Implications of Colonial Practices on Accountability – The Case of the Yindjibarndi People

Margarita Angelica Guevara

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School of Accounting, Economics and Finance

Implications of Colonial Practices on Accountability – The Case of the Yindjibarndi People

Margarita Angelica Guevara

This thesis is presented as part of the requirements for the award of the Degree of Master of Philosophy of the UNIVERSITY OF WOLLONGONG

August 31 2016
CERTIFICATION

I, Margarita Angelica Guevara, declare that this thesis, submitted in partial fulfillment of the requirements for the award of Master of Philosophy, in the School of Accounting, Economics and Finance, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Margarita Angelica Guevara
August 2016
The mining industry plays an important role in the economic and social development in Australia. In particular, the revenues from iron ore extraction and export are a significant contributor to the wealth of corporations and governments in the form of revenue. However, these mining activities are controversial as the mineral deposits are often located on land occupied by traditional or Indigenous owners. This thesis investigates the land right issues concerning the Solomon Hub Project by Fortescue Mining Group (Fortescue) in the Pilbara region, in North-Western Australia and its impact on the Yindjibarndi community. The research explores the discharge of accountability to Indigenous communities for the use of traditional land use and explores the concept of land within the context of ongoing colonial practices.

To investigate contemporary forms of colonial practices, a postcolonial framework was used to analyse publicly available accountability documents. These included: annual reports from Fortescue and the native title holders for the Indigenous community, Yindjibarndi Aboriginal Corporation (YAC); Public Environmental Reports (PER); media releases; and, legislation and case law. Themes associated with postcolonialism such as land and tenure, profit and resource allocation, the role of the State, social and environment issues; and divide and conquer were identified and structure the analysis.

The case of Fortescue and Yindjibarndi demonstrates different perspectives of land and the subsequent dispute over mining and the rights to the use of the land. Fortescue discharges a form of accountability embedded within hierarchical and individualistic systems of accountability that privilege economic progress, a view that
is in contrast with the Yindjibarndi’s non-economic objectives. Indigenous mining land right controversies will continue to persist if mining corporations do not take into account an Indigenous worldview where social, cultural, environmental and sacred places are inextricably linked to the wellbeing of Indigenous communities.

The research contributes to the accounting literature in several ways. First, it provides further insights into various notions of accountability in the context of land rights negotiations with Indigenous communities through an empirical case. Second, it uses theme analysis to investigate corporate disclosures in annual reports to give visibility to the dominance of corporate power embedded in colonial ideology. Third, it draws on postcolonialism to give visibility to an ongoing situation of exploitation. Since accountability often occurs in the public domain, only publicly available documents were used. However, due to the nature of the dispute and the breakdown of negotiations between Fortescue and YAC several documents were unavailable. Therefore, further research that incorporated interviews from various stakeholders would provide insights, especially in terms of postcolonial resistance.
ACKNOWLEDGEMENTS

Completing this thesis has been a long and wonderful journey. It is with great pleasure that I express my gratitude to all the people that have contributed and supported me in completing this thesis.

Firstly, I would like to thank my supervisors: the Associate Professor Lee Moerman and Dr. Sanja Pupovac. The knowledge, skill and support you have given me throughout the writing of this thesis have been extraordinary. I appreciate your academic guidance, patience and encouragement and feel honoured to have had the two of you as my supervisors.

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Finally, I would like to thank my children Eliza and Wilbert, my husband Gabriel and friends for the unwavering love, support and patience given during the completion of this thesis.
DEDICATION

I dedicate this thesis to my husband Gabriel and my two children Eliza and Wilbert. I am grateful for all their endless love, patience, understanding, encouragement and tolerance during the process and completion of this thesis. They have to bear some responsibilities at home and been without me on many important family and friends gatherings that I refused to attend in order to work on this thesis. Without their invaluable support, this thesis could not have been completed.

I also dedicate this thesis in loving memory of my beloved aunty Marianita as she taught me about the value of education and encouraged me to believe that I could achieve anything I worked hard for.
# TABLE OF CONTENTS

ABSTRACT ........................................................................................................ i

ACKNOWLEDGEMENTS ................................................................................. iii

DEDICATION ...................................................................................................... iv

LIST OF TABLES .............................................................................................. vii

LIST OF FIGURES ............................................................................................. vii

LIST OF ABBREVIATIONS .............................................................................. viii

CHAPTER 1: INTRODUCTION .............................................................................. 1

1.1 Purpose of this thesis and contribution .................................................... 5

1.2 Yindjibarndi Indigenous peoples .............................................................. 6

1.3 Fortescue Minerals Group (FMG) ............................................................ 10

1.4 Salomon Hub Project .............................................................................. 11

1.5 The Solomon Hub negotiations .............................................................. 14

1.6 Approach to the study ........................................................................... 17

1.7 Postcolonial theory ................................................................................ 19

1.8 Structure of this thesis ........................................................................... 20

CHAPTER 2: AUSTRALIAN COLONIAL CONTEXT ......................................... 23

2.1 Introduction ............................................................................................. 23

2.2 The meaning of colonialism and imperialism ......................................... 25

2.3 Imperialism ............................................................................................. 28

2.4 Australian Colonial process .................................................................. 30

2.4.1 Australian Indigenous classic traditions and Practices before Colonisation ......... 31

2.5 Confrontation-British settlement ............................................................ 32

2.5.1 *Terra nullius* and Dispossession of Indigenous people’s land ................. 34

2.6 Incarceration ............................................................................................ 35

2.6.1 Drafting the Australian Constitution .................................................. 38

2.7 The assimilation process -The stolen generation .................................... 39

2.8 Post-Assimilation ................................................................................... 42

2.9 Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth) (ALRA) .... 43

2.10 The Mabo Case and the Native Title Act .............................................. 45

2.10.1 Impacts of Native Title .................................................................. 48

2.11 Summary ................................................................................................ 50

CHAPTER 3: POSTCOLONIAL THEORY ........................................................ 52

3.1 Introduction ............................................................................................. 52

3.2 Postcolonial Theory Background ............................................................ 53

3.3 Postcolonial or Post-colonal? ................................................................. 56

3.4 Postcolonial Theory and Australia ......................................................... 60

3.5 Accounting and Postcolonial Studies ..................................................... 62

3.6 Accountability in a Postcolonial Context .............................................. 67

3.6.1 Accountability ................................................................................ 68

3.7 Summary ................................................................................................ 68

CHAPTER 4: CORPORATE SOCIAL PRACTICES AND THEME ANALYSIS ... 72

4.1 Introduction ............................................................................................. 72

4.2 Accountability disclosures ..................................................................... 72

4.2.1 Annual Reports ............................................................................... 73

4.2.2 Other Social and Environmental Disclosures .................................... 75

4.3 Data ......................................................................................................... 78
CHAPTER 5: POSTCOLONIAL CONTEXT: FORTESCUE AND YINDJIBARNDI ................................................................. 91
  5.1 Introduction .......................................................................................................... 91
  5.2 Solomon Hub Project ......................................................................................... 92
  5.3 Land and Tenure ................................................................................................. 95
    5.3.1 Fortescue ......................................................................................................... 95
    5.3.2 Yindjibarndi community ................................................................................. 99
  5.4 Profit and Resource Allocation ........................................................................ 105
    5.4.1 Fortescue - shareholder value ......................................................................... 106
    5.4.2 Fortescue and employment opportunities ...................................................... 107
    5.4.3 Yindjibarndi and ‘welfare’ ............................................................................. 109
  5.5 Role of the State ................................................................................................ 113
  5.6 Social and Environment Issues ......................................................................... 118
  5.7 Divide and conquer strategies – division of the Yindjibarndi community .......... 126
  5.8 Summary ........................................................................................................... 130

CHAPTER 6: DISCUSSION AND CONCLUSIONS ......................................... 132
  6.1 Summary ............................................................................................................ 132
  6.2 Indigenous community and Western values of land use ..................................... 133
  6.3 Accountability for land use .............................................................................. 136
  6.4 Modern day Colonial Practices ........................................................................ 142
  6.5 Concluding Comments ..................................................................................... 142
    6.5.1 Contributions ................................................................................................ 144
    6.5.2 Research limitations and future research ..................................................... 145

APPENDICES ............................................................................................................ 146

Appendix 1 .................................................................................................................. 146
Appendix 2 .................................................................................................................. 147
Appendix 3 .................................................................................................................. 149
  Yindjibarndi country before and after Fortescue disturbance .............................. 148
Appendix 4 .................................................................................................................. 152
  Environmental Performance Indicators of Sustainability Reporting Guidelines (GRI).... 153
Appendix 5 .................................................................................................................. 155

REFERENCES ........................................................................................................... 164
LIST OF TABLES

Table 2.1 Developments in Australia with regard to Indigenous peoples --------------37
Table 4.2 Phases of thematic analysis ---------------------------------------------87
Table 5.1 Postcolonial and colonial practices -------------------------------------95
Table 5.2 Heritage destruction---------------------------------------------------115
Table 5.3 Native Title Amendments Act 1998 (Cth) Reforms----------------------116

LIST OF FIGURES

Figure 2.1 Australian colonial processes ----------------------------------------30
Figure 4.1 Theme analysis process ---------------------------------------------85
LIST OF ABBREVIATIONS

AASB: Australian Accounting Standard Board
ALRA: Aboriginal Land Rights Act
ATSIC: Aboriginal and Torres Strait Islander Commission
CSR: Corporate Social Responsibility
FCA: Federal Court of Australia
FMG: Fortescue Metals Group
GRI: Global Reporting Initiative
MCA: Minerals Council of Australia
NTA: Native Title Act
NNTTA: National Native Title Tribunal of Australia
PER: Public Environmental Reports
RTN: Right to Negotiate
UNGC: United Nations Global Compact
VTEC: Vocational Training and Employment Centre
WA: Western Australia
YAC: Yindjibarndi Aboriginal Corporation
WMC: Western Mining Corporation
WMYAC: Wirlu Murra Yindjibarndi Aboriginal Corporation
CHAPTER 1: INTRODUCTION

Australia has a relatively strong and stable economy, and the mining industry has played a significant role. While Australia has the world largest deposits of coal, bauxite, gold, silver, uranium, copper and iron ore (Jolley et al. 2012); commodities such as iron ore, for example, have secured a large share of the market and contribute to the wealth of corporations and governments in the form of revenue. Therefore, the mining industry delivers economic benefits contributing to state revenue, regional development and employment (Connolly and Orsmond, 2011). Mining activities can give rise to social conflict, given that benefits accrue only to some members of society leaving others such as Indigenous communities suffering economic disadvantage (Brueckner et al. 2013).

During the 2000s, the emerging economies in Asia with their rapid urbanisation and industrialisation prompted a demand in iron for use in steel and energy generation (Connolly and Orsmond, 2011). Since the global mining industry did not meet the fast growing demand of the Asian market, Australian iron ore prices were competitive and mining investment in Australia grew to high levels. In particular the Pilbara region in Western Australia (WA), where most of the iron ore is mined, accounts for 95 percent of Australia’s iron ore production (Australian Bulk Commodity Exports and Infrastructure, 2012).

Mining operations and activities often occur where there are existing communities and conflicts over the use of land. In Australia until the 1990s, the political and

---

1 In colonial times the word Aboriginal was often considered a derogative term. In the late 20th century the term Aboriginal had come to refer to refer to the Australian Indigenous population. Therefore, in this thesis the word Indigenous has been used to avoid the stigma that was associated with the term in the colonial period.
economic landscape denied Indigenous peoples self-determination in relation to decisions for mining development on their ancestral lands. Primarily because of an absence of a legal recognition of Indigenous land rights (O’Faircheallaigh, 2006). This thesis explores one such conflict over land and mining rights with one particular mining company, Fortescue Metals Group (hereafter Fortescue) and the Yindjibarndi Indigenous community in North West Australia. The struggle over the rights to land use represents the long and complicated relationship among mining companies, the Australian government and Australian Indigenous peoples.

