hamersley Range in Yindjibarndi country.
381. The narrative finds expression in a song of the Burndud. The account includes reference to the power of the Burndud to stultify the Barganyji.⁴⁵¹ I was later told that the narrative forms that part of the Burndud song line that is restricted – being heard

⁴⁴⁸ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie; 40, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie. I first recorded this narrative in the 1970s collected from members of different but adjacent language groups (Palmer 1981, 274).

⁴⁴⁹ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴⁵⁰ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie.

⁴⁵¹ KPFN, 31, Michael Woodley, Middleton Cheedy and Stanley Warrie.

only by men and, ‘Women at this point must hide their heads and rattle a pebble in a tin can so they can’t hear the songs’.⁴⁵² As a consequence of its restricted nature, this narrative as represented in the Burndud is not ‘in the *jina* of the Burndud because it’s at the end’, but ‘he’s brought back into this area’ [i.e. the area where we were camping at Ganyjingarringunha].⁴⁵³

382. In my opinion and based on these data the Burlinyjirra narrative and its representation in the Burndud is not specifically impacted by the mines of the Solomon Hub. However, the Burlinyjirra episode is considered to have occurred generally within the Hamersley Range (Gamburdayinha) so the mine has destroyed aspects of the country wherein these events are believed to have taken place. In terms of the integrity of the Burndud as it relates to country as I have characterised it above, I am of the opinion that the mines are seen to have impacted all parts of the Burndud, including this gender restricted sequence.

CONCLUSION AND OPINION: LOST PLACES, LOST COUNTRY

383. In this chapter I have provided data which support my opinion that for the Yindjibarndi it is the loss of country rather than the loss of individuated quarantined sites which is their concern. This is because it is country as a total environment which the Yindjibarndi see as endowed with cultural value – not merely small patches within it (paragraphs 333 to 337). The fact that the evaluations of places of cultural significance to the Yindjibarndi has found a ready focus on ‘sites’ means it is these that have received much of the attention of researchers who have been involved in their identification and recording. Accepting these parameters I have shown that a substantial number of places have been destroyed as a result of the Solomon Hub mines (paragraph 320). The total number of these ‘sites’ cannot be known from the data available to me (paragraphs 312 to 318).
384. I have also shown that for the Yindjibarndi a principal concern about loss as a consequence of the mines of the Solomon Hub develops from their concerns relating to the preservation of Yindjibarndi culture and history, as it relates to the area of the Solomon Hub (paragraph 321 to 323). This includes how the land was used in times past in a practical and economic sense – arrangements that are believed to have been first ordained in the creative period of the Ngurra Nyujunggamu (paragraphs 326 to 331).

⁴⁵² KPFN, 40, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁵³ KPFN, 40, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

Loss of skeletal materials evokes deeper sentiment. These represent not only deceased Yindjibarndi ancestors and their living spirits but demand particular ritual management which the Yindjibarndi feel is now mostly denied to them (paragraphs 324 to 325). Loss too is counted through the deprivation of the natural resources of the country – ochre and other minerals (paragraph 332).

385. I have set out my opinions based on my field data, of the impact of the Solomon Hub mines on the places named or evoked in the Burndud song line and the consequential feelings of loss amongst the Yindjibarndi with who I have worked (paragraphs 363 to 373). I have also discussed other mythic beings who traversed the country and provided my opinions on the nature of the cultural loss experienced by the Yindjibarndi in this regard (paragraphs 374 to 382). Given that for the Yindjibarndi these are matters that relate to the reproduction of spiritual belief, life, social relationships and the continuity of a culture over successive generations, the cultural loss as I have documented it is existential.

386. Place is quintessentially about country and the significance of *ngurra* to those with whom I worked is a recurring theme in this chapter and this report. When camped at Ganyjingarringunha and, as we were to be reminded by the explosive charge, but a few kilometres from the mines⁴⁵⁴, I asked the senior men how they express notions of loss.⁴⁵⁵ These senior men had been speaking about their country as ‘home’.⁴⁵⁶ In their understanding, ‘home’ is also your *ngurra* in Yindjibarndi⁴⁵⁷ and for them was central to an individual’s deepest emotions of belonging.

Our heart is in our house [*ngurra*]. It’s a connection. You put your *jina* [feet] in this *ngurra* and you feel connected. ... when you step onto your own country, it’s ours. It’s a privilege.

KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

387. They then added, ‘we lose it in the mine’.⁴⁵⁸

388. The fact of loss is a function of the absence of something. The emotions of loss are a response to an appreciation of the value of a thing once present but now gone. When I asked these men about how they might express loss in Yindjibarndi they

⁴⁵⁴ KPFN, 38, personal observation.

⁴⁵⁵ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁵⁶ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

⁴⁵⁷ Wordick 1982, 323.

⁴⁵⁸ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie.

commenced with an appreciation of *ngurra* as extant and whole.⁴⁵⁹ *Ngurra* can heal and make the spirit whole. This they told me can be articulated by the phrase,

Wirrard waba margurrari
Spirit good well – to become.

‘Your spirit is healed.’

389. However, when they see the mines and the associated destruction they experience a different emotion. Here, *ngurra* is lost. This they expressed as:

Wirrard waji margurrari
Spirit bad; evil; foul; sour to become.

‘Your spirit is embittered or broken.’

390. But there is an additional feeling which is a sense of anger of your spirit. This is expressed in the phrase;

Wirrard bayaarri margurrari
Spirit angry to become.

‘Your spirit becomes angry’.

391. Wordick (1982, 336) defines *bayaarri* (his *payaarri*) as ‘to become savage, vicious, wild or angry.’ To become *bayaarri* is to experience more than anger. It is also a physical manifestation of that anger.

392. Loss of *ngurra* has taken many forms for the Yindjibarndi, as I have set out in this report. The feelings of the loss are by my reading of these texts, more than a sense of regret that something that once was is no more. Rather it is something that, according to Yindjibarndi spiritual beliefs, perceptions and emotions, affects the central spiritual core of a person to render it sour, thus denying the healing powers that emanate from country which is whole. The consequence of the souring of a person’s spirit has another side – that of anger. Anger extinguishes equilibrium and represents a loss of personal well-being.

⁴⁵⁹ KPFN, 37, Michael Woodley, Middleton Cheedy, Kevin Guinness and Stanley Warrie. Data in paragraphs 389 and 390 and also taken from this source.

7 RESPONSE TO THE SERVICES REQUIRED

393. The services I am asked to provide are set out in Schedule 1 of the contract made between Yindjibarndi Ngurra Aboriginal Corporation and Appleby Consulting (Appendix A of this report). I am asked to write an expert report, based on field work and other research,

which addresses the nature and extent of any loss, diminution, impairment or other effect of the grant of the FMG mining tenements on the Yindjibarndi People's native title rights and interests in the Warrie (No 2) Determination Area.

Services, paragraph 1(a).

394. I am advised that addressing the nature of loss, diminution, impairment of other effects of the grant of the FMG tenements would include consideration of any physical interference with:

- (i) with rights of occupation and use;
- (ii) social disruption; and
- (iii) cultural loss.

Services, paragraph 1(a).

