

From: Communications [Corporate]
Sent: Thursday, 14 April 2011 4:13 PM
To: [REDACTED]
Subject: Fortescue and Yindjibarndi

This email and video has today been emailed to all WA Government and Opposition MPs, together with WA Federal MPs and relevant Ministers. It has also been distributed to various Community organisations.

Please read it and distribute as you see fit.



Fortescue and Yindjibarndi

This communication refers to a video published by the Yindjibarndi Aboriginal Corporation (YAC) about a Yindjibarndi community meeting in Roebourne on 16 March 2011.

Fortescue's public comments about this matter to date have deliberately not dealt with all the details raised in the YAC video. The false allegations were so numerous that any viewer unfamiliar with the situation (as was the intent) would have been entirely misled and deceived about the meeting that happened on 16 March 2011. The relationship between Fortescue and Yindjibarndi was also deliberately and entirely misrepresented.

Instead, Fortescue has tried to keep the debate focussed around the fact that the community has voted overwhelmingly for positive change.

In response to continued concerns from the general community about the nature of the video, Fortescue would like to set the record straight.

The following key points respond to the things that were untrue or omitted from the YAC video:

1. The community meeting was called by three of the seven Yindjibarndi People who have applied to the Federal Court for recognition of native title. They were supported by Wirlu Murra Yindjibarndi Aboriginal Corporation, a registered Aboriginal corporation whose membership includes over 210 Yindjibarndi People (being more than the membership of YAC). It was called in accordance with proper procedure and process. It was not called by Fortescue.

2. Prior to the meeting, both YAC and Wirlu Murra Yindjibarndi encouraged their members to attend the meeting on 16 March 2011.
3. Also prior to the meeting, Wirlu Murra Yindjibarndi asked Graham Castledine (an independent native title lawyer and expert in mediation) to attend the meeting as an independent Chairman.
4. Fortescue did not attend the meeting during its initial two hours. Wirlu Murra Yindjibarndi have informed Fortescue that during this time, when it became apparent that some YAC members were disruptively opposing Mr Castledine's proposed involvement, Mr Castledine (unsurprisingly) withdrew his availability. The Wirlu Murra Yindjibarndi then instructed Mr Ronald Bower to chair the meeting.
5. Mr Ronald Bower is an independent lawyer instructed by Wirlu Murra Yindjibarndi. He practises law from the legal firm Corser & Corser. He does not work for Fortescue and never has. In fact, he has regularly acted in opposition to Fortescue, including before the Full Federal Court in 2009. As far as Fortescue is aware, it is a common practice during native title negotiations for mining companies to pay the legal costs of the native title party's lawyer. The State of Western Australian in similar circumstances also pays such legal costs. This practice is entirely proper and ethical. In fact, Fortescue originally paid YAC and its lawyers during negotiations which commenced more than four years ago in early 2007.
6. The Fortescue offer that was clearly presented at the meeting amounted to a total of \$10.5 million annually. This included \$4m annually in financial compensation (\$120m over the project life) and \$6.5m (\$195m over the project life) annually in training, employment and business development.

This substantial commitment of \$315m excludes salaries and wages that are often also included in such native title settlements. In the case of Fortescue's offer they were not.

Fortescue is currently paying \$27m a year to local aboriginal people for its first operation as well as housing, training and substantial other benefits. It expects to employ at least that many local people for its second project the subject of this settlement.

While the amount stated could severely understate the amount injected by Fortescue into the indigenous community over the project's life, these commitments and track record for salaries and wages to local aboriginal people alone, amount to an injection into the local indigenous communities of \$1.125 billion.

Perhaps most importantly, this offer was made without obligation by Fortescue. The company has already been granted its mining leases to proceed with the project as a result of its good faith negotiations to date. It made this second offer at the request of the overwhelming majority of the local Yindjibarndi community, particularly the women. It was not required to do so to proceed with its project.

7. With one exception, the votes of each meeting agenda item were over 100 in the affirmative and never more than 20 in the negative. In one case the affirmative vote was 90 and the meeting did not vote on Mr Castledine's role as independent chairperson prior to his withdrawal. Fortescue understands that the Yindjibarndi People endorse decision making by majority vote. Resolutions passed on 16 March 2011 were by clear majorities. Vote counting at the meeting was undertaken by legal practitioners from Corser & Corser.

YAC has not challenged these numbers and if it were to do so would receive substantial opposition from the local community.

8. After four motions had been passed in the affirmative by an overwhelming majority, a group of less than 20 YAC members left the meeting. Many more YAC members remained and continued to vote.

9. In perhaps the most important resolution, to enter into an agreement with Fortescue, all remaining YAC members either voted in favour of the resolution or exercised their right not to vote. The votes were 120 in the positive to nil in the negative. After failing to disrupt the meeting and preventing the resolutions from being voted on, the YAC members referred to in (8.) above had left the meeting.

10. To Fortescue's knowledge, YAC has not launched any legal proceeding challenging any aspect of the meeting.

Some important points by way of background information are that:

- The Yindjibarndi people live in the area around the town of Roebourne in Western Australia. As has been heavily covered in media, it is one of the most hopelessly disparate indigenous communities in Australia with shockingly high, alcoholism, drug and crime rates. Unemployment is at extreme levels and school attendance very low.
- The majority of the community are seeking a substantial change in the direction of their community.
- Fortescue commenced negotiations with Yindjibarndi people in early 2007. The original negotiations focussed on three mining leases at Solomon.
- The National Native Title Tribunal found that during these negotiations Fortescue had negotiated in good faith. This is an objective standard that must be reached under the Native Title Act if mining leases are to be granted to a company. YAC members have never challenged that finding.
- The National Native Title Tribunal further determined that the three mining leases should be granted to Fortescue. In response to this determination, YAC members challenged the Tribunal's determination in the Federal Court. The challenge was dismissed.

- In response, YAC members sought to challenge the Federal Court's decision in the Full Federal Court. YAC members also sought a "stay order" from the Federal Court which would have prevented the State from granting the mining leases to Fortescue. The Full Federal Court refused to grant the "stay order". The State subsequently granted the leases. The hearing before the Full Federal Court concluded in December 2010 and a decision is yet to be handed down, however, Fortescue has been allowed to, and has, commenced full implementation of the project with the clear support of the overwhelming majority of Yindjibarndi people.
- In 2009, when YAC commenced various legal actions against Fortescue's tenure, despite substantial opposition to their litigious behaviour from the local community, and after Fortescue was found to have negotiated in good faith, Fortescue removed all offers of compensation to the Yindjibarndi people.
- In early 2010, a group of Yindjibarndi people who did not agree with the litigious YAC strategy, approached Fortescue requesting that we re-enter negotiations. Fortescue agreed to do so, provided those people had proper legal representation and were supported by their community.
- The decision by the Yindjibarndi community on March 16 to enter into a Land Access Agreement with Fortescue vindicates their actions over the past year.

In order that the Wirlu Murra Yindjibarndi voice is heard in this debate, Wirlu Murra Yindjibarndi and Fortescue have produced a video that responds in large part to the YAC video.

You can access the video through the following link:

<http://www.thetruenativetitlestory.com.au/>

Also attached is an opinion piece that was carried by The West Australian last week. This explains Fortescue's philosophy regarding native title negotiations.

Regards

Fortescue Metals Group