In Australia, Fortescue is one of the major mining companies making significant economic contribution “through the billions of dollars [it] pays to state and federal governments in taxes and royalties” (Fortescue Annual Report 2014, p.7). For the period covered in the study (2003–2014), the iron ore industry was Australia’s largest export earner (Jolley et al. 2012; Peck, 2013). However, the economic benefits arising from mining are not equally distributed to all groups of Australian society (Altman, 2009; Brueckner et al. 2013), and Indigenous peoples are recognised to be one of the more economically disadvantaged. The State, Territory and Federal governments have committed to assist Indigenous economic, social and cultural development (Howlett, 2010) and mining activities are seen to provide positive opportunities to overcome economic marginalisation and disadvantage such as unemployment, poverty, education, health problems and family violence (Howlett et al. 2011). However, according to Biddle (2009, p. 2) Indigenous peoples have little to show in relation to these benefits:

---

2 At the moment there is a downturn in the mining industry due to the falls in iron ore prices. In Australia, this decline in iron ore prices could cut in US$20b in mining revenues in the 2016 financial year (National Australian Bank, 2016).
All the research to date suggests that Indigenous Australians in urban Australia are concentrated in particular [neighbourhoods] and that these [neighbourhoods] have on average poorer socioeconomic outcomes than other parts of the city.

The following is an example that demonstrates the poorer socioeconomic conditions of Indigenous peoples such as the Yindjibarndi:

Today, as in the past, the majority of the Yindjibarndi people Ngaarda continue to live in the most dreadful conditions of poverty, with the overcrowded housing, poor health and poor education, and with to many of our young ones in prison. There have been plenty of studies about just how bad things are for us. This way of life robs my countrymen of all hope for their future (National Native Title Tribunal of Australia 99, 2009, p.19).

Although the Australian government\(^3\) is not directly involved in setting the terms for mining development on Indigenous lands, it plays an important role in negotiations between companies and Indigenous peoples through the legislative and institutional framework governing mining development (Howitt, 2001; Howlett et al. 2011). For instance, the Australian High Court recognition of native title in the Mabo\(^4\) decision in 1992 and its response, the Native Title Act 1993 (NTA)\(^5\), and the development of corporate social responsibility (CSR) policies have brought significant structural changes to the institutional environment within which decision making occurs (Howitt, 2001; O’Faircheallaigh, 2006; 2008). The NTA 1993 also created the Right To Negotiate (RTN) with the objective to improve the participation of Indigenous peoples in decisions related to mining activities on their ancestral lands (Howitt, 2001).

However, amendments to the NTA in 1998 weakened the position of Indigenous land right claims. For example, strict requirements were imposed for the registration of native title claims and the existing claims were required to be re-registered. Also, the

---

\(^3\) In the Northern Territory land right agreements are negotiated under the Commonwealth Aboriginal Land rights (Northern Territory) Act 1976 (Howlett, 2010).
\(^4\) For full discussion on the Mabo decision see Chapter 2.
\(^5\) For full elaboration on the Native Title Act 1993 (NTA) see Chapter 2.
State governments introduced native state-based title legislation that “offers minimal procedural rights to native title interests” (O’Faircheallaigh 2006, p. 11).

While the Mabo case and the subsequent NTA protected the land rights of Indigenous peoples, the subsequent changes to legislation favoured the interests of mining companies (Strelein, 2009).

The legal, policy and institutional environment remain largely hostile to Aboriginal interests. In particular, legal and administrative aspects of the environment that are notionally politically neutral and objective are in fact highly politicised in that they systematically favour the interests of developers over those of Aboriginal landowners. To this extent the political economy of mineral development on Aboriginal land displays continuity with the past (O’Faircheallaigh 2006, p. 3).

Mining activities occurring where a native title claim in the area to be mined exists, creates controversy, and results in;

[a] complex approach to accountability in case of violations of [indigenous] peoples’ rights. The need for the infrastructure as well as the value of the resources exploited often results in the establishment of private-public partnership between government and multinational corporations (MNCs) (Gilbert 2012, p. 26).

While, the government owes a responsibility to Indigenous peoples in terms of the management of their ancestral lands, they “have been found accountable for violations of such responsibilities” (Miranda 2007, p. 138). Overall, Indigenous leaders perceive the mining negotiations by the government as having a negative impact (Pearson, 1993).

Since mining is such an important aspect of the Australian social, political and economic context this thesis explores the mining land rights dispute between the Fortescue and the Yindjibarndi. This mining dispute is a recent example that demonstrates the disadvantages and adverse impacts of mining activities on Indigenous land rights that have occurred since colonisation. Despite the significant
improvements of the contemporary Indigenous land right movements the Yindjibarndi’s land rights;

[continue] to pose a challenge at the operational level. This challenge is due, in part, to the corporate interests that impact [indigenous] land rights yet bear little accountability to the [indigenous] people involved (Miranda 2007, p. 135).

This study will elaborate on accountability issues that have arisen from the social conflict associated with mining activities and the intervention of the Australian government, its policies and ideology of the mining negotiations with the Yindjibarndi. To give an account is to report, describe, tell a story about something; accountability is the responsibility for both the account and the relationships and consequences of that which it describes. Therefore, accounting and accountability are linked and the recognition of the Yindjibarndi’s land rights provides an opportunity to explore accountability and corporate responsibility through various ‘accounts’ (e.g. annual reports) of Indigenous land. Since the study is situated with a socio-political context grounded in colonial practices, the study adopts a postcolonial theoretical lens.

1.1 Purpose of this thesis and contribution

Buhr (2011; 2012) calls for new accounting research that empowers Indigenous peoples. In Australia, except for some notable exceptions (such as Chew and Greer 1997; Greer and Patel 2000; Gibson 2000 and Moerman and var der Laan 2010) there is limited research relating to Indigenous peoples within an accounting context. This thesis provides new insights as it contrasts various notions of accountability in the context of land rights negotiations. In particular, it explores empowering Indigenous peoples in their pursuit to enact alternative forms of accountability that renders visible the needs of community (Hopwood, 1984). Indigenous accountability needs to be
redefined according to their strong cultural values and accommodated alongside western-based accountability (Rossingh, 2012).

The Yindjibarndi case demonstrates the inequality between the Yindjibarndi people and Fortescue and the different ways in which concepts of accountability are practiced. Therefore, in light of the above, the thesis:

1. Explores how an Indigenous community values their land in contrast to Western values of land use, and;
2. Examines how Fortescue discharges its accountability to traditional owners regarding use of their land, and;
3. Analyses to what extent colonial practices continue to impact Indigenous communities.

To address the aims of this thesis, a specific mining land rights controversy over the development of the Solomon Hub highlights the impact of mining activities on Indigenous peoples. The following sections provide an overview of the Yindjibarndi Indigenous peoples and Fortescue to gain a better understanding of their mining land rights negotiations and agreements.

1.2 Yindjibarndi Indigenous peoples

The Yindjibarndi people\(^6\) have inhabited the traditional ‘country’ along the middle part of the valley of the Fortescue River in the Pilbara region of northwestern Australia for more than 35000 years (Tindale, 1974). Currently, most of the Yindjibarndi community resides in the small town of Roebourne in WA (Mark and

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\(^6\) “Yindjibarndi’ people, is the name of the distinct ‘society’ (of [i]ndigenous persons) which was formerly recognized by the Native Title Determination of the Federal Court, on 3 July 2003, as ‘a body of persons united in and by its acknowledgement and observance of a body of laws and customs” (YAC 2011, p.1).
Turk, 2003). The Yindjibarndi have a native title claim to land in the area that is rich in natural iron ore mineral resources (YAC, 2011g; Cleary, 2014). There is a requirement:

For indigenous claimants to prove their native titles in Australia, among other things they need to show not only that they have rights in country according to their own system of laws and customs, but also that such a system is a rightful descendant of an organised society which occupied the relevant area at the time when British sovereignty was established (Sutton 1999, p. 41).

As such, the Yindjibarndi first lodged their native title claim in 1994. In 2007, after many years struggling against State and Federal Governments to prove their cultural identity and connection with their ancestral land, they achieved a determination of native title (United Nations, 2009). Since 2005, the Federal Court appointed YAC as the legal representative for the Yindjibarndi and, as an elected body by the Yindjibarndi to hold and manage their native title rights and interests, including their rights to protect heritage sites (YAC, 2011h).

The Yindjibarndi have the belief that “their traditional country was created, by spiritual beings sent from the skyworld above by God, ‘Minkala’, in the Ngurranyujunggamu - the beginning of time when the world was soft” (YAC 2011h, p. 2). According to YAC (2011g), the spiritual beings, ‘Marrga’ also created the society known today as the ‘Yindjibarndi People’. However, the Yindjibarndi people assert, “their society might be better understood in terms of the ‘People of Yindjibarndi’. This is because ‘Yindjibarndi’ refers to, and is inseparable from, the spiritual domain (created by the Yindjibarndi Marrga) in which the Birdarra law applies” (YAC 2011h, p. 2). Michael Woodley\(^7\) further evidences this:

\[\text{In accordance with the Birdarra, I believe that Yindjibarndi people, Yindjibarndi language and Yindjibarndi country (and all that is within, from both past and present) are not different things, but related parts of one thing, called “Yindjibarndi”, which}\]

\(^7\) Michael Woodley is YAC’s CEO.
has existed since the Ngurranyujunggamu. This is why I, and the other Yindjibarndi Ngaarda, believe we must continue to look after Yindjibarndi country, in the way the Birdarra says we must, because we don’t just belong to Yindjibarndi country, we are Yindjibarndi country, and if our Law is not followed we are punished and we suffer. It doesn’t matter if we were unable to stop the Law from being broken, it is our duty to ensure it is not. For us, Yindjibarndi country is alive and connected to us, and it can grab us in a way that makes you very sick (NNTTA 99, 2009, p. 16).

Also, Birdarra law is very important because it concerns what the Yindjibarndi people call ‘Galharra’ or what constitutes the social system of Yindjibarndi:

Galharra is a relationship system, based on respect and reciprocity – it binds us together as a community and ensures that [the] resources of our country are shared by the present generation and preserved for future generations (YAC 2011h, p. 2).

In addition, the Birdarra law is attached to the religious principle of reciprocity and explains why, although the Yindjibarndi community opposed Fortescue mining activities on their land, they gave approval for the native title holders the Yindjibarndi Aboriginal Corporation (YAC) to negotiate an agreement with Fortescue.

Under [the Birdarra] Law, Yindjibarndi country is obliged to produce and share its resources with us, only if we continue to follow the Law by caring for our country and people in accordance with the Law; and, Yindjibarndi … are obliged to share the resources of Yindjibarndi country with Manjangu, only if they too follow the Law by caring for our country and us in accordance with that Law (YAC 2011h, p. 3).

According to Yindjibarndi Law, they negotiated an agreement to give consent for Fortescue to mine the land if, Fortescue was prepared to:

1. recognise the economic, political and social disadvantage faced by the Yindjibarndi People;
2. fully respect their fundamental human right to civil, political and cultural self-determination-as enshrined within the United Nations Universal declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and,
3. “honour the decision of the Yindjibarndi People for all negotiations to be conducted through YAC (YAC 2011h, p. 3).
According to YAC (2011g), Fortescue did not reply to YAC’s conditions to negotiate such agreement to negotiate.

The constant and increasing demand for iron-ore resources necessary to the Australian economy has had a negative impact on the way of life for the Yindjibarndi:

It has been a bitter lesson for our people [the Yindjibarndi people] to watch lands all around us being exploited ever since colonisation, with us always ending up the poorest and least powerful. It has been a tragic and painful (and fatal) experience to get the short end of the stick from the State, the Federal Government, and miners ever since the Pilbara started BOOMING. Their policies, their bureaucracy, their ideology, their discrimination have done little for us. All their reports and studies keep saying how we have effectively gained nothing out of their 50 year-long resources bonanza in the Pilbara (YAC 2011a, p. 6).