395. I am further advised that in order to determine the effect of cultural loss, I will need to 'determine the nature of the Yindjibarndi People's spiritual relationship with their traditional country and in particular, their country in the *Warrie (No 2)* Determination Area.'⁴⁶⁰ I might then provide an expert opinion on, 'the spiritual hurt or harm that may have been caused by the grant of the FMG mining tenements to that spiritual relationship.'⁴⁶¹

396. I have sought to respond to these requirements by providing an account of the Yindjibarndi people's spiritual relationship with their country. This I have set out in chapter 2 above. Additional data have been provided through subsequent chapters of the report which bear directly on the *Warrie (No. 2)* determination area. I have addressed 'social disruption' in chapter 3. Here I show that the fabric of Yindjibarndi society – its Laws, customs and social relationships – has been damaged by the division which has been a result of the interventions of FMG. Interference with and, in my opinion, loss of, rights of access, occupation and use I have addressed in chapter 4. Additional examples of cultural loss include the compromising, diminution and at times loss of the spiritual

⁴⁶⁰ Services, paragraph 1 (a).

⁴⁶¹ Services, paragraph 1 (a).

relationship between the Yindjibarndi and the country of the mines. These I have addressed in chapter 5. Finally, in chapter 6 I have examined how the Solomon Hub has affected places which are of spiritual and ritual value to the Yindjibarndi people.

397. With respect to all these instances of loss documented in chapters 3, 4, 5 and 6 I have explored, by reference to my field data, collected from the Yindjibarndi native title holders, how they express these various feelings and emotions of loss. Based on these data I consider these to be emotions of the ‘epic’ sort, I described above (paragraphs 101 to 105). They develop from the particular relationship which Yindjibarndi people believe to exist between themselves and the countryside: it is spiritually informed, connate and consonant. Feelings and emotions of loss are consequently deeply felt for they are feelings a person has for a numinous and the holy (paragraph 102). ‘This is because the notion of injury to Aboriginal self is connected with the oneness between people and Dreamings, and the “feeling” is about an Aboriginal person’s experience of engaging with the Dreaming’.⁴⁶²

398. My anthropological opinion, based on this understanding, is that making a divide between ‘cultural loss’ and some other sort of loss is not supported by my field data. Essentially, loss of rights to country, social disruption and other sorts of loss (spiritual connection with country, loss of place) are all situated within the veins of Yindjibarndi cultural beliefs, practices and normative values. All were ordained by the great creative being of the Ngurra Nyujunggamu, all are in contemporary dealings regarded as endowed with a legitimating spiritual authority which furnishes the essentialities of being for a Yindjibarndi person.

399. This explains why feelings of loss are so acutely expressed in the field data I have relied upon. These feelings of loss are a consequence of the loss of what is believed to have been the divine ordination of the Mingala creative being. This is the right to hold dominion over country and its resources, a right to control who comes on to that country, the central concept of *manjangu* and the requirement that those so identified seek permission prior to coming onto Yindjibarndi country. By my reading, these principles were upheld by the Full Federal Court when it heard the appeal from the *Warrie* (No. 2) decision.⁴⁶³

400. The data I have considered in this report provide the basis for my opinion then that people (*ngaarda*), spirit (*wirrard*) and country (*ngurra*) are linked to the existence and

⁴⁶² *Griffiths v Northern Territory of Australia* (No 3) 2016 FCA 900 [357], cited above in paragraph 102.

⁴⁶³ *Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People* [2019] FCAFC 177, [218] to [356].

execution of rights to country. In my opinion, this was how the system worked for a hunting and gathering society, prior to the time of effective sovereignty. Rights were safe-guarded through divine ordination and fear of both physical retribution and potentially fatal spiritual harm for malefactors. It was a system designed to ensure the continuity of territorial sustainability through time. I am of the opinion, based on the materials I have here reviewed, that the system whereby rights to country are articulated through spiritual correspondence and connectivity remains a fundamental element of contemporary Yindjibarndi Law and culture. The principal loss from which all other emotions of loss develop, is then, by this account, the loss of rights to country through the unauthorised access, use and destruction of the area of the Solomon Hub. This is the denial of the exclusive possession, which was finally recognised by the Federal Court as an enduring quality of the Yindjibarndi system of owning land. Since this was recognition of the Law that determined rights to country that predated the acquisition of sovereignty by the British Crown it was consequently the recognition of a prior right not a conferral of a right by a court of the new settlers.⁴⁶⁴

401. In this report I have provided numerous accounts, based on the field work I undertook with the Yindjibarndi people, of the places within or adjacent to the Solomon Hub area. These are named and these names inform my account and the conclusions I have provided. They include Gamburdayinha, Ganyjingarringunha, Banggangarra, Tharndibirndinha, Barngkawinha, Wanduwarranha, Wirlumurra, Windamurra and Jilunjilun. These are Yindjibarndi names bestowed in the Ngurra Nyujunggamu by the creative beings.⁴⁶⁵
402. I am advised in the assumptions it is suggested I adopt,⁴⁶⁶ that the Solomon Hub open-cut ore mine comprises three mines: Firetail, Kings Valley and Queens Valley. One of the senior Yindjibarndi men with whom I worked, Charlie Cheedy, had first-hand knowledge of the names that FMG have used, and gave me some additional names as well.⁴⁶⁷ However, when Charlie described the song lines and tracks of the mythic beings he referenced them by speaking of the places they visited, identifying them by the Yindjibarndi names of the country,⁴⁶⁸ some of which I have listed above.

⁴⁶⁴ *Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People* [2019] FCAFC 177, [288].

⁴⁶⁵ ... 'named and shaped the country'. Juluwarlu Aboriginal Corporation and Rijavec 2004, 2..

⁴⁶⁶ Appendix A, Addendum to Services, letter of 24th May 2022.

⁴⁶⁷ KPFN, 25, 27, Charlie Cheedy.

⁴⁶⁸ KPFN, 26, 28, Charlie Cheedy.

403. There are then, for the geographic area which has been the focus of this report two sets of place names – those that have been in use according to the Yindjibarndi since time began, and those that have been devised and allocated within the last few years.
404. Anthropologists and others have recognised that place naming is part of the process of colonial settler society.⁴⁶⁹ Place naming is a way to take control of a landscape by changing Indigenous names to those favoured by those who seek to appropriate the land for themselves.⁴⁷⁰ Place names can be used to impose values and sanction power relations. This process has been observed and subject to analyses in other areas where Indigenous names have been replaced by miners.⁴⁷¹ These names were (as is the case for the Yindjibarndi) believed to have been ordained in the creative period of the Dreaming and to accord with the customary system of land tenure. The names used for the FMG Hamersley mines, whatever else they might be or seek to evoke,⁴⁷² are not Yindjibarndi.
405. A place name is a means whereby people relate to a locale and so serves as a verbal representation of physical place. Imposing novel place names on those already in service is a means of asserting the rights of one group over places owned by another. Just as a name stands for or is a symbol of a place, so too is the renaming of place a token of the usurpation of rights to the country of another. In my opinion, and based on the data I have reviewed in this report, this act of novel representation goes to the heart of the cultural loss of the Yindjibarndi people occasioned by the development of the Solomon Hub. The rights of the Yindjibarndi to their country have been usurped: lost, denied and diminished. Intense feelings of cultural loss derive from this fact.

