



Expert denies \$1b Fortescue case bias

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Body

A key independent witness in a lengthy native title legal battle against Andrew Forrest's **Fortescue** has batted away accusations of bias in favour of the traditional owners, the Federal Court heard yesterday.

The silk representing **Fortescue** urged the court to view as unreliable clinical psychologist Jeff Nelson's key report on the psychological harm to traditional owners caused by the miner's giant iron ore project on their land in the Pilbara.

The Yindjibarndi people are suing **Fortescue** for about \$1 billion in lost economic benefits, and cultural and spiritual damage from **Fortescue**'s Solomon hub, three-quarters of which sits in Yindjibarndi land that also takes in the gorges and rock pools of Millstream Chichester National Park.

The case will decide if **Fortescue**, which has mined iron ore there without permission or agreement with the Yindjibarndi Aboriginal Corporation for 10 years, will get compensation. The Yindjibarndi were found to be native titleholders of the land in 2017.

One of the traditional owners' claims for compensation, previously untested, is around social disharmony based on **Fortescue** opting to throw its support behind a breakaway group, Wirlu-murra Yindjibarndi Aboriginal Corporation, which has separately struck deals with the miner.

Griff Ranson SC, the silk for the state of Western Australia, played the court a recording of a conversation between Dr Nelson with the leader of YAC, Michael Woodley, to suggest he was biased towards the YAC's interests.

"A fair-minded listener could reasonably conclude from listening to this audio recording that your evidence is not impartial, but that you've become an advocate for the cause of the party that's retained you," he said.

Dr Nelson refuted the suggestions that he was biased and that his report was one-sided.

"The excerpts of the tape may have presented me in a particular way and I make no apology for interacting with him on level that they are comfortable with," he told the court when re-examined by YAC's counsel Tina Jowett. "I am not an advocate for one person ... I really went to great lengths to get information from both sides of this divide."

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Fortescue's silk Brahmananda Dharmananda SC sought to cast doubt on the report's finding that **Fortescue** caused social division, and argued Dr Nelson didn't make an effort to interview the breakaway group.

"The sample group of 21 people cannot statistically reflect ... the whole of the people - given there around 1200 of them?" he asked.

Dr Nelson agreed the maths was correct, but explained this criticism didn't stand in a professional setting. "When you're talking in the clinical space, it's a different argument. You will find many good single case study reports from which generalisations are made."

Dr Nelson dismissed suggestions he did not make efforts to interview Wirlu-murra Yindjibarndi people. He said he visited their office on five occasions, and had arranged to interview a group of people, but they didn't turn up.

Fortescue's silk further put to the court that the social dislocation and trauma faced by the group couldn't be pegged on **Fortescue**, and instead the social dislocation stretched back to the 1960s and 1970s.

Dr Nelson agreed that it was not possible to pin the group's trauma and dislocation exclusively on **Fortescue**.

But on re-examination by Ms Jowett, he said **Fortescue** mining the land without permission compounded the foundational trauma of the group's relocation.

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