The above quote reflects the devastation felt by the Yindjibarndi due to the mining activities on their ancestral lands and frames the social problems that the Yindjibarndi have endured since Australian colonialisation. The exploitation of mining activities in the Pilbara region also included the development of large infrastructure to transport the iron ore to countries such as China and India. The establishment of infrastructure for mining activities affects both the environmental and cultural practices of Indigenous communities (Bebbington et al. 2008; Altman, 2009; Howlett, 2010; Brueckner et al. 2013). The destruction of the Yindjibarndi land, has adversely affected cultural rights, and sacred and spiritual places (see Appendix 2, 3 and 5). These issues are further explored in Chapter 5.

The controversy and dispute over land rights has been exacerbated by the approach adopted in the NTA and its failure to protect the Yindjibarndi while promoting Fortescue’s mining interests:

While Yindjibarndi Native Title has not brought justice or prosperity to our people, FMG are doing very nicely out of native title legislation. Some very clever people in FMG have worked out that they can hold on to all their exploration leases that are
under native title claim for limitless of time. This is how FMG turn the game to their advantage (YAC 2011a, p. 20).

This raises accountability concerns that will be explored in this thesis. The following section provides the background for Fortescue.

1.3 Fortescue Minerals Group (FMG)

Fortescue is a major Australian mining company founded in 2003 by Western Australian businessperson Andrew Forrest. Fortescue is located in the iron ore rich Pilbara region in Western Australia with close proximity to Asia. In 2004, the company discovered one of the largest iron ore deposits in the Pilbara’s Chichester Range, Hamersley Range and Mt Lewin deposits – 2.4 billion tons (Fortescue Annual Report, 2005; 2014; IntraLinks, 2007). Fortescue completed infrastructure and mining Definitive Feasibility Studies (DFS) raising US$80 million in two tranches of convertible notes, the first tranche of US$30 million (conversion price of $A4.50 per share) and the second of US$50 million (conversion price of A$6.00 per share) (Fortescue Annual Report, 2005).

In 2006, Fortescue commenced the construction of its first mine Cloudbreak, a 256-kilometre railway from Cloudbreak to Port Hedland, and facilities at Herb Elliot Port (Fortescue Annual Report, 2008). In 2008, Fortescue shipped its first cargo of iron ore to China. In subsequent years the company became a valuable supplier of iron ore used in the construction of homes, schools, hospitals and transportation systems to customers in China and South East Asia (Fortescue Annual Report, 2014). As of March 2011, Fortescue was the fourth largest iron ore producer in the world, with an annual production of 155 million tonnes per annum (Fortescue Annual Report, 2011). Fortescue’s achievements are the result of it focus on maximising throughput, low
costs, paying debt and increasing shareholder value with the objective to be the “safest, lower cost, most profitable iron ore producer in the world” (Fortescue Annual Report 2014, p. 3).

In 2014, Fortescue had a strong financial performance reaching a net profit US$2.7 billion after tax, on the back of US$11.8 billion revenues (Fortescue Annual Report, 2014). Since the date of its foundation in 2003 to the 31 December 2014 the company has been a significant contributor to the Australian economy through more than $4.5 billion in income tax (30 percent tax rate) and royalty payments to Federal and State Governments (Fortescue Annual Report, 2014). Fortescue is listed on the Australian Stock Exchange (ASX) with a market capitalization of $6.35 billion and more than 66000 shareholders, including 85 percent resident and 15 percent non-resident shareholders (Fortescue Annual Report, 2014). Fortescue’s turnaround to increase export volumes is explained by its ownership structures that control the mines, railways and ports to produce and export iron ore. In 2014, the US$9.2 billion expansion including the construction of the Solomon Hub in the Hamersley Ranges was officially completed and opened, increasing Fortescue’s capacity to 155 million tonnes per annum (Fortescue Annual Report, 2014). The following section introduces the controversial Solomon Hub Project.

1.3 Solomon Hub Project

The background of the Solomon Hub project is important as it demonstrates the relationship between the Australian Federal, State and Territory governments along with the High Court and the NTA. In 2010, Fortescue began planning the Solomon Hub Project that is considered “the world’s best underdeveloped major mineral resource” (Fortescue Annual Report 2010, p. 2). The Solomon Hub Project comprises
the Firetail and the Kings mine, a development twice the size of the Cloudbreach and Christmas Creek combined (Fortescue Annual Report, 2010). Fortescue applied for mining leases and licenses to use land to expand the multi-billion dollar Solomon Hub in the East Pilbara region of WA (Fortescue Annual Report, 2011). The project includes 43 exploration licenses, 4 mining leases and more than 100 miscellaneous licenses in Yindjibarndi land (Fortescue Annual Report 2011). The infrastructure for the project included an airport, roads, power lines, accommodation village and a railway to transport ore from the proposed mines to the proposed Anketell Port (YAC, 2011c,d). Fortescue’s mining tenements were estimated to cover 4475 square kilometres of the determination area that is held in trust by YAC, for the benefit of the Yindjibarndi (YAC, 2011c,d).

The Solomon Hub area has many cultural heritage sites such as rock shelters, burial caves and materials used for initiation and ceremonies that will be destroyed with the construction of the mines (YAC, 2011k). This area is known as the Ganyjingarringunha area and forms part of a unique knowledge system “that is extremely rare in the field of international Indigenous heritage […] Ganyjingarringunha probably offered one of the last remnant refuges well into the 20th century” (YAC 2011i, p. 1). The Ganyjingarringunha is a river that runs through Ganbulanha. The eastern part of the Ganyjingarringunha runs through the middle where the Solomon Hub Project is proposed and it is the area where the Yindjibarndi people collect the Gandi or sacred stones each year for use in their Birdarra Law Ceremonies (YAC, 2011k). Archeological studies suggest that the area was utilised to perform ceremonies and store human remains, collect and make stone and wooden implements, occupy, camp and take shelter within the many rock overhangs and caves (YAC, 2011k). The area also provided the natural faunal, floral and environmental
resources for Indigenous survival. These cultural sites are culturally and ecologically important for the Yindjibarndi people and will be destroyed with the mining project (YAC, 2011k). Additionally, the lease arrangements will have a significant impact on the exercise of native title rights on Yindjibarndi country (discussed in the following section).

In 2012 construction began on the US$9 billion Solomon Hub Project. The opening of the Firetail mine in May 2013 increased cost benefits for Fortescue (Fortescue, 2013). With the completion of the Kings mine in October 2013, an additional 1.16 billion tonnes was added to the Solomon Mineral Resource (Fortescue, 2014).

The Australian Federal government is involved in the negotiation, development and facilitation of mining activities, defining the terms and conditions on which mining resources are accessed, produced, transported and marketed (Howitt 2001; Howlett, 2007). The State governments obtain royalties from mining activities because “under the Australian constitution all mineral ownership rights are vested in the crown” (Howlett 2007, p.78) Fortescue provides tax revenues to the State and Federal government. This reflects an interrelationship between government revenues and corporate profits. While a discussion of tax is not the objective of this thesis, this interrelationship is important because it forms a part of the background for understanding the role of the government in the development of mining activities. Accounting and tax are “two systems that implicitly sustain and reinforce each other”, as such, are institutional practices that maintain the privileges and power (Stoianoff and Kaidonis 2005, p. 47) often through claims of ‘public interest’. Although the Australian state has the authority to make legal decisions over mining operations, the

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8 For Indigenous peoples, ‘country’ means their special connection, attachment or relationship to the land, as it represents, “spirituality, law, culture, and economics” (Australian Human Rights Commission 2004, p. 11; Garnett and Sithole, 2007).
Commonwealth government has the power to impose limits on the export of mineral resources (Nettheim, 2003).

1.5 The Solomon Hub negotiations

Under the NTA Fortescue has to negotiate in good faith\(^9\) with the YAC whose members are registered as legal traditional owners of the project. The Solomon Hub negotiations between Fortescue and YAC were conducted over the period 2003 – 2014. Fortescue lodged 20 exploration license applications between October 2003 and October 2006, three of these licenses were granted, leaving the rest open for negotiation within the native title systems for a period of up to and exceeding 7 years (YAC, 2011a). The lodgment of an application is an opportunity for Fortescue under license, to apply for mining leases in the area. Therefore, when Fortescue:

[wants] to exploit those leases, they just trigger the so-called “right to negotiate” procedures under the Native Title Act in order to “unlock” a particular lease and move it into mining-and this with all the help from the State Government (YAC 2011a, p. 20).

However, these mining activities have had negative consequences for the Yindjibarndi people and their land. Fortescue is also given a monopoly over mineral exploration over 2500 square kilometers of Yindjibarndi land and exclusive rights to negotiate mining leases with the Yindjibarndi (YAC 2011a).

In 2008, Fortescue approached the Yindjibarndi to arrange formal mining negotiations on traditional lands. Fortescue was seeking Yindjibarndi cooperation to support the development of the Solomon Hub Project. During the first stages of the negotiation Fortescue offered an upfront payment of $250000, $2 million for training Indigenous

\(^9\) Negotiate in good faith can be understood as the desire to reach an honest mining agreement with each of the native title parties (National Native Title Tribunal, 2012).
peoples plus $3 million as a capped, un-indexed royalty (YAC 2008\textsuperscript{10}, cited in Cleary 2014, p. 142). In 2009, when Fortescue and YAC started land negotiations, Fortescue offered Yindjibarndi people $1.5 million a year as a flat fee for the life of the mine rather than an annual royalty payment (YAC, 2011a).

During further negotiations, Fortescue offered the Yindjibarndi people compensation of $4 million a year, which included a cash payment in royalties along with $7 million towards the development of housing, training and employment (YAC, 2011a,b). However, the YAC who hold the Native Title rights, refused to accept this compensation offer from Fortescue. According to Michael Woodley\textsuperscript{11}, the YAC requested a deal of 5% annual royalty (Cleary, 2014) that would be the equivalent to approximately $68 million per year.

According to YAC (2011a), Fortescue expected 60 million tonnes in the first year of mining activities, increasing to 100 million tons in the future. Using present value calculations, 60 tons generates $10 billion at today’s prices since profits increase into the future (YAC, 2011a). Accordingly, Fortescue’s offer of a fixed payment of $4 million a year equates to only 0.057 % of the mines income (YAC, 2011c). These terms over the land access agreement proposed by Fortescue are said to be “a deal that falls far short of industry standards and deprives Yindjibarndi of the opportunity to benefit from the vast wealth that will be extracted from our traditional lands” (YAC 2011, p.1f). For example, at the same time Fortescue were negotiating with the Yindjibarndi, Rio Tinto reached an agreement with other Indigenous peoples in the Pilbara region. Rio Tinto’s offer to Indigenous peoples included jobs and economic development benefits at an estimated value of $2 billion over 40 years (Cleary, 2014).

\textsuperscript{10} YAC’s 2008 media release was not available during the period this research was conducted.

\textsuperscript{11} The CEO of Yindjibarndi Aboriginal Corporation
Also, BHP reached Indigenous mining land right negotiations offering a 0.5 percent deal (Cleary, 2014).

The mining negotiations between Fortescue and YAC continued without reaching agreement. According to Fortescue YAC’s request was too high and inconsistent with Fortescue’s approach to be the lowest cost iron producer:

FMG wants to be the lowest cost iron producer - that’s our goal, that’s our number one goal out there. And we recognise that we don’t pay quite the same money as some other companies, so we have put our energy and focus into other areas, and that is employment support and business support (YAC in Cleary 2014, p. 11).

In addition, the YAC reduced its request to a 2.5 percent royalty followed by a further reduction of 0.5 percent of the production value under threat of legal action by Fortescue (Irving 201112, referenced by Cleary 2014, p. 142).