⁴⁶⁹ See Carter 1987, 1-33 for a particular account of the meanings and intent of names in the early history of the colonisation of Australia. Other, more specific examples and commentary are found in Koch and Hercus, 2009.

⁴⁷⁰ Kostanski and Clark 2009, 189.

⁴⁷¹ Wilkinson, Marika and Williams 2009, 403-4.

⁴⁷² I have not found an explanation for the adoption of the names Solomon Hub, Kings Valley, Queens Valley or Firetail. Three of the names are evocative of Rider Haggard's well known 19th century novel, *King Solomon's Mines* (Haggard 1885).

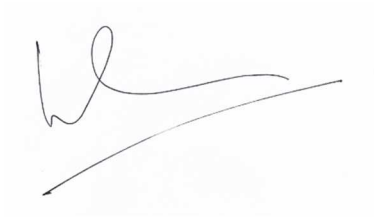
REFERENCES

- Berndt, R.M. 1970. 'Traditional morality as expressed through the medium of an Australian Aboriginal religion'. In, *Australian aboriginal Anthropology*, R.M. Berndt (ed.). University of Western Australia Press, Nedlands, pp. 216-247.
- Berndt, R.M. and C.H. 1977. *The World of the First Australians*. Ure Smith, Sydney.
- Brandenstein, C. G. von 1970. *Narratives from the North-west of Western Australia in the Ngarluma and Jindjibarndi languages*. 3 vols., AIAS, Canberra.
- Brandenstein, C.G. and Thomas, A.P. 1974. *Taruru : Aboriginal song poetry from the Pilbara*. Rigby, Adelaide.
- Carter, P. 1987. *The Road to Botany Bay*. Faber and Faber, London.
- Cleary, P. 2021. *Title Fight. How the Yindjibarndi battled and defeated a mining giant*. Black Inc. Carlton Victoria.
- Davies, P. 2014. 'Yindjibarndi heritage features located in the mining tenements M47/1473 and M47/1475'.
- Davies, P. 2021. 'Four Yindjibarndi artefacts: Evidence of religious practices for a discrete human community in the Pilbara.' Master of Archaeology and Heritage Management thesis, Flinders University of South Australia.
- Edmunds, M. 1989. *They get heaps. A study of attitudes in Roebourne Western Australia*. Institute Report Series, Aboriginal Studies Press, Canberra.
- Haggard, R. 1885. *King Solomon's Mines*. Cassell & Company, Limited, London.
- Irving, G. 2012. 'Yindjibarndi Chronology' 2012. Compiled by George Irving, Legal Services Director, Juluwarlu Group Aboriginal Corporation (Juluwarlu); Solicitor and In-House Counsel, Yindjibarndi Aboriginal Corporation RNTBC (YAC).
- Juluwarlu Aboriginal Corporation 2007. *Ngurra Warndurala Buluyugayi. Exploring Yindjibarndi Country*. Juluwarlu Aboriginal Corporation, Roebourne.
- Juluwarlu Aboriginal Corporation 2008. *Ngurra Warndurala Buluyugayi Wuyumarri*. Juluwarlu Aboriginal Corporation, Roebourne.
- Juluwarlu Aboriginal Corporation and Rijavec, F. 2004. *Know the Song, Know the Country*. Juluwarlu Aboriginal Corporation, Roebourne.
- Juluwarlu Archive, n.d. *Yindjibarndi Dictionary*. Juluwarlu Aboriginal Corporation, Roebourne.
- Kaberry, P.M. 1939. *Aboriginal Woman, Sacred and Profane*. Routledge, London.
- Kostanski, L. and Clark, I. 2009. 'Reviving old Indigenous names for new purposes'. In, *Aboriginal Placenames Naming and re-Naming the Australian Landscape*, Harold Koch and Luise Hercus (eds.). Australian National University Press, Canberra, pp. 189-206.http://epress.anu.edu.au/placenames_citation.html

- Myers, F. R. 1986. *Pintupi Country, Pintupi Self. Sentiment, Place, and Politics among Western Desert Aborigines*. Smithsonian Institution Press, Washington and London and AIAS, Canberra.
- Palmer, K. 2014. 'Yindjibarndi 1 WAD6005/2003 Anthropologist's Report.' Appleby Consulting Pty Ltd, Upper Brookfield, QLD.
- Palmer, K. 2018. *Australian Native Title anthropology. Strategic practice, the law and the state*. ANU Press, Canberra. <http://epress.anu.edu.au/>
- Palmer, K. 1981. 'Aboriginal Religion and the Ordering of Social Relations'. Ph.D. thesis, Department of Anthropology, University of Western Australia, Nedlands.
- Payne, H. 1989. 'Rites for Sites or Sites for Rites?' In, P. Brock (ed.). *Women, Rites and Sites*. : Allen and Unwin, Sydney pp. 41-59.
- Rose, D.B. 2000. 'Signs of Life on a Barbarous Frontier: Intercultural Encounters in North Australia.' In, *The Archaeology of Difference: Negotiating Cross-Cultural Engagements in Oceania*. R. Torrence and A. Clarke (eds.). Routledge, London. Paper sourced from https://press-files.anu.edu.au/downloads/press/p11081/pdf/6_rose_hr2_1998.pdf
- Sansom, B. 2002. 'A Frightened Hunting Ground: Epic Emotions and Landholding in the Western Reaches of Australia's Top End.' *Oceania* 22, pp. 156-194.
- Shire of Roebourne 2013. *Shire of Roebourne Local Government Heritage Inventory. Volume 1*. Shire of Roebourne, Roebourne, WA.
(https://karratha.wa.gov.au/sites/default/files/Assets/Documents/Document%20Centre/LGHI/volume_1_Local_Gov_Heritage_SOR_FINAL.pdf)
- Sutton, p. 2003. *Native Title in Australia, an Ethnographic Perspective*. Cambridge University Press, Cambridge.
- Wilkinson, M., Marika, R. and Williams N. 2009. "“This place already has a name”". In, *Aboriginal Placenames Naming and re-Naming the Australian Landscape*, Harold Koch and Luise Hercus (eds.). Australian National University Press, Canberra, pp. 403-462.
http://epress.anu.edu.au/placenames_citation.html
- Wordick, F. 1982. *The Yindjibarndi language*. Pacific Linguistics, Research School of Pacific and Asian Studies, the Australian National University, Canberra.
(<http://pacling.anu.edu.au/index.html>)
- Yindjibarndi Aboriginal Corporation. 2021. 'Solomon Footprint – Overview'. Unpublished map, Yindjibarndi Aboriginal Corporation, Roebourne.
- Yindjibarndi Aboriginal Corporation. 2018. 'Yindjibarndi cultural heritage inspection conducted within Fortescue Metals Group (FMG) Section 18 “Phase 23” Application Area'. Completed for YNAC by Yindjibarndi Aboriginal Corporation. Roebourne.
- Yindjibarndi Aboriginal Corporation RNTBC. 2015. 'Yindjibarndi #1 Claim (WAD6005/2003) Area Map including Topography, Tenure and All Sites'.