The land negotiation disagreement with Fortescue divided the Yindjibarndi Indigenous community members. Fortescue management rejected negotiations with the major YAC representatives and members of the Yndjibarndi community. In 2010, Fortescue created a splinter group referred to as Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) to deal with the Solomon Hub negotiations (YAC, 2011a). According to YAC, Fortescue established the WMYAC organisation with the objective of negotiating cheap land mining rights and “sign away substantive rights13 of the original native title determination” (YAC 2011a, p.5).

Despite the Yindjibarndi’s opposition to Fortescue’s mining development in 2010, the

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12 Unpublished information held by Cleary (2014).
13 Under the Native Title Act, substantive rights are those rights given by the Determination of the Federal court in the original Yindjibarndi native title claim. These substantial rights recognize that the Yindjibarndi People hold the rights to visit, conduct ceremony on, camp on, and gather traditional resources and bush tucker within the Yindjibarndi Native title Area (Yindjibarndi Aboriginal Corporation, 2011a).
Western Australian Government granted lease rights to Fortescue claiming that it was in the public interest to benefit the state, the nation and the local Aboriginal people (YAC, 2011a). This example demonstrates that the government has the power to override a decision and grant mining activities without agreement with Indigenous communities (O'Faircheallaigh, 2006).

The YAC appealed to the High Court to oppose the Solomon Hub Project decision, using legislative frameworks such as the NTA 1993. However, they were not able to prevent the mining development. Subsequently, the YAC worked to oppose the development and continue to express concerns about the destruction of their sacred and spiritual lands (see Appendix 2), damage to their culture and their relationship with other members of the Yindjibarndi community. This thesis draws on this dispute to answer the research questions proposed. Since these questions relate to studying the socio-political context in which accountability is enacted, the following qualitative approach is adopted.

1.6 Approach to the study

Since this is an accounting study, the primary documents for analysis will include 2003-2014 Fortescue Annual Reports; 2008-2012 Fortescue Quarterly Reports, the 2012 YAC annual report\(^\text{14}\), 2008-2012 Public Environmental Reports (PER), media releases and legal cases as forms of accountability discourse\(^\text{15}\). The use of these documents as evidence is common in accounting studies, especially as they are perceived as discourses of giving an account. To give an account can be understood as “to be liable to present an account of, and answer for, the execution of responsibilities

\(^{14}\) At the time of the study only one report was publicly available and information was supplemented with material from YAC’s website.

\(^{15}\) See Appendix 1 for a comprehensive list of documents.
to those entrusting those responsibilities” (Gray and Jenkings 1985, p. 138). These accounts are provided as a means to render conduct intelligible and to “prevent conflicts from arising by verbally bridging the gap between action and expectation” (Scott and Lyman 1968, p. 46). Corporations have a duty to account for the impacts they have on communities, as such, accountability can be understood as a relationship between people involving “giving and demanding of reasons for conduct” (Roberts and Scapens 1985, p. 447). Accountability then “can be considered as a moral practice, since the accountable person is presented as someone moral and responsible to enact discursively the responsibility for her/his behavior” (Messner 2009, p. 920). Accountability concerns the rights of stakeholders to receive information from corporations about the impacts that affect them.

This thesis adopts theme analysis as the method to conduct this study. Theme analysis is defined as “a method for identifying, analysing and reporting patterns (themes) within data” (Braun and Clarke 2006, p. 79). Theme analysis is employed to examine how Fortescue discharges accountability through non-financial information. For the purpose of this thesis, theme analysis is conducted by analysing Fortescue’s annual reports covering the period 2003 to 2014, (this is the period when mining land rights were negotiated), public environmental reports (PER) covering the period 2008 to 2012, media releases and case law for the period 2011 to 2012. In addition, YAC’s media releases covering the period 2011-2012, case law documents covering the period 2011-2014 and WMYAC’s 2011 media release also form part of the empirical data to be analysed since they represent public communication devices.

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16 Fortescue began to publish stand-alone PER reports in 2008.
17 Due to the mining land rights dispute between Fortescue and YAC, YAC’s website was closed in July 2013 and when it re-appeared documents concerning the dispute had been removed.
The process involves the identification of themes in Fortescue’s annual reports through “careful reading and re-reading of the data” (Rice and Ezzy 1999, p. 258).

Boyatzis (1998, p. 1) claims that a theme can be defined as:

[a] pattern in the information that a minimum describes and organises the possible observations and at maximum interprets aspects of the phenomenon.

In this thesis, themes were developed and the empirical material interpreted in terms of the relevance to Australian colonial ideology and practices, and the impacts of colonial practices on the Yindjibarndi. Since the purpose of the thesis is also to determine whether annual reports and media release disclosures offer any emancipatory potential to promote a form of accountability for the Yindjibarndi people in particular and marginalised groups in general by corporate activities, the following themes were identified.

1. Land and tenure
2. Profit and resource allocation
3. Role of the state
4. Social and environmental issue
5. Divide and conquer

These themes correspond with a postcolonial context and reflect the different worldviews or positions on the value of land, the concept of welfare and social and environmental responsibility.

1.7 Postcolonial theory

A number of accounting research studies using annual reports has employed stakeholder theory and legitimacy theory in the investigation and analysis of corporate social responsibility in annual reports. These theories have become common theories within the accounting social and environment context (Tilling, 2004). However, for the purpose of this thesis postcolonial theory offers an understanding of Fortescue’s non-financial and social and environmental disclosures. Further it provides insights
into Fortescue’s relationship with the Yindjibarndi community and “reveal the usefulness of investigating a particular social occurrence through more than one theoretical point of view” (Chen and Roberts 2010, p.662). Postcolonial theory reveals the ideological views created to justify the exercise of power inherited by colonial domination, the effects of colonialism on Indigenous cultures and the ideology of superiority, which empowers Western culture (Sawant, 2012).

Through the lens of postcolonial theory, this research seeks to make visible the ways accounting systems based on Western knowledge have contributed to the oppression and injustice of Indigenous peoples and Yindjibarndi people specifically. It is argued that these accounting practices have been inherited from the colonial period and this colonial project continues in contemporary forms of accounting and accountability in postcolonial Australia. In this thesis, postcolonial theory informs the economic and social structures imposed on the Yindjibarndi people during British colonisation in Australia.

1.8 Structure of this thesis
This thesis is organised in the following manner.

Chapter 2: Australian colonial context provides the Australian historical context, and the background to the historical development of Australia-settler colonisation processes in the nineteenth century. It also highlights the development of colonial structures that gave rise to contemporary government policies and corporate accountability.

Chapter 3: Postcolonial Theory draws on postcolonial theory this thesis considers and analyses the effects of British settlers on Australia’s colonised people. Postcolonial
Theory is a suitable explanatory framework to inform this research study of mining land rights. A discussion of accountability concludes the chapter.

Chapter 4: *Corporate Social Practices and Theme Analysis* discusses theme analysis and the documentary evidence. This thesis adopts the work of Braun and Clarke (2006) in order to identify and develop themes.

Chapter 5: *Postcolonial Context: Fortescue and Yindjibarndi* examines the publicly available documents of Fortescue, YAC, WMYAC and legislation and cases. The chapter is a detailed analysis of the themes emerging from these documents according to a postcolonial interpretation.

Chapter 6: Discussion and Conclusions provides a summary and discussion relating to the analysis, the methodological, analytical and theoretical findings. This chapter also suggests further research.

1.9 Summary

In this chapter, the basis for this thesis was outlined. The chapter provided an overview of the Australian mining industry, the background to Fortescue since its formation and mining operations; followed by a brief profile of the Yindjibarndi people. This chapter discussed the relationship between Fortescue, the Yindjibarndi people and the Australian and State governments; followed by the Solomon Hub negotiations and its implications for the Yindjibarndi.
The research problem, purpose and contribution of the study were introduced, and, an overview of the methodology was provided, following by the structure of the chapters included in this thesis. In order to understand the linkage of colonial ideology in contemporary mining land rights dispute, the following chapter presents the Australian colonial context to provide the historical background scene for this study.
CHAPTER 2: AUSTRALIAN COLONIAL CONTEXT

This chapter examines the historical development of the Australian colonisation process and relevance of colonialism to contemporary Australian government policies. Further, the chapter discusses the concept of imperialism and provides a background to Australian Indigenous peoples highlighting the antecedent colonial structures that still continue to control and restrict.

2.1 Introduction

European colonialism was born during the fifteenth and sixteenth centuries and extended to other continents. During the nineteenth and early twentieth centuries British colonisers occupied the most territories in different countries and continents such as Canada, America, Egypt, South Africa, Africa, India, Jamaica, Gibraltar, Malta, Cyprus, New Zealand and Australia (Ocana-Aybar, 2006). Colonialism involved the subjugation of Indigenous peoples and the forcible takeover of land and its resources by British settlers (Emerson, 1969; Loomba, 2005). The following section discusses the Australian colonial process.

In Australia, the colonial process is divided into three periods: confrontation, incarceration and assimilation (Wolfe, 1994). Confrontation refers to the period when England settled Australia in 1778. During the confrontation phase, the British exploited cultural differences, subsequently, the power, economic inequalities between Indigenous peoples, and the colonial settlers (Wolfe, 1994; Maddison, 2012). This period was marked by the dispossession of Indigenous land; introduction of different diseases such as smallpox, syphilis, typhoid, tuberculosis, measles,
diphtheria and influenza; starvation, homicide; and, conflictive confrontation resulting in death (Hackett, 1978; Wolfe, 1994; Campbell, 2002; Dudgeon et al. 2010).

Incarceration is the second period in the colonial process in Australia and refers to the continuing process of Indigenous people’s dispossession and elimination (Wolfe, 1994). During this phase, the objective of the British settlers was to make Australian lands available for pastoral activities to extract large revenues (Wolfe, 1994; Harper, 2001; Maddison, 2012). The British settlers set aside small reserves of land forced Indigenous peoples to live in these reserves, stations and church missions where they were neglected in the belief that;

[t]hey are dying out anyway, they are the lowest race on earth thus, settlers would get the profits from the pastoral industry and not give the Indigenous any share of that revenue and any grants for their land (Hasluck 1970, p. 121).

The last phase, referred to as the assimilation process, involved the transformation of Indigenous culture into non-indigenous culture (Wolfe, 1994). The forcible separation of mixed blood Indigenous children by the Australian government, between 1900 and 1972, from full blood Indigenous families is an example of assimilation (Renes, 2011). During this stage of colonialism children of Indigenous women, albeit of a settler’s descent, were not considered as Indigenous (Wolfe, 1994; Curthoys, 2000; Morgan, 2006; Dudgeon et al. 2010). The three phases and the adverse effects on Indigenous peoples will be elaborated in detail under section 2.4.

In order to examine the Australian colonial process, the following section provides an understanding of the different concepts of colonialism and imperialism. Loomba (2005, p. 7) claims that “colonialism and imperialism are often used interchangeably” as if they were synonymous concepts because both colonialism and imperialism involved ‘subjugation’ and ‘domination’ (Young, 2001) of Indigenous peoples by
British settlers. However, colonialism is a practice while imperialism is analysed as being operationalised as a policy of State, driven by the exercise of power through direct conquest and forms of domination (Young, 2001).

2.2 The meaning of colonialism and imperialism

This section discusses the different ways in which colonialism and imperialism have been conceptualised by different scholars over time. Colonialism has been defined as a debatable concept with different meanings (Loomba, 2005). However, it is contended that the definitions of colonialism encapsulates three characteristics “domination, cultural imposition and, exploitation” (Butt 2013, p.2). For example, Osterhammel (1997, pp. 16-17) takes a view of colonialism that is still current. A relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders. The fundamental decisions affecting the lives of the colonized people are made and implemented by the colonial rulers in pursuit of interests that are often defined in a distant metropolis. Rejecting cultural compromises with the colonized population, the colonizers are convinced of their ordained mandate to rule.

The above quote implies that colonialism is a form of domination which involves their subjugation, such as the case of the Australian Indigenous peoples by British settlers. While British imperialism has declined, the pursuit of colonial interests and rejection of Indigenous culture is still witnessed today in ‘pockets’ of colonialism such as multinational corporate intervention on Indigenous lands. For example, the British “established systems of rule and forms of social relations which governed interaction with the Indigenous peoples being colonized” (Smith 1999, p. 26). These relations between the coloniser and the colonised were gendered and hierarchical as a form of power to dominate and control Indigenous peoples.
The settler viewed Indigenous peoples as non-adult or childish, therefore creating differences that British ‘adulthood’ could dominate (Gandhi, 1998; Smith, 1999). This relationship of the dominant and the dominated is relevant for this thesis and can be applied to the controversial mining land rights dispute between Fortescue and the Yindjibarndi people where;

[t]he former dominate; the latter must be dominated, which usually means having their land occupied, their internal affairs rigidly controlled, their blood and treasure put the disposal of one or another Western power (Said 1978, p. 36).

Said (1993) argues that colonialism continues. The domination, inequality of power and wealth between non-indigenous and Indigenous peoples are permanent facts of human society and, although there are not expanding frontiers or new settlements, the colonial “cycle replicates itself” (Said, 1993, p. 20). In a similar vein Miranda (2010), contends that Indigenous peoples continue the struggle to regain control of their lands. The mining land rights controversy between Fortescue and the Yindjibarndi are the residue of colonialism and an example of how it continues today in a postcolonial context (see Chapter 5).

Loomba (2005, p. 8) argues that colonialism can be defined as “the conquest and control of other people’s land and goods”. In Australia, British settlers expropriated Indigenous peoples lands and while they were not moved from their lands they were exterminated (Young, 2001). This process constitutes what Said (1993) calls an act of geographical violence to deprive Indigenous peoples of their land rights. Said’s (1993, p. 5) view that colonialism is: “thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and owned by others” embodies the British settlement in Australia.
Cook-Lynn (2012, p. 138) claims that colonialism is not just about the “invasion and inhabiting of a place owned by others; it is the establishment of laws to legitimise the power of occupancy and ownership”; colonialism is about re-arrangement, re-presentation and re-distribution (Smith, 1999). Australian colonialism was the imposition of British superiority through the dispossession and authority over Indigenous lands, imposition of law and government and the imposition of British authority over Indigenous culture, knowledge and language (Smith, 1999) (further discussed in this chapter and Chapter 5).

Howard-Wagner (2007, p. 2) further explores the cultural aspects of colonialism as;

[a] social and cultural process, whereby the colonisers legitimated conquest by asserting the alleged inferiority of the colonised. The colonial order divided the social world creating two distinct realms: European/Native or white/black.

The above definition assumes that colonialism was also a cultural process that used hierarchies to classify the British as a superior culture and the Indigenous as an inferior culture “in whose soul an inferiority complex has been created by the death and burial of its local cultural originality” (Fanon 1967, p. 18). This form of colonialism attempts “to impose the colonial power’s culture and customs onto the colonized” (Butt 2013, p. 2) and is based on the belief of British’s cultural or racial superiority. This form of authority is what Said (1988) refers to as beliefs constructed by the British about the ‘other’. This classification is important for this thesis because it gives rise to the development of policies that were used to segregate Indigenous peoples and also assimilate children into white culture (see section 2.8). This imposition of British culture, development of policies such as the NTA that are associated with the dispossession of mineral resources constitute a form of exploitation that will be further discussed in this chapter as a the social and cultural practices under the concept of imperialism.
2.3 Imperialism

According to Loomba (1998) and Smith (1999), colonialism results from imperialism. However, “unlike colonialism, imperialism is driven by ideology … in some instances even to the extent that it can operate as much against purely economic interests as for them” (Young 2001, p. 27). Said (1999, p. 8), defines imperialism as;

[t]he practice, the theory, and the attitudes of a dominating metropolitan centre ruling a distant territory; colonialism, which is almost always a consequence of imperialism, is the implanting of settlements on distant territory.

Dominating a distant territory implies doing something about the territory’s inhabitants. For instance, it could involve the genocide of Indigenous peoples with the objective to make the territory free for settlement and consequently controllable. It could involve the importation of white people to control the operations of the country. According to Fanon (1961) the control of territories and its Indigenous peoples by imperial power has been exercised through the imposition of force. In a similar vein, Doyle (1986, p. 45) contends that;

Empire is a relationship, formal or informal, in which one state controls the effective political sovereignty of another political society. It can be achieved by force, by political collaboration, by economic, social, or cultural dependence. Imperialism is simply the process or policy of establishing or maintaining an empire.

This form of forceful control or imperial rule on Indigenous peoples is also part of the Australian colonial context. As such, it is important in the case of Fortescue and the Yindjibarndi people because it forms the basis of contemporary interactions between non-indigenous peoples and Indigenous peoples. In this regard Said (1993, p. 8) states that;

[i]n our time, direct colonialism has largely ended; imperialism, lingers (remains) where it has always been, in a kind of general cultural sphere as well as in specific political, ideological, economic, and social practices.

He further adds that.

Neither imperialism nor colonialism is a simple act of accumulation and acquisition. Both are supported and perhaps even impelled (forced) by impressive ideological
formations that include notions that certain territories and people require and beseech domination, as well of forms of knowledge affiliated with domination: the vocabulary of classic nineteenth century imperial culture is plentiful with such words and concepts as ‘inferior’ or ‘subject races’, ‘subordinate peoples’ ‘dependency’ ‘expansion’, and ‘authority’.

These attitudes of the dominating metropolitan created the ideology of the British and the Indigenous ‘other’ (Said, 1993). The ‘other’ is interpreted as;

“[t]he inferior term in a binary opposition and then, by extension, fixed in a permanent position of subordination within a master code of binary thinking, as a mode of representation that energises the imperial enterprise” (Slemon 1988, p. 162).

This domination of British ideology legitimated the classification of societies as binary opposites, and that of coloniser-colonised (Chilisa, 2012) and superior-inferior (Fanon, 1961; Said, 1978; 1993).

Smith (1999) reinforces this British ideology of the other:

Colonialism was an image of imperialism, a particular realization of the imperial imagination. It was also, in part, an image of the future nation it would become. In this image lie images of the Other, stark contrasts and subtle nuances, of the ways in which the indigenous communities were perceived and dealt with, which make the stories of colonialism, part of a grander narrative and yet part also of a very local, very specific experience (Smith 1999, p. 23).

For the Yindjibarndi people, large scale mining and urbanisation in the West-Pilbara constitutes a form of colonisation without the ‘guns and chains’ of the British settlement, since a struggle for land rights and assault on their traditional values and beliefs continues (Edmunds, 2013). Fanon (1963, p. 210) sates that:

Colonialism is not satisfied merely with holding a people in its grip and emptying the native’s brain of all form and content. By a kind of perverted logic, it turns to the past of the oppressed people, and distorts, disfigures, and destroys it. This work of devaluing pre-colonial history takes on a dialectical significance today.

Contemporary forms of postmodern imperialism attempt to confine the expression of Indigenous peoples’ right of self-determination to a set of domestic authorities operating within the constitutional framework of the state (as opposed to the right of having and autonomous and global standing) and actively seek to sever Indigenous links to their ancestral homelands.
The Yindjibarndi and Fortescue represent two incompatible ends and the belief in the inferiority of the Yindjibarndi people encourages the government and Fortescue to make decisions about what is convenient for the Yindjibarndi (Prasad, 1997; Neu, 2000). These ideological issues and consequences of colonialism and imperialism are explored in the following sections. Figure 2.1 demonstrates the Australian colonial process that is examined in the following sections.

Figure 2.1 Australian colonial processes.

2.4 Australian Colonial process

The Australian colonial process provides the background that underlines British ideology and underpins the development of current government policies and laws affecting Yindjibarndi claims to land rights. The Australian colonial process
comprising the Indigenous classic traditions and practices before colonisation, confrontation, incarceration and the assimilation process will be discussed in the following sections.

2.4.1 Australian Indigenous classic traditions and Practices before Colonisation

During the period before colonialism there were about 500 different classes of Indigenous peoples living in small groups of many families (Behrendt, 2010). Indigenous societies were “self-reliant, socially coherent, healthy, and had a clear direction” (Rowse, 2000; Helin 2008, p. 6). Prior to colonisation, an Australian Indigenous way of life was established according to religious and spiritual beliefs based on a deep respect for nature (Rossingh, 2012). According to Indigenous beliefs, spiritual ancestors created the physical environment and every living and non-living thing and their governance and philosophical structures had strong foundations based on the Dreaming (Dudgeon et al. 2010). Stanner 1953 (pp. 23-24) speaks about the importance of the Dreaming.

A central meaning of the Dreaming is that of a sacred, heroic time long ago when man and nature came to be as they are; but neither 'time' nor 'history' as we understand them is involved in this meaning...Although The Dreaming conjures up the notion of a sacred, heroic time of the indefinitely remote past, such time is also, in a sense, still part of the present. One cannot 'fix' The Dreaming in time: it was and is, every when... Clearly, [T]he Dreaming is many things in one. Among them, a kind of narrative of things that once happened; a kind of charter of things that still happen; and a kind of logos or principle of order transcending everything significant for Aboriginal man... It is a cosmogony, an account of the begetting of the universe, a study about creation, It is also a cosmology, an account or theory of how what was created became an ordered system. To be more precise, how the universe became a moral system.

Indigenous peoples practiced farming and worked the land where natural resources were available to sustain a sedentary life if required. Since they did not have an economic view of wealth or the concept of private or personal property, land was used communally for Indigenous enjoyment, hunting, farming and limited forms of
The Indigenous attachment to the land was (and is) expressed through song, art, dance and painting. This is passed from generation to generation as a means to explain and understand cultural stories. Through this storytelling they acquire the knowledge to protect and respect the land’s resources and retain sacred places for religious ceremonies (Behrendt, 2010). Since this thesis is concerned with land claims and rights, the following sections highlight the aspects of the colonial process that relate to the dispossession of Indigenous land.

2.5 Confrontation-British settlement

This section examines the first phase of the historical development of Australian colonisation process and highlights the alienation from Indigenous land. Australia was colonised by England during the age of imperialism in the late eighteenth century. At the time of British settlement in Australia in 1788, between 250000 and 750000 Indigenous peoples were living in Australia, migrating to the continent more than 50000 years ago (Altman, 2009). Despite the large number of Indigenous peoples living in Australia at the time, the first fleet of British colonisers on 26 January 1788 reported only a very small number of inhabitants on the continent (Short, 2008).

Captain Cook and other settlers on their arrival saw the Indigenous peoples and described them as nomads (with no fixed territory) and considered them inferior human beings with little value, uncivilised and ignorant (Reynold, 1998; Short, 2008). This negative image of Indigenous peoples, legitimated by the British settler

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18 In 1770, Captain James Cook first set foot in the South East coast of Australia, landing in Botany Bay (Nugent, 2009).
superiority reinforces the image of the non-indigenous as civilised (Gandhi, 1998). This assumption allowed the construction of the Indigenous other, and established a British-Indigenous relationship “of power, of domination, of varying degrees of a complex hegemony” (Said 2003, p. 5). In addition, this representation of the indigenous peoples as the ‘other’ also justified dispossession of their lands. For example, the British claimed Indigenous land, thus, destroying their wealth, natural resources and cultural values. Indigenous peoples refused to acknowledge the British title of ownership because of their attachment to land and would not;

[r]esign the mountains and seas, the rivers and lakes, the plains and the wilds of their uncradled infancy, and the habitation of their fathers for generation immemorial, to a foreign foe, without grief (Lyon 1839, p. 80, cited in Reynolds 1998, p. 78).