DECLARATION BY THE EXPERT AS REQUIRED BY THE PRACTICE DIRECTION

I, Kingsley Palmer, have made all the inquiries that I believe are desirable and appropriate (save for any matters identified explicitly in the report), and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.

A handwritten signature in black ink, appearing to be 'K. Palmer', written over a faint, light blue rectangular background.

Kingsley Palmer

23 August, 2022.

APPENDIX A. THE SERVICES REQUIRED

THE SERVICES

I. Subject to paragraph 2, the Services required are:

- (a) The writing of an Expert Anthropological Report for filing in the Federal Court, based on desktop research and on field work conducted with members of the Yindjibarndi People, and which addresses the nature and extent of any loss, diminution, impairment or other effect of the grant of the FMG mining tenements on the Yindjibarndi People's native title rights and interests in the *Warrie (No 2)* Determination Area. This would include physical interference with rights of occupation and use, social disruption and what the High Court in *Northern Territory v Griffiths* (2019] HCA 7 has described as "*cultural loss*". Determining the extent of cultural loss involves first determining the nature of the Yindjibarndi People's spiritual relationship with their traditional country and in particular, their country in the *Warrie (No 2)* Determination Area and then determining the spiritual hurt or harm that may have been caused by the grant of the FMG mining tenements to that spiritual relationship.

2. The services to be provided by the Consultant may be varied by mutual agreement in writing, signed by both parties.

Addendum to the Services: assumptions that should be adopted.

BLACKSHIELD

LAWYERS

24 May 2022

Dr Kingsley Palmer

BY EMAIL

Dear Dr Palmer,

**RE: Your anthropological report in relation to the Yindjibarndi Ngurra
Aboriginal Corporation RNTBC compensation claim WAD 37 of 2022**

I refer to the above report. For the purpose of preparing your report, you should adopt the following assumptions:

1. The Solomon Hub is an open-cut iron ore mine in the Hamersley Ranges located 60km north of Tom Price.
2. It comprises the Firetail, Kings Valley and Queens Valley mines, which together have a production capacity of 75 million tonnes of iron ore per annum. Mining operations at the Firetail deposit of the mine commenced in May 2013. The expected mine life of Solomon Hub is 20 years.
3. The tenements which comprise the Solomon Hub are wholly owned by the Fortescue Metals Group (**FMG**), through various subsidiaries.
4. Approximately 75% of the tenements which comprise the Solomon Hub fall within the area which was covered up to 17 December 2017 by the Yindjibarndi #1 native title determination application (which was filed on 9 July 2003 and was registered from 8 August 2003), and from 17 November 2017 by the Yindjibarndi #1 determination area (with the determined native title rights and interests being held on trust for the common law native title holders by the Yindjibarndi Ngurra Aboriginal Corporation RNTBC).

A.B.N. 51 836 017 567

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

PH: (08) 9288 4515

EMAIL: lawyers@blackshield.net

5. No agreement has been reached in relation to the grant of any of the tenements which comprise the Solomon Hub as between FMG and the registered claimant for the Yindjibarndi #1 native title determination application (prior to 17 November 2017) or with the Yindjibarndi Ngurra Aboriginal Corporation RNTBC (after 17 November 2017).
6. FMG has entered into a relationship and agreements with some of the common law native title holders without the consent of the registered claimant for the Yindjibarndi #1 native title determination application (prior to 17 November 2017) or of the Yindjibarndi Ngurra Aboriginal Corporation RNTBC (after 17 November 2017). These agreements and relationships are ongoing. This has caused a division in the Yindjibarndi community.
7. Native title has a physical or material aspect (the right to do something in relation to land) and a cultural or spiritual aspect (the connection with the land). Under the *Native Title Act 1993* (Cth) (NTA), the common law native title holders have an entitlement to compensation for the any loss, diminution, impairment or other effect of the grant of the Solomon Hub mining tenements on both aspects of their native title rights and interests.
8. The NTA also requires that the court, in making a determination of native title compensation, apply the principles or criteria set out in the *Mining Act 1978* (WA). Section 123(2) of that Act states that the owner of the land is entitled to compensation for "*all loss or damage*" suffered or likely to be suffered as a result of or arising from, the mining actually carried out. Section 123(4) states that the amount payable under s.123(2) "*may include*" compensation for the items then specified. Those items include, but are not limited to, compensation for:
 - (a) being deprived of the possession or use, or any particular use, of the natural surface of the land or any part of the land;
 - (b) damage to the land or any part of the land; and
 - (c) social disruption.

Yours faithfully



Simon Blackshield
Solicitor

APPENDIX B. EXPERT'S *CURRICULUM VITAE*

PRESENT POSITION: Consultant Anthropologist and Director, Appleby Consulting Pty Ltd.

PREVIOUS APPOINTMENTS:

1994-2001 Deputy Principal, The Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

1985-1994 Director of Research and Head, Research Program, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

1982-1985 Head, Anthropology Program, Northern Land Council, Darwin.

1981-1982 Research Fellow; Flinders University of South Australia (18 months).

1977-1981 Doctoral study; University of Western Australia. Part-time tutor.

1973-1976 Research Officer, Department of Aboriginal Sites, Western Australian Museum, Perth.

1973 Research Officer, Commonwealth Commission of Enquiry into Poverty, Perth.

OUTLINE OF PRINCIPAL CONSULTANCY ACTIVITIES.

2022. Expert reports and research for native title applications Nauo (SA), Barada Kabalbara Yetimarala People, Queensland, Yindjibarndi People's compensation claim and Waturta and Tjalkadjara overlap dispute (northern Goldfield, WA).

2021. Expert reports and research for native title applications South Coast Peoples (NSW), Wirangu and Nauo (SA) and Barada Kabalbara Yetimarala People, Queensland.

2020. Expert advice and research for native title applications South Coast Peoples (NSW), Wirangu and Nauo (SA).

2019. Expert advice and research for native title application Yinhawangka Gobawarra and Jurruru claims; expert evidence before the Federal Court.

2019. Expert advice and review of expert report relating to Kurtjar (north Qld) native title application; expert evidence before the Federal Court.

2018. Expert advice and field research and research for native title applications: Giya and Ngaro (north Qld); Wakka (central Qld); Wirangu (South Australia); Kukatj and Kutharn (north Qld) and Kurtjar (north Qld).

2017. Teaching; expert opinion and field research and research for native title applications Giya and Ngaro (north Qld), Buccaneer Archipelago, Kimberley region, Mirning (far east WA) and Wirangu (South Australia). Expert evidence for Kariyarra native title application.

2016. Teaching; expert advice and field research and research for native title applications Giya and Ngaro (north Qld), Buccaneer Archipelago, Kimberley region, Mirning (far east WA) and Yindjibarndi (Pilbara). Expert evidence for Timber Creek compensation case and Yindjibarndi 1 native title application.

2015 Expert advice and field research and research for native title applications Gia and Ngaro (north Qld), SE Dampier Peninsula, Kimberley region and Yindjibarndi (Pilbara).

2014 Expert advice and field research and research for native title applications Gia and Ngaro (north Qld), SE Dampier Peninsula, Kimberley region, Yindjibarndi (Pilbara). Advice and research in relation to Muckaty proposed waste disposal site. Expert evidence provided for native title claim north west QLD.

2013 Expert advice and field research and research for native title applications Kariyarra, Western Goldfields and Nyikina and Mangala (W.A.), Bularnu, Waluwarra and Wangkayujuru and Wakka and Birra Gubbi claims (Qld). Advice and research in relation to Muckaty proposed waste disposal site.

2012 Expert advice and field research and research for Ngadju, Mirning, Central West and Nyikina and Mangala (WA), Wangkanguru/Yarluyandi (SA and Qld), Bularnu, Waluwarra and Wangkayujuru and Wakka (Qld), Timber Creek NT (compensation claim) and study of diet and lifestyle factors on Maralinga Lands SA.

2011 Expert advice and field research and research for Banjima, Mirning and Nyikina and Mangala (W.A.), Wangkanguru/Yarluyandi (SA and Qld), Mitakoodi, Bularnu, Waluwarra and Wangkayujuru and Wakka (Qld), Timber Creek (compensation claim) and study of diet and lifestyle factors on Maralinga Lands SA.

2010 Expert evidence, criminal case, Broome, W.A. Wakka (Qld) native title application. Field research Expert report preparation.

2009. Wakka Wakka (Qld) native title claim and report preparation. Far West Coast (SA) native title application. Expert report preparation. Torres Strait Regional Authority. Native title research, expert review. Ngadju native title research; expert report preparation.

2008-9. Banjima (Pilbara) native title claims; field research and desk top research and report preparation.

2008. Jurruru (Pilbara) native title application; additional field research. Torres Strait Regional Authority. Native title research, expert review. Mirning (W.A.) native title application; desk top research and field research. Far West Coast (SA) native title application. Field research

2007. Broome work program clearances, KLC (Rubibi), Broome. Far West Coast (SA) native title application. Field research. Nyikina and Mangala native title application; field research and report preparation. Jurruru native title application; field research and report preparation. Mirning native title application; desk top research and field research. NW Victorian native title claims; desk top research. Nyikina and Mangala native title application; desk top research.

2006-7. Groote Eylandt; traditional owner identification.

2006. Noonkanbah native title claim; field research and report preparation. Broome work program clearances, KLC, Broome. Preliminary research Kija combined native title claim, KLC Broome. Preliminary research Nyikina Mangala native title claim, KLC Broome. Additional research in relation to native title application, Torres Strait. Provision of expert advice and research direction, Noonkanbah native title claim, KLC Broome.

2005-6. Waluwarra/Georgina River People's native title claim (Queensland). Field and archival research; preparation of connection report

2005. Single Noongar claim, SWALSC; expert evidence. Broome work program clearances, KLC, Broome. Timber Creek native title claim; Northern Territory for the NLC; expert evidence. Review of research directions, AIATSIS, Canberra. Review of literature and connection materials, Noonkanbah native title claim. KLC, Broome. Research in relation to native title application, Torres Strait. Social Impact Assessment, Bradshaw Field Training Area. NLC, Darwin.

2004-5. Ngadju native title claim; review of preservation evidence; GLSC, Kalgoorlie.

2004. Timber Creek native title claim; Northern Territory for the NLC

2003-4. Single Noongar claim, SWALSC.

2003. Workshop and research planning, SWALSC. Review of Ngurrara native title claim expert report for KLC. AIATSIS, Canberra. Review of literature for ATSIC review. KLC work program clearance of Argyle Diamond Mine, W.A.

2002-3. Argyle Diamond Mine, native title holders; review anthropologist. Kimberley Land Council, Kununurra.

2001-2003. Rubibi 1 native title claim, Broome, field work research and expert evidence, Kimberley Land Council.

2001-2003. Ngadju Native Title Claim. Goldfields Land Council.

2002. Kakadu outstation services; review and report for the establishment of a new service agency in the Kakadu National Park. Anindilyakwa Land Council (Groote Eylandt), review of traditional ownership and other related matters. Agency review, policy and planning development, Western Desert Regional Council, ATSIC, Kalgoorlie

2001 Anthropological advice prepared for the Minister for the Environment and Heritage on a report prepared under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act*.

2000. Review and workshop facilitator: ATSIC funding to community based art and craft centres. Strategic Language Study: NSW. ATSIC NSW State office

1999. Review of Outstation Resource Agencies; Katherine Regional Office, ATSIC.

1997-8 National Review of Outstation Resource Centres for ATSIC.

1996 Review of *Aboriginal Councils and Associations Act*. Project Director. Review of Outstation Resource Centres: ATSIC and Papunya Regional Council.

1996-8 Senior anthropological advisor; Keep River National Park, Native Title Claim, NLC, Darwin.

1992 January to July: Consultancy for the National Museum of Australia: Repatriation of Aboriginal men's restricted objects.

1992 Project Director: Aboriginal and Torres Strait Islander Dictionary project. Grant to AIATSIS.

1990 Project Director: Medical Advisory Committee of the Australian Associated Brewers. Grant to AIATSIS.

1989 Project Director: Office of Multicultural Affairs. Aborigines and Tourism. Grant to AIATSIS.

1987 Project Director: Australian Bicentennial Authority: National Computerised Dictionary of Aboriginal Languages. Grant awarded to A.I.A.S.

1985 Project Director: U.N.E.S.C.O.: Aboriginal oral history; method and theory (\$3,000). Grant awarded to A.I.A.S.

1984-87. Consultant to Maralinga Tjarutja in relation to Royal Commission into Atomic Tests in Australia.

1984 Project Director: Department of Aboriginal Affairs. Impact of Tourism in the Kakadu region. Grant to Northern Land Council.

1982 Project Director: Australian Associated Brewers. Study of alcohol use in a remote Aboriginal community (with M. Brady).

1978-1980 Numerous consultancies in Western Australia in relation to sites, development and land rights.

FIELDWORK AND RESEARCH EXPERIENCE

2022. North eastern Goldfields (WA); Yindjibarndi (Pilbara, WA).2021.

2021. South coast of New South Wales; Nullarbor Plains western fringes. North eastern Goldfields (WA), Pilbara (WA).

2020. South coast of New South Wales.

2019. Pilbara region (Ngarluma).

2018. Northern and central Queensland, South Australia (non-fieldwork based research); and central southern Queensland.

2017. Central and central southern Queensland, western Kimberley, South Australia and Pilbara.

2016. Central QLD, Kimberley and Pilbara.

2015. Central QLD, Kimberley and Pilbara.

2014. Central QLD, NT, Kimberley and Pilbara.

2013. Central and S.E. Queensland, Pilbara region, NT.

2012. S.E Queensland, Kimberley region, VRD NT, Goldfields and Maralinga lands.

2011. S.E Queensland, Kimberley region, VRD NT, Goldfields, Maralinga lands and Pilbara regions.

2010. S.E Queensland, Bidiyadanga, W.A.

2009. Torres Strait, S.E Queensland, Pilbara, W.A., Eastern Goldfield, W.A.

2008. Southern Pilbara region, southern W.A., SA, Groote Eylandt.

2007. Southern Pilbara region, Kimberley, SA, Goldfields.

2006. Central and east Kimberley (three claims). Groote Eylandt.

2005-6 Mt Isa-Georgina river area, for CLCAC.