The dispossession of land brought conflict and confrontation between the settlers and the Indigenous peoples from resistance, and several other factors, that lead to death of indigenous populations. For example, Tasmania lost sixty percent of the Indigenous population within a twelve-month period (Reynolds, 2006). Consequently, the settlers reacted to such violence and justified the dispossession of land by “inventing some view of the case that would justify such a line of conduct to render them odious to the public at home, by representing them in the worst light” (Lyon 1839, p. 48, cited in Reynolds 1998, p. 72). In addition to conflictive violence, the settlers introduced diseases such as measles, syphilis, typhoid, tuberculosis, measles, diphtheria, influenza, starvation, and homicide that contributed to s death (Hackett, 1978; Wolfe, 1994; Campbell, 2002; Dudgeon et al., 2010).

Australian colonialism was characterised by a hierarchy of domination. The British “established systems of rule and forms of social relations which governed interaction with the Indigenous peoples being colonised” (Smith 1999, p. 26) that gave them the
power to dominate Indigenous peoples and categorise Indigenous peoples as non-human. For example, the ‘black’ or full-blooded were exterminated and those partially ‘human’ or half-caste were placed into missions or reserves (Smith, 1999). These practices were supported by rules and policies that justified the extermination or assimilation of Indigenous peoples into civilised society (Gandhi, 1998; Smith, 1999). For example, the Western Australian Aborigines Act 1905 supported the forcible removal of children. This destruction and marginalisation also underpinned the belief that the Indigenous were unable to have their own political systems (Memmi, 1974).

2.5.1 Terra nullius and Dispossession of Indigenous people’s land

Prior to colonisation Indigenous peoples were organised as self-governing political entities without any settled law system (Short, 2008; Howard-Wagner, 2010). This cultural difference allowed the British colonial authorities to declare Australia as terra nullius, land belonging to no-one (Short, 2008; Howard-Wagner, 2010; Dudgeon et al. 2010). This further allowed the imposition of British law and claims of land ownership for their empires (land in the colony was the property of the crown) and forcefully dispossesses Indigenous peoples of their traditional lands. Consequently, imperialism and colonialism disconnected Indigenous peoples from their own traditions, culture, spiritual and legal systems (Fannon, 1963), and imposed new rules to govern and control (Hage, 2001; Altman, 2009).

The colonial process reinforces that the British arrival to new lands was to “un-form” or “Re-form” the rules, traditions and cultural values already prevalent for the traditional owners of the land (Loomba 1998, p 2), (see section 2.6). The British settler practices of appropriating Indigenous land to establish pastoral stations for
sheep farming led to an increase in both wealth and political power (Reynolds, 1998). British settlers, while extracting wealth from the Indigenous peoples and their lands, also created an unequal system of distribution and exchange which made the colonised economically dependent upon the coloniser (Prasad, 2003). Therefore, land dispossession is considered one of the primary causes of contemporary Indigenous peoples’ racial discrimination and social disadvantage (Short, 2008).

This settlement practice, based on economic progress with the objective of maximising British profits and wealth (Loomba, 1998; Prasad, 2003), is reminiscent of the case of Fortescue and the Yindjibarndi. Mining companies such as Fortescue have accumulated many tenements of land in the Pilbara region despite the opposition of the Yindjibarndi people (see Chapter 5). Fortescue’s form of land appropriation has caused further marginalisation of the Yindjibarndi people and continues to dispossess them from their cultural values, religious ceremonies and the destruction of sacred sites (see Appendix 2).

### 2.6 Incarceration

The second phase of Australian colonisation is known as colonial incarceration. Colonial incarceration refers to the continuous dispossession of Indigenous land and the elimination of the Australian Indigenous peoples through disease, starvation and massacre (Maddison, 2012). During this phase the Australian government passed the Aborigines Protection Act (1905) with the objective to remove Indigenous peoples from their traditional land and to place them into reserves or stations where they were prevented from practicing their culture (Smith, 2000). The Aborigines Protection Act ensured that Indigenous peoples remained on stations under the protection of the State
and were dependent on the distribution of provisions (Wolfe, 1994). This policy of protection was premised in the belief that Indigenous peoples were uncivilised and unfit to survive without the government provision of rations of food and blankets (Hasluck, 1970; Reynolds, 1972). However, as rations became limited, Indigenous peoples suffered. Incarceration also meant that Indigenous land was available for the pastoral industry without compensation (Wolfe, 1994).

This policy of Indigenous incarceration in government reserves and the provision of rations was a misguided approach as a form of compensation for Indigenous land usage (Reynolds, 1972). Indigenous dependency on rations of food and blankets provided by the government are an example of ‘hand-outs’ without negotiation that continues today. During this period, the ideology of British superiority also gave rise to the enactment of legislation and paternalistic policies that continue to dominate and control Australian Indigenous peoples. Table 2.2 below illustrates a change in the legislation passed by the Australian government since 1901 to 1998.
Table 2.1 Developments in Australia with regard to Indigenous peoples

<table>
<thead>
<tr>
<th>Year</th>
<th>Legislation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1902 -</td>
<td>The Commonwealth Franchise Act 1902</td>
<td>Indigenous peoples of Australia are denied the right to vote and the Act made no reference to Indigenous peoples.</td>
</tr>
<tr>
<td>1905</td>
<td>The conference of Commonwealth and State Aboriginal Authorities (held in Canberra)</td>
<td>It was established that not of the full blood Indigenous peoples should be assimilated into British culture.</td>
</tr>
<tr>
<td>1961</td>
<td>Policy of assimilation</td>
<td>A meeting of federal and state ministers agreed on a policy of assimilation.</td>
</tr>
<tr>
<td>1966</td>
<td>The Aboriginal Lands Trust Act 1966</td>
<td>Enacted in South Australia, is the major recognition of Aboriginal Land Rights by an Australian government.</td>
</tr>
<tr>
<td>1967</td>
<td>The Constitution Alteration (Aboriginals) 1967</td>
<td>Provided for a referendum, the Commonwealth accepted wider but not exclusive responsibility for Indigenous peoples.</td>
</tr>
<tr>
<td>1974</td>
<td>The Aboriginal Land Rights Commission’s Second report</td>
<td>Introduced the land rights legislation</td>
</tr>
<tr>
<td>1984</td>
<td>The Aboriginal and Torres strait Islander Heritage Protection Act 1984</td>
<td>Provided for the protection of Indigenous peoples’ preservation and protection of religious and sacred sites.</td>
</tr>
<tr>
<td>1987</td>
<td>Aboriginal Land Rights (Northern Territory) Amendment Act 1987</td>
<td>Introduced a provision to ensure no claims were lodged after June 1997.</td>
</tr>
<tr>
<td>1992</td>
<td>The Mabo Case</td>
<td>This decision recognised that Australian Indigenous peoples have land rights that have survived colonisation.</td>
</tr>
<tr>
<td>1993</td>
<td>The Native Title Act 1993 (NTA)</td>
<td>The objective of the Act is to recognise and protect native title so Indigenous peoples’ land can be recognized.</td>
</tr>
<tr>
<td>1998</td>
<td>The Native Title Act 1998 (the amendments)</td>
<td>Reduced the protection granted by the NTA 1993.</td>
</tr>
</tbody>
</table>
Table 2.2 is a summary of the legislation passed by the Australian government during the colonial period from Federation in 1901 until the amendment to the NTA in 1998. The following section outlines the importance of the Constitution.

2.6.1 Drafting the Australian Constitution

The dominance of British superiority was reflected in the Australian Constitution that was drafted in the 1880s and 1890s. When it was enacted in 1901, it constituted the most powerful set of laws in Australia and gave rise to the State government legislation that undermined Indigenous people’s access to citizenship and welfare rights (Dow and Gardiner-Garden, 2011).

Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established (Law Council of Australia, 2011, p. 18).

The above statement in the preamble of the Commonwealth of Australia Constitution Act 1901 did not include Australian Indigenous peoples. However, two references relating to Indigenous peoples include a provision in which the Federal parliament had the power to enact laws with reference to:

The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws (Australian Constitution 1901, Section 51 pp. xxvi); In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted (Sawer 1966 p. 25).

Therefore, Indigenous peoples are referred to in the Australian constitution only in a discriminatory provision. It was believed at the time that Indigenous peoples were inferior and incapable of coping with the “onset of civilization” and that they were “a dying race” whose future was not important (Geoffrey, 1967; Russell, 2005; Behrendt 2010 p. 186). Accordingly, the Constitution ensured that it not included Indigenous peoples or recognise them as having a place in Australian society (Russell, 2005).
Accordingly, the constitution ensured that the “Australian states would have the power to continue to enact laws that discriminated against people on the basis of their race” (Havemann 2005, p. 66; Berrendt 2010, p. 188). Including Indigenous peoples would have reversed the ideological formation of ‘terra-nullius’ and, entitled them to representation in the democratic institutions of the State (Havemann, 2005). The underpinning ideology of this legislation ensured the continued regulation and control of Indigenous lives.

The next section discusses how the importance of the differences of race between the non-indigenous peoples and Indigenous peoples gave rise to government policies intended to control and govern Indigenous peoples (Geoffrey, 1967; Dudgeon et. al. 2004). These government policies facilitated the removal and dispersion of Indigenous peoples and were intended to ‘protect’, convert and assimilate Indigenous peoples through the removal of children of mixed blood from their families and communities (Dudgeon et al. 2004; Cassidy, 2006).

2.7 The assimilation process - The stolen generation

This section describes the third phase in Australian colonisation referred to as the assimilation process or the ‘stolen generation’. The assimilation process included forcible removal of Indigenous children from their parents, and their adoption into non-indigenous families. The underlying premise of this policy was that Indigenous children taken by the government between 1900 and 1972 would forget their own Indigenous culture and traditional land and assimilate into White Australian society (Cassidy, 2006; Renes, 2011; Maddison, 2012). For example, in Western Australia under the provision of the Aborigines Act 1905, the Chief Protector of Aborigines had
legal power to remove children from their families (Dudgeon, et al. 2004; Tomlinson, 2008).

By 1911, the Australian government was heavily implicated in the stolen generation of half-caste\textsuperscript{19} children. For example, in 1937 State intervention was replaced with a national policy that declared the removal of half-caste children from their mothers. This policy was declared at the first Conference of Commonwealth and State Aboriginal Authorities, held in Canberra (Cassidy, 2006; Dow and Gardiner-Garden, 2011).

This conference believes that the destiny of the natives of aboriginal origin, but not of the full blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end (Commonwealth of Australia, 1937, p. 21).

Indigenous children were placed in government reserves with foster parents or government institutions with an objective to receive Christian education (Gardiner-Garden, 1999; Cassidy, 2006). However, Christianity or evangelising as a form to assimilate has been criticised as a way of oppression;

\begin{quote}
It does not call the colonized to the ways of God, but to the ways of the white man, to the ways of the master, the ways of the oppressor (Fannon 1963, p. 7).
\end{quote}

Indigenous children were sent to schools were they were not permitted to practice their native language or culture (Gandhi, 1998; Smith, 1999) and according to Gilbert (1978), these children were neglected by schoolteachers particularly in religious schools. Throughout the process of assimilation, the Australian government supported the discrimination against Indigenous peoples in areas such as voting rights, wage entitlements and social security entitlements\textsuperscript{20}.

\textsuperscript{19} In the absence of European women, half-caste children were the offspring from the white settler’s sexual abuse to Indigenous women. These children, which were born in cattle stations, reserves and in town fringe camp were not recognize by their white fathers (Cassidy, 2006).

\textsuperscript{20} See the Department of Territories Publication \textit{the Australian Aborigines}, July 1967, pp. 48- 61; the three volumes of C.D. Rowley, \textit{Aboriginal Policy and Practice}, 1970-7.
The three phases of colonialism delineate the historical process whereby the British “cancel or negate the cultural difference and value” of s people (Gandhi 1998, p. 16).