2005 Broome, for the KLC

2005 Victoria River District, Northern Territory for the NLC

2005 Torres Strait for the TSRA.

2004 South Western W.A. field research for the Single Noongar Claim

2004 Timber Creek field research for the Timber Creek land claim.

2003 Eastern Goldfields region, field work and research: Ngadju native title claim, Eastern Goldfields, Western Australia.

2003 Broome; Rubibi native title claim

2003 Work program clearance of Argyle Diamond Mine, W.A.

2002 Broome; Rubibi 1 native title claim.

2002 Kakadu National Park; governance and structures of Indigenous organisations.

2002 Groote Eylandt; traditional ownership and use of the seas.

Eastern Goldfields region, field work and research: Ngadju native title claim, Eastern Goldfields, Western Australia.

2001 Broome; Rubibi 1 native title claim.

2001 Kalgoorlie region and Great Victoria Desert community: Review of resource agencies, Western Desert Region, ATSIC.

2000 Review of Art and Craft Centres and production of discussion paper on funding options.

1999 Katherine Region of ATSIC, NT: Consultant to ATSIC, review of Resource Agencies, Katherine Region.

1996-8. Western NT, field work and research: consultant to the Northern Land Council; Miriuwung Gadjerong native title claim.

1996. Consultant to ATSIC; review of Outstation Resource Centres, Papunya Region.

1984-91. Amanbidji station and western NT: Consultant to Northern Land Council and traditional owners; Amanbidji land claim.

1984-87. Maralinga, Oak Valley, Great Victoria Desert and Yalata, SA. Consultant to Maralinga Tjarutja in relation to Royal Commission into Atomic Tests in Australia.

1982-5. Extensive fieldwork in northern NT, Northern Land Council, Darwin.

1980-81. Extensive fieldwork at Yalata and Oak Valley, Great Victoria Desert.

1972-79. Extensive fieldwork in northern Western Australia; W.A. Museum and as consultant.

ACADEMIC QUALIFICATIONS:

- Ph.D. Department of Anthropology, University of Western Australia. *Aboriginal Religion and the Ordering of Social Relations*.
- Ph.D. preliminary by thesis and examination. Department of Anthropology, University of Western Australia.
- M.Phil. Leeds University. A collection and annotation of oral traditions from two areas of Southern England.
- B.A. Hons. English Language and Literature. Sheffield University, England. Subsidiary subjects: History and Philosophy.

MEMBERSHIP OF PROFESSIONAL ORGANISATIONS

- Member of the Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Fellow of the Australian Anthropological Society.

PUBLICATIONS

BOOKS

2018. *Australian Native Title anthropology. Strategic practice, the law and the state*. ANU Press, Canberra.

2016. *Noongar people, Noongar land. The resilience of Aboriginal culture in the southwest of Western Australia*. Aboriginal Studies Press, Canberra.

1999 *Swinging the Billy. Indigenous and other styles of Australian bush cooking*. Aboriginal Studies Press, Canberra.

1991 *Diet and Lifestyle in the Desert: The Maralinga Aborigines*, Aboriginal Studies Press, Canberra (with Maggie Brady).

1984 *Alcohol in the Outback: A Study of Drinking in a Remote Community*, N.A.R.U. monograph A.N.U., Canberra (with Maggie Brady).

1978 *Somewhere Between Black and White*, Macmillan, Melbourne (with C. McKenna).

1976 *The Folklore of Somerset*. Batsford, London.

1973 *Oral Folk-Tales of Wessex*. David and Charles, Newton Abbot.

ARTICLES AND PAPERS

2015. 'Homelands as outstations of public policy'. In, *Experiments in self-determination: histories of the outstation movement in Australia*. Nicolas Peterson and Fred Myers (eds). Canberra: ANU Press.

2013. 'Overview: Forensic Social Anthropology'. In, 'Forensic Anthropology', a multi-authored chapter in *Expert Evidence*, I. Freckelton and H. Selby (eds.). Thomson Reuters, Sydney.

Palmer, K. 2011. 'Anthropologist as Expert in Native Title Cases in Australia'. AIATSIS Native Title Research Unit Resource, <http://www.aiatsis.gov.au/ntru/overview.html>

Palmer, K. 2011. 'Piety, fact and the oral account in native title claims' in *Anthropological Forum*, 21.3 pp. 269-286.

2010. 'Understanding another ethnography: the use of early texts in native title inquiries'. In, *Dilemmas in Applied native Title Anthropology in Australia*. Ed. T. Bauman, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, pp. 72-96.

2010. 'Societies, communities and native title'. In, *Dialogue about Land Justice. Papers from the National Native Title Conference*. Ed. L. Strelein. Aboriginal Studies Press, Canberra, pp. 139-158.

2010 'Anthropologists and the Native Title Act'. In preparation for publication in I. Freckelton and H. Selby (eds). *Expert Evidence*, Law Book Co (subscription service).

2009 'Piety, fact and the oral account in native title claims' (in preparation, Dept Anthropology, University of Queensland).

2009 'Societies, communities and native title' (Issues paper 4.1 AIATSIS, Canberra).

2007 'Anthropology and applications for the recognition of native title'. *Land, Rights, Laws: Issues of native title*. Issues paper 3.7. AIATSIS, Canberra.

2005 'Land, land ownership and land use'. In *The Macquarie Atlas of Indigenous Australia*, B. Arthur and F. Morphy (eds), Macquarie Library, Macquarie University. (With J Altman.)

2005 'Dependency, technology and governance'. In *The power of knowledge, the resonance of tradition*, L. Taylor et al (eds). Aboriginal Studies press, Canberra, pp 101-115.