Similarly, Fanon (1963, p. 6) argues that:

Colonized society is not merely portrayed as a society without values. The colonist is not content with stating that the colonized world has lost its values or worse never possessed any, The ‘native’ is declared impervious to ethics, representing not only the absence of values but also the negation of values. He is, dare we say it, the enemy of values.

Said (1993) further argues that colonialism continues, its domination and inequality of power and wealth between non-indigenous and Indigenous peoples are permanent facts of human society. In the past, Indigenous peoples suffered the negative consequences of repressive laws that oppressed and controlled them, however, in the present corporations and multinationals such as Fortescue have the power and control to dominate Indigenous peoples through a legacy of dispossession and discriminatory legislation. As Haebich (2008, p. 9) argues;

[t]oday Indigenous Australians assert that rather than referring to a distinct policy governing a specific slice of time, assimilation has persisted as core doctrine in policy-making over the generations from first contact to the present.

Similarly, Gilbert (1978, p. 3) contends.

The real horror story of Aboriginal Australia today is locked in police files and child welfare reports. It is a story of private misery and degradation, caused by a complex chain of historical circumstance, that continues into the present.

The example of Yindjibarndi demonstrates how the colonial “cycle replicates itself” (Said 1993, p. 20). The mining land rights controversy between Fortescue and the Yindjibarndi people represents this residue of colonialism and a sign of how the past continues today. For example, Fortescue’s corporate practices such as providing training and employment to the Yindjibarndi people in exchange for mining compensation are not dissimilar to the assimilation process. The following section highlights the events in Australia from the mid nineteenth century.
2.8 Post-Assimilation

Despite colonial practices, there was evidence that the Indigenous population was slowly increasing. According to statistical evidence they were not a dying race, they were living in isolated areas in extreme poverty and this state of deprivation raised concern for many Australians and the government (Beherendt, 2010). These concerns fostered popular movements during the 1950s and 1960s (Beherendt, 2010) and resulted in a successful referendum in 1967 for amendment to the Australian Constitution Act 1901. The Constitution Alteration (Aboriginals) 1967 amended section 51 and section 127 (Dow and Gardiner-Garden, 2011). For example, the words “other than the aboriginal race” were removed from section 51 of the Australian Constitution Act 1905, therefore, enabling the Federal Parliament to legislate for Indigenous peoples; also section 127 was deleted, and Indigenous peoples were included in the census (Altman, 2009; Law Council of Australia; Rossingh, 2012). However, the amendments to the Constitution did not guarantee Indigenous-voting rights, confer citizenship rights (in theory they are Australian citizens) or granted wages in the pastoral industry (Law Council of Australia, 2011).

The 1967 referendum resulted in a 90 per cent “yes” vote and focused on the provision of rights and equal opportunities for Indigenous peoples. However, according to Beherendt (2010, p. 189) the 1967 referendum only allowed Indigenous peoples: “to be included in the census and, it allowed the Federal Parliament the power to make laws in relation to Indigenous peoples”. It was assumed that if power were conferred to the Federal government to enact legislation, this power would be used to benefit Indigenous peoples. This view, however, has not been the case of benevolence as widely believed. For example, legislation such as the Native Title
Amendment Act 1998 (Cth), was passed to remove Indigenous peoples rights (Strelein, 2009). Although acts such as the Racial Discrimination Act (1975) was a Federal initiative to “ratify Aboriginal and political rights and to prevent acts of racial discrimination” (Haebich 2008, p. 158), it has not provided protection to Indigenous peoples (see Miller et al. 2010). These discriminatory policies and legislation that were part of the colonial project are prevalent today (Russell, 2005; Maddison, 2012) and discussed in relation to the Native Title Act and its antecedent legislation in the following section.

2.9 Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth) (ALRA)

The Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth) (ALRA) is an important piece of social reform in Australia. ALRA is considered a benchmark law because it was the first attempt by the Australian government to recognise land ownership of Indigenous peoples (Russell, 2005; Central Land Council, 2006; Altman and Martin, 2009). However, the return and recognition of land to Indigenous peoples did not include minerals and other resources rights (Altman, 2009). The land obtained by Indigenous peoples “is granted under inalienable freehold title” (Central Land Council, 2006; Altman, 2009), “it cannot be bought, acquired or mortgaged” (Altman, 2009).

When ALRA was passed, it created a form of land title, which was held by land trusts and managed by statutory authorities called land councils (Altman, 2009). The objective of the land councils was to provide Indigenous peoples with assistance to claim and manage their lands, protect sacred sites and the financial management of income obtained under ALRA (Central Land Councils, 2006). However, “the ALRA
regime, especially its land councils and local communities’ rights of veto, has been responsible for poor economic outcomes” for Indigenous peoples (Clary 2014, p. 134). Therefore, for some Indigenous peoples, such as the Yindjibarndi, while they have inalienable title, mining development on their land is “legally subject to external governance, not local Aboriginal regulation” (Altman 2009, p. 20).

ALRA is considered the iconic ‘high water mark’ statute that was enacted for specific purposes, and has been subject to significant reviews suggesting important changes. The Aboriginal Land Rights Commission found that Indigenous communities have the capacity to control access to their lands (Law Council of Australia, 2007). Controlling access to Indigenous land is “one of the most important proofs of genuine Aboriginal ownership” (Aboriginal Land Rights Commission 1974, para 109). Commissioner Woodward 21 recommended that “the permit system should be implemented to allow aboriginal people to exclude from their lands those who are not welcome, with certain exceptions including police, health and emergency services and public officials” (Law Council of Australia 2007, p. 5). In 1998, the Federal Government commissioned John Reeves conducted a review of the Act and recommended to eliminate and replace the permit system in favour of enacting a law for Indigenous peoples to have the capacity to control who enter their lands (Law Council of Australia, 2007). However, a Parliamentary Inquiry rejected these changes in 1999 noting that Indigenous communities preferred the permit system to prevail (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 1999).

21 In 1973, the Australian Labor Party Prime Minister Gough Whitlam appointed Justice Woodward to recommend and prepare reports regarding the recognition of Indigenous land rights in the Northern Territory (Central Land Council, 2006).
2.10 The Mabo Case and the Native Title Act

The NTA was the result of a decision by the Australian High Court to recognise Indigenous land rights and to overturn the fiction of terra nullius or land belonging to no one (Short, 2007). It was the first time since the British settlement that the Australian High Court considered issues regarding land rights under s traditional laws (Neate, 2004).

In 1992, *Mabo v Queensland* the High Court of Australia established that the Meriam people of the Murray Islands had maintained their connection with the land from earliest times. Therefore, they demonstrated land rights according to their Indigenous law and traditions and, that those rights are protected by the Australian law (Corbett and O’Faircheallaigh, 2006; Strelein, 2010). The court sustained the claim, ruling that when the “British Crown acquired the territory and sovereignty through acts of State it gained a radical title on the lands” (Short 2008, p. 37). In this regard, the British Crown was not the beneficial owner of the land because it remained in the possession of Indigenous peoples. Therefore, Indigenous peoples were granted by common law, a form of native title that entitles the right to possess, occupy, use and enjoy the Murray Islands (Short, 2008; Howlett, 2011). Further, the Australian court decided that this principle was applicable to Australia as a whole, and decided to rule for the abandonment of the doctrine of *terra nullius* (Short, 2008; Strelein, 2010).

In 1992, the Mabo case recognised the injustice committed to Indigenous peoples by the coloniser in dispossessing them of their lands, freedom, culture and religion

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22 After Eddie K Mabo. In the 1970s Eddie Koiki Mabo from the Torres Strait island of Mer (Murray Island) discovered that the Murray island was Crown land. He decided to take the case to the Court to establish that the Meriam people had legal rights in their land (Neate, 2004).
Bartlett, 1997; Warden-Fernandez, 2010). The Mabo decision recognised that Australian Indigenous peoples already have land rights that have survived colonisation and passed from generation to generation (Morris, 2012). The Australian Court held that;

> [t]he common law of this country recognises a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the [i]ndigenous inhabitants, in accordance with their laws or customs, to their traditional lands (Neate 2004, p. 115).

However, the recognition of the native title was not welcomed. The mining and the pastoral industry feared that land leases might be subject to Indigenous land claims (Gibson, 1994). Accessing the land is important to the development of the mining (Gibson, 1994; Howlett, 2011). And the industry had concerns about the threat to investment.

In terms of mining investment, Australia has always had three factors in its favour – geologically rich, stable government and security of tenure. Mabo has now removed security of tenure for all tenements granted post October 31, 1975 (the date of the operation of the Racial Discrimination Act) (Way 1993, p. 9, cited in Gibson 1994, p. 4).

The Native Title Act 1993 (Cth) was enacted as the Commonwealth Government’s legislative response to the Mabo case. This legislative response gave statutory effect to the Mabo decision establishing a framework in which native title can function (Strelein, 2010; Stephenson, 2011). Therefore,

> [t]he native Title is the set of institutions and processes that were established after the Mabo decision to manage the dispute over traditional Indigenous land rights in Australia under the Commonwealth’s Native Title Act 1993 (Ritter 2009, p. x).

However, for Indigenous peoples it is not merely a title, it is an important recognition “of the distinct identity and special place of the first people” (Strelein 2010, p. 128). However, Indigenous peoples have encountered difficulties with the Act (see Chapter 5) because it extinguishes Indigenous land rights in certain cases (see more in section 2.10.1).
The objective of the NTA was to recognise and protect native title (Banerjee, 1999; Dudgeon et al. 2010; Howlet, 2010). However, the NTA is restrictive and facilitates mining exploitation activities on land where native title may or does not exist. This is further complicated because, according to native title, Indigenous peoples are not granted the right of sale or transfer and, as such, Indigenous peoples do not have the opportunity to expand their economic, social and cultural values (Pearson, 2003; Corbett and O’Faircheallaigh, 2006). Native title operates on traditional Indigenous practices, but is nevertheless entrenched in colonial structures because it operates “around the fringes of white property rights” (Short 2007, p. 860).

Under the NTA, Indigenous owners are granted the Right to Negotiate (RTN), however they do not have the right to say ‘no’ to mining activity (Corbett and O’Faircheallaigh 2006; Howlet, 2010; Warden- Fernandez, 2010). This “right to negotiate is the right of the native title party to be involved in discussions about – but not veto – certain proposed developments” (National Native Title Tribunal 2002, p. 3). Although the RTN is considered one important element of the NTA and one of the most important rights achieved by Indigenous peoples in their land rights dispute (Howlett, 2010), mining companies opposed the High Court of Australia’s recognition of native title to land and as such they called for legislation to;

[O]vercome the potential invalidation of thousands of land titles – pastoral, mining, forestry – by fact they were awarded by governments in possible contravention of the racial Discrimination Act in not taking account of the interests of “native title” holders (Gill 1993, p. 16, cited in Gibson, 1994, p. 4)

The Native Title Amendment Act 199823 (NTAA) included the following reforms to reduce the RTN: 

Raising the threshold for registration of applications, and therefore limiting access to

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23 Further elaborated under section 2.10.1
procedural rights such as the RTN and diminishing or removing the right to negotiate and introduction of more limited rights to notification and comment in relation to various classes of acts (Strelein 2006, p. 7).

The scope of the RTN operations was diminished to reduce the impacts of native title on the mining sector (Strelein, 2006; Howlett, 2010). Howlett (2010, p. 102) argues that the RTN was reduced to a “right to be consulted with control over land use decision-making being effectively returned to the State governments”.

2.10.1 Impacts of Native Title

The NTA allows any person (corporation or individual) with interests impacted by the Act’s provisions to become a party to a claim. Consequently, the mining industry, which is the most important sector within the Australian economy, was significantly opposed to the NTA (Ritter, 2009; Strelein, 2010). Every industrial sector needs land or water in which to operate. These industries involve different activities and need different kind of permission to operate without impediment. The Mineral Council of Australia (MCA) did not support the NTA as it created a conflict in securing new leases, especially because the mining companies disagree with the right to negotiate ‘economic business’ with Indigenous peoples (Ritter, 2009).