- 2004 'ATSIC and Indigenous representation in Australia: Is there a future?'. *Academy of the Social Sciences in Australia*, 23.2, pp 25-34.
- 2004 *ATSIC: Origins and Issues for the Future. A critical review of public domain research and other materials*. AIATSIS Discussion Paper no. 12, AIATSIS, Canberra.
- 2001 'Anthropology and public policy: an introductory comment'. *Australian Aboriginal Studies* 2001.2. pp 2-3.
- 2001 "'Never ask a question unless you know the answer'. Anthropology and the formation of public policy." *Australian Aboriginal Studies* 2001.2 pp 4-11.
2000. (ed.) *Strong Language Strong Culture. New South Wales Strategic Language Study. Final report and Strategic Action Plan*. Report prepared for ATSIC (NSW). (With D Hosking, T Lonsdale, J Troy and M Walsh.)
- 1999 'Favourite Foods and the Fight for Country: Witchetty grubs and the Southern Pitjantjatjara'. In Festschrift for I White, *Aboriginal History* 23. Pp 51-60.
- 1999 'A Formula Approach to Funding'. Confidential discussion paper, prepared for the Katherine Regional Office of ATSIC. Canberra, 1999. (with D Gillespie).
- 1999 'Review and Report on Resource Centres'. Report prepared for the Katherine Regional Office of ATSIC. Canberra, 1999. (with D Gillespie and R. Taylor).
- 1999 'Miriuwung and Gadjerong native title claim: Reasons for decision. Some anthropological issues.' Paper prepared for the Northern Land Council, Darwin.
1998. 'National Review of Outstation Resource Agencies 1998'. Report prepared for ATSIC Canberra. (With J Altman and D Gillespie, joint authors).
- 1998 'Resource Agency Funding Options, Resource Management and Cost Recovery.' Discussion paper no. 3, National Review of Outstation Resource Agencies. Prepared for ATSIC Canberra. (With J Altman.)
- 1998 'Customary Marine Tenure at Groote Eylandt'. In N Peterson and B Rigsby (eds.), *Customary Marine Tenure on Australia*. Oceania Monograph 48. University of Sydney, Sydney.
- 1996 'Religious Knowledge and the Politics of Continuity and Change.' In C Anderson (ed.) *Politics of the Secret* Oceania Monograph 45. University of Sydney, Sydney.
- 1992 'The Anthropologist as Expert Witness'. In I Freckelton and H Selby (eds.), *The Expert Witness*, Law Book Company, Melbourne.
- 1991 'Indigenous art and the limits of social science', *Rock Art Research* 8.2 113-118.
- 1991 'Aborigines and the Environment', CRES Working Paper, ANU, Canberra.
- 1990 'Aboriginal Relationships to Land in the Southern Blatchford Escarpment Area of the East Kimberley.' In R.A. Dixon and M.C. Dillon (eds.) *Aborigines and Diamond Mining*, Perth, University of W.A. Press.
- 1990 'Self-management on settlements: Government Policy and Aboriginal aspirations.' In *Going it Alone. Essays in Honour of Prof. R.M. Berndt and Dr C. M. Berndt*, Canberra, Aboriginal Studies Press.
- 1990 'Dealing with the Legacy of the Past: Aborigines and Atomic Testing in South Australia.' *Aboriginal History*, 14.1-2: 197-207.
- 1989 'Comments' *Rock Art Research* 6:90-92.
- 1989 'Status of documentary information on Aboriginal and Islander fishing and marine hunting in northern Australia.' In *Workshop on Traditional Knowledge of the Marine Environment in Northern Australia* F. Gray and L. Zann (eds.). Great Barrier Reef Marine Park Authority, Townsville. (Workshop Series no. 8)
- 1988 'Dependency and Assertiveness. Three waves of Christianity among Pitjantjatjara people of Ooldea and Yalata.' In *Aboriginal Australians and Christian Mission*. T. Swain and D. Rose (eds.). Aust. Ass. Study of Religion, Bedford Park, South Australia. (With M. Brady.)
- 1987 'Anthropologists in Aboriginal Australia: The case for negotiated anthropology'. *Australian Aboriginal Studies* 1987. 1.
- 1986 'Anthropologists in Bureaucracies: New issues in the post land rights era'. *Australian Aboriginal Studies* 1986 1:30-34.
- 1985 'Ownership and use of the seas: The Yolngu of north-east Arnhem Land'. *Anthropological Forum*. 5.3:448-55.
- 1985 'Simple Justice or Compensation: Establishing criteria for Aboriginal land grants.' *Anthropological Forum*. 5.3:309-316.
- 1984 'Aboriginal land ownership among the Southern Pitjantjatjara of the Great Victoria Desert'. In, *Aboriginal Land Owners* L. Hiatt (ed.). Oceania Monograph no.27. University of Sydney, Sydney.
- 1983 "'Owners" and "Managers": Ritual co-operation and mutual dependence in the maintenance of rights to land.' *Mankind*, 13(6)

- 1983 'Migration and rights to land in the Pilbara.' In, *Aborigines, Land and Land Rights*, N. Peterson & M. Langton (eds.). A.I.A.S. Canberra
- 1982 'An Aboriginal cattle station: Economy of a community in the north of western Australia.' In, *Small Rural Communities*, E.A. Young and E.K. Fisk (eds.). Development Studies Centre, A.N.U., Canberra.
- 1982 'Knowledge as a commodity in Aboriginal Australia.' Deakin University, Open Campus Programme (ref. 41AE).
- 1982 'Mental maps and lines of inquiry.' Deakin University, Open Campus Programme (ref. 31AE)
- 1978 Clark, J., Dix W., Dortch C.E., and Palmer K. 'Aboriginal sites on Millstream Station, Pilbara, Western Australia'. *Rec. West. Aust. Mus.* 6.2:221-57
- 1977 'Myth, ritual and rock art.' *Arch. and Phys. Anthropol. in Oceania*, Vol. 12, no. 1, pp. 39-50.
- 1977 'Stone arrangements and mythology.' *Mankind*, Vol. 11, no. 1, pp. 33-8
- 1977 'Aboriginal sites and the Fortescue River, north-west of Western Australia'. *Arch. and Phys. Anthropol. in Oceania*, vol. 12.3: 226-33
- 1976 'Fish traps in the Lagrange area of N.W. Western Australia.' *A.I.A.S. Site Recorders' Newsletter*, vol. 1, no. 1, 19-22
- 1976 'Aboriginal oral traditions from the South West of Western Australia.' *Folklore*, vol. 87, no.1, pp.76-80.
- 1976 'Aborigines and the Fortescue River, D.A.A. Newsletter, Vol. 2, no. 5, pp. 4-7.
- 1975 'Petroglyphs and associated Aboriginal sites in the North West of Western Australia.' *Arch. and Phys. Anthropol. in Oceania*, vol. x, no.2, pp. 152-160.
- 1975 'Dixon Island, an Aboriginal site in danger.' *West Australian Naturalist*, vol. 13, pp. 92-94.
- 1974 'Modern oral traditions amongst overland travellers.' *Folklore*, vol. 85, pp. 164-168.
- 1974 'Aboriginal fish traps'. *A.A.P.A. Newsletter*
- 1972 'Punkies.' *Folklore*, vol. 83, pp. 240-4.
- 1971 'Wassailing and the ashen faggot'. *Folklore*, vol. 82, pp. 281-91.

REVIEWS

- 1999 Body and Soul. An Aboriginal View by Anthony Rex Peile, Edited by Peter Bindon. Hesperian Press, Perth and the Pallottines in Australia, Melbourne (joint publication), 1997. In *Australian Aboriginal Studies* 1999.1 pp 72-74.
- 1998 *Rockart of the Dreamtime: Images of Ancient Australia* by Josephine Flood
Angus and Robertson, HarperCollins, Sydney. In *Australian Aboriginal Studies* 1998.2.
- 1998 *Justice All Their Own. The Caledon Bay and Woodah Island Killings 1932-1933*. Ted Egan Melbourne University Press, Melbourne, 1996. In *Australian Aboriginal Studies* 1998.1.
- 1996 'Riji' and 'Jakuli': Kimberley Pearl Shell in Aboriginal Australia. K Akerman with J Stanton. NT Museum, NT Govt Printing Office, Darwin 1994. In *Australian Aboriginal Studies* 1997.1.
- 1995 *Comparing The Policy Of Aboriginal Assimilation*, A. Armitage, University of British Columbia Press, 1995. In *Journal of Political Ecology*.
- 1995 *A World That Was. The Yarlaldi of the Murray River and the Lakes, South Australia*. Melbourne University Press, Melbourne, 1993, Ronald M Berndt and Catherine H Berndt, with John E Stanton. In *Australian Aboriginal Studies*.
- 1993 *For their Own Good*, University of Western Australia Press, Perth, 1988, A Haebich and Mister Neville, Fremantle Arts Centre Press, Fremantle, 1990, P Jacobs. In *Australian Aboriginal Studies*, 1993. 2.

EDITORIAL

- 1999 Editor, Institute Newsletter 1/2000
- 1989 – 1991 Editor, Australian Aboriginal Studies, 1/89 – 2/91.

UNPUBLISHED REPORTS

Numerous expert and other reports written in relation to consultancy activities which are unpublished and are not listed in this *vita*.

PAPERS PRESENTED AND TEACHING

2018. 'Native title recognition in Australia: expectations, limitations, aspirations and the role of anthropology'. Conference on Hunting and Gathering Societies XII (CHAGS), School of Social Sciences, Universiti Sains, Penang, Malaysia.
2018. 'Compensation and native title.' Workshop for YMAC Perth.

2017. 'Disciplining anthropology: Indigenous disputes in native title trials'. Federal Court of Australia, National Native Title Tribunal and Centre for Native Title Anthropology, *25 years of native title anthropology: A tribute to the contribution of anthropologists to the development of Australian native title law*. Perth.
2015. Aurora course for interns: Native Title anthropology.
2014. Aurora course for interns: Native Title anthropology.
2013. Aurora course for interns: Native Title anthropology.
2013. 'Homelands as outstations of public policy'. ANU research workshop, Canberra.
2012. 'Land, rights and interests, now and then. Australian Aboriginal Anthropology, Retrospective and Prospective'. Centre for Native Title Anthropology, ANU Workshop, Perth.
2012. Native Title anthropology. University of Queensland intensive summer course unit.
2012. 'Authors and others. Writing expert reports'. University of Queensland workshop in conjunction with Centre for Native Title Research, ANU.
2010. God's Truth and Anthropology: Early Texts and Contested Rights. Paper presented at the AAS Annual Conference, Canberra.
2009. Understanding another ethnography. The use of early texts in native title inquiries. Paper presented at the AAS annual conference, Sydney.
2008. 'Piety, fact and the oral account in native title claims'. Native Title Workshop, Department of Anthropology, University of Queensland.
2007. 'Societies, communities and native title'. National Native Title Conference, Cairns.
- 2006 'Anthropology and applications for the recognition of native title'. National Native Title Conference, Darwin.
2003. 'On the borders of cultures'. Paper presented at the AAS annual conference, Sydney.
2003. 'Public policy and the role of the Aboriginal and Torres Strait Islander Commission'. Centre for Aboriginal Economic Policy Research, ANU.
2001. 'Dependency, development technology and administrative imperialism.' Paper presented to the Australian Institute of Aboriginal and Torres Strait Islander Studies Conference 2001, Canberra.
2001. 'Native Title Nations'. Paper read to the Australian Institute of Aboriginal and Torres Strait Islander Studies Seminar series.
2001. 'Governance, administration and appropriate technology. Indigenous Community Technology in Australia'. Paper presented to the Community Technology Conference, Murdoch University, Perth.
- 2000 'Community based art and craft centres: Funding formulas, funding models and benchmarking. Paper prepared for the Aboriginal and Torres Strait Islander Commission, Canberra.
2000. "Never ask a question unless you know the answer". Anthropology and the formation of Public policy'. Australian Anthropological Society, Perth, September 2000.
- 2000 'Research and public policy: a formula approach to funding agencies in Indigenous Australia.' Paper read to the Australian Institute of Aboriginal and Torres Strait Islander Studies Seminar series.
- 1998 'Digital Commodities and Indigenous Moral Rights'. Paper presented to 'Managing Rights – Indigenous Culture in the Digital Domain' Arts Queensland, Brisbane, September 1998.
- 1996 'A system of marine tenure: an example from Groote Eylandt, Northern Territory, Australia.' AAS Conference, Albury.
- 1995 'Indigenous Technology. Appropriate technology and sustainable development': A Paper presented to the Victorian Chapter of the Australian Institute of Aboriginal and Torres Strait Islander Studies.
- 1992 'The return of Aboriginal men's sacred objects: A report on a consultancy for the National Museum of Australia.' AIATSIS seminar.
- 1991 'Assessing the diet and lifestyle of the traditional Aboriginal owners of the Maralinga lands.' 16th annual conference of the Australian Radiation Protection Society, Melbourne.
- 1990 'Diet and Lifestyle of Aborigines in the Vicinity of the Atomic Test sites in South Australia'. 6th Conference on Hunting and Gathering people, Alaska, USA.
- 1989 'Aborigines and the Environment' CRES seminar, ANU
- 1988 'Dose commitment estimates in an Aboriginal Community. A problem in rapidly changing social values'. Paper presented to the International Conference on Radiation Protection in Nuclear Energy. Sydney, 1988. (With M.S. Giles and M.A. Brady)
- 1988 'Atomic Tests and an Aboriginal response to development.' Paper presented to the 5th Conference on Hunting and Gathering Societies, Darwin, 1988.

1988 'Indigenous art and the limits of social science.' Paper presented to the First AURA Conference, Darwin 1988.

1986 'Leadership on an Aboriginal Cattle Station: North of Western Australia.' Paper presented to the Anthropology Conference at the 1986 Biennial meeting of the A.I.A.S., Canberra.

APPENDIX C. INVITATION TO PARTICIPATE IN RESEARCH



31/03/22

The Chairperson and Directors
Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC)
Roebourne

Dear Chairperson and Directors,

Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC),

As you will know the Yindjibarndi Native Title Holders have recently authorised a claim for compensation in the Federal Court. As part of this process the Yindjibarndi Ngurra Aboriginal Corporation (YNAC) as the Representative Native Title Body Corporate has made arrangements for Dr Kingsley Palmer to undertake anthropological research for the claim.

Kingsley has commenced work interviewing Yindjibarndi native title holders. He expects to be in the Roebourne area until next Thursday the 7th April, 2022, and will return for a second trip after Easter this year.

Members of the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) who are also Yindjibarndi Native Title holders are welcome to participate in the research and Dr Palmer will be pleased to speak with them.

For those who wish to be a part of this research process, they can contact Phil Davies on 0429 110 451 or via email at pdavies@yindjibarndi.org.au, to arrange a suitable time to meet with Dr Palmer.

Yours sincerely,



Philip Davies

General Manager: Culture & Heritage

Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

Telephone: (08) 9182 1497

Mobile: 0429 110451

Email: pdavies@yindjibarndi.org.au

Yindjibarndi Ngurra Aboriginal Corporation RNTBC.

Lot 21 Hampton Street Roebourne 6718 WA – PO Box 111 Roebourne 6718 WA. PH: (08) 9182 1497.

Email: accounts@yindjibarndi.org.au