The NTA ensured that the economic interests of the mining industry were not threatened (Daes, 2001; Short, 2007) and allowed the Native Title Amendment Act 1998 Cth) (the Amendments) to exclusively grant mining leases (Strelein, 2010). Consequently, the NTA amendments in 1998 significantly diminish the protection previously introduced in the NTA 1993 (Stephenson, 2011). Daes (2001, p. 12) argues that the Committee on the Elimination of Racial Discrimination, on 18 March 1999 found that provisions in the 1998 NTA (Amendments);
[e]xtinguish or impair the exercise of indigenous title rights and interests and discriminate against native title holders (A/54/18, para. 21, decision 2 (54)).

For example, the NTA reduced the protection granted by the NTA 1993 by:

[ diminishing] or removing the right to negotiate and introduction of more limited rights to notification and comment in relation to various classes of acts and the introduction, and also introduced a detailed scheme of Indigenous Use Agreements that allowed greater certainty for non-Indigenous parties through the creation of binding agreements (Strelein 2009, p. 7).

According to Short (2007) the mining sector lobbied the government to validate prevailing commercial titles for two important reasons. First, the native title could be extinguished with a compensation payment. Second, to ensure that native title holders did not have the right to veto land development of their lands in the future. Thus, as stated by Short (2007) the NTA decision was a political agreement between vested interest parties and the government rather than a moral compromise. Mining is important for the Australian economy and is sufficiently politically powerful to influence the policy making process (Nettheim, 2003). These amendments were facilitated because “the mining industry is a powerful interest group with greater access to the policy making process in comparison with Indigenous people” (Howlett 2011, p. 82).

The agreement reached demonstrates that the interests of non-indigenous peoples are dominant. Strelein (2009) argues that land rights have been removed from Australian Indigenous peoples before and after the Mabo case, and native title has been extinguished by the granting of mining leases. Therefore, the intent to reform some of the British aspects of domination that were imposed during the colonial period on Indigenous peoples have failed because Indigenous peoples have never willingly given away their lands.
Settler state granted rights such as native title are a continued form of colonialism “and not a remedy to it” because such rights are controlled and regulated by the State to favor non-indigenous peoples, Alfred (1999, p. 58). Despite the rejection of *terra nullius* in Mabo and the subsequent provisions of the NTA to privilege the mining companies, reflects a colonial way of thinking by denying Indigenous peoples sovereignty and self-determination. Watson (1997, p. 48) states that:

> [t]erra nullius has not stopped; the violations of our law have continued, the ecological destruction of the earth our mother continues with a vengeance, we are still struggling to return to the land, and the assimilator-integrator model is still being forced upon us.

The NTA, failed to recognise that the British settler illegally imposed its superiority on Indigenous peoples “who were distinct political entities with land and sovereignty at the time of conquest” (Short 2007, p. 869).

In the case of the Yindjibarndi people, the NTA gave prominence to the obligation of the Australian government to consider the land rights of the Yindjibarndi people. However, mining land rights were granted to Fortescue despite evidence that the Yindjibarndi are the traditional owners of the land where the Solomon Hub Project was being developed. This demonstrates a form of accountability grounded in British colonial thinking rather than the collective concept of accountability (Gallhofer et al. 1996) based on Yindjibarndi cultural values.

### 2.11 Summary

This chapter discussed the historical development of the Australian colonial process, highlighting its importance on the development of government policies. The three periods of the colonial process discussed were confrontation, incarceration and assimilation. For this thesis, the three periods are relevant as they highlight how
British colonisation created cultural differences, power and economic inequalities that adversely affected and continue to affect the lives of Australian Indigenous peoples. The relevance of the colonial period was discussed in terms of its importance in the imposition of British law and claims of land ownership. British law gave pastoralists and farmers rights that affected the relationship between non-indigenous peoples and Indigenous peoples. The main objective was to provide a view of how the colonial period gave mining corporations the basis to continue to govern Indigenous peoples. Further, it was discussed how the Fortescue and Yindjibarndi case is an example that is reminiscent of the colonial period.
CHAPTER 3: POSTCOLONIAL THEORY

3.1 Introduction

In Chapter 2 the background to the Australian colonial period was outlined in order to provide a background understanding of how the Yindjibarndi Indigenous peoples are still significantly influenced by colonial ideology. This provides the basis for the identification of the effects and consequences as the continuation of colonial exploitation in current times.

This Chapter outlines postcolonial theory as a framework to examine the interrelationship between colonial practices towards Indigenous peoples and contemporary forms of mining exploitation. In this regard, postcolonial theory entails a consideration and analysis of the effects of the contemporary legacies left by the British settlers on Australia’s colonised Indigenous peoples. Young (2001, p. 11) argues:

Postcolonial critique focuses on forces of oppression and coercive domination that operate in the contemporary world: the politics of anti-colonialism and neo-colonialism, race, gender, nationalism, class and ethnicities define its terrain.

This thesis analyses the unequal power relations between the Yindjibarndi Indigenous peoples and Fortescue and the conflict that arises. Philosophies of postcolonial theory unveil how British culture and ideology “established systems of rule and forms of social relations which governed interaction with the Indigenous peoples being colonized” (Smith 1999, p. 26). The relation between the coloniser and the colonised were gendered and hierarchical as it involved the power to dominate Indigenous peoples. The Fortescue and the Yindjibarndi case is built on these notions of power, imperialism and differences of culture between non-indigenous peoples and indigenous peoples. In so doing:
[p]ostcolonial theory aims to develop a fine-grained understanding of: (a) the multiplicity of instruments and causes that combine to perpetuate the current international regime of exploitation and deprivation, as well as (b) of their wide-ranging effects on peoples, cultures, economies, epistemologies, and so forth (Prasad and Prasad 2003, p. 284).

The next section discusses the background of postcolonial theory, followed by the ambiguities in its definition. Later, the chapter will address how postcolonial theory is incorporated into an accounting context in different colonised countries, including Australia. The final section of the chapter outlines how postcolonial theory is applied to the Fortescue and Yindjibarndi case in an accounting context.

### 3.2 Postcolonial Theory Background

Postcolonial theory emerged in the 1980s, in the publication of Edward Said’s *Orientalism* in 1978. Orientalism set the grounds and it is regarded as the “catalyst and reference point for postcolonialism” (Gandhi 1998, p. 64). According to Said (1978, p. 2), “[O]rientalism is a style of thought based upon an ontological and epistemological distinction made between the Orient and (most of the time) the Occident”. In this regard, according to Said (1978) postcolonial theory focuses on the Western representation of the Orient as ‘primitive and inferior’, a collective notion that extends to all non-western people and cultures. Said (1998) argues that this ‘primitive’ is a fabrication and a representation by Western colonisers, philosophers and many writers since the Egypt’s invasion by Napoleon in 1798. This ‘primitive’ is the colonised or the ‘other’ that depicts the Indigenous peoples of many regions across the world by the colonisers in the same way as the Orient. Bhabha (1990, p. 75) contends:

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24 The Occident represents the Western countries from Europe.
The objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration and instruction.

Since Orientalism came to light, postcolonial theory has been studied by researchers in many disciplines such as post-structuralism, psychoanalysis and feminism (Gandhi 1998), history, anthropology (Loomba, 2005), culture, political science, religious studies, sociology, philosophy and geography (Prasad, 2003). These studies involve analysis of migration, slavery, suppression, resistance, representation, difference, race, gender, place, indigenous peoples and ethnicity (Ashcroft et al. 1995). In addition, postcolonial theory is associated with the works of historical figures such as Franz Fanon (1961); Albert Memmi (1968); Gayatri Spivak (1985); Homi Bhabha (1994); whose literary origins are embedded in the “landscapes, languages, cultures and imaginative worlds of peoples and nations whose own histories were interrupted and radically reformulated by European imperialism (Smith 1999, p. 19).

Postcolonial theory thus, unveils the ideological views created to justify the exercise of power inherited by colonial domination. It investigates the outcomes of the cultural clash between Indigenous and non-indigenous peoples, the effects of colonialism on Indigenous cultures and the ideology of superiority, which empowers the Western culture (Sawant, 2012). In addition, postcolonial theory seeks emancipation from the subjugation of Indigenous peoples. However, it does not introduce a new world different from the aftermath of colonialism. Chilisa (2012) claims that postcolonial theory can ignore the values of Indigenous peoples, such as the concepts of family, spirituality and sovereignty; and, argues for research within the Indigenous context that takes these into consideration as a form of postcolonial Indigenous theory that:

[em]phasize indigenous theorizing and indigenous knowledge as essential ingredients in postcolonial theory and recognizes the indigenous knowledge as a rich source from
which to theorize postcolonial indigenous research methodologies (Chilisa 2012, p. 50).

It promotes change in the lives of Indigenous peoples in terms of giving them the necessary authority, and cultural freedom to gain independence and to overcome political and cultural imperialism (Sawant, 2012). Postcolonial theory then is a process concerned with remembering and questioning colonialism.

In the Australian context, the British settler constructed a false image of the Australian Indigenous peoples from inferior, dirty, savage and childish, therefore, transforming the Indigenous as ‘the other’, contrasted with the civilised and superior British (Langton, 1993; Moreton-Robinson, 2004).

[i]s the settler who has brought the native into existence and who perpetuates his existence … it influences individuals and modifies them fundamentally. It transforms spectators crushed with their inessentiality into privileged actors, with the grandiose glare of history’s flood lights upon them, introduced by new men, and with a new language and a new humanity” (Fanon 1963, pp. 35-36).

According to (Miley, 2006) the Indigenous representation as the ‘other’ and ‘inferior’ during the Australian colonial period, was the cause that gave rise to genocide, dispossession, incarceration and assimilation of Indigenous peoples into British culture dictated by government policy and legislation. In this thesis the ‘other’; as the inferior, powerless and oppressed, is represented by the Yindjibarndi community.

We are constantly defined as ‘other’, but we are never permitted to be generally independent, generally different. In fact, far from being recognized in our difference, in our own terms, we are always defined in the terms of the colonising or defining culture…. Our difference and our independence would threaten the boundaries of identity, knowledge and absolute truth, which give the subject a sense of power and control,… Aboriginality is defined in terms of how it compares with the dominant culture (Dodson 1994, pp. 8-9).

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25 Michael Dodson is an Australian Indigenous spokesperson that helped to improve the lives of Australian Indigenous peoples and advocated for Indigenous rights across the world. Dodson promoted the organization Reconciliation Australia that Prime Minister Kevin Rudd delivered in 2008.
Langton (1993) contends that the Australian Indigenous peoples have been depicted as the ‘other’ through their representation by non-indigenous writers such as settlers, explorers, critical, social and cultural commentators. The ‘other’ is a binary representation of self/other, civilised/native, us/them, that frames the settler as subject/self and the Indigenous as the objectified other (Fanon, 1967; Miley, 2006). Banerjee (1999, p. 9) contends that:

[t]he fact that constructions of Aboriginality have been shaped by colonial and racist discourses should come at no surprise: what is interesting and problematic is the fact that representations of Aboriginality in ‘postcolonial’ Australia continue to be dominated by non-Aboriginal people.

During the 1980s and 1990s, postcolonial theory emerged in Australia as a theoretical framework with the publications of Orientalism (Said, 1988) and Black Skin, White Masks (Fanon, 1967). In The Empire Writes Back: Theory and Practice in Post-Colonial Literature (Ashcroft et al. 1989) the key terms and discursive tenets of the postcolonial theory within the Australian context are elucidated (Miley, 2006). Since then, the Australian Indigenous peoples started to react and engage ethical debates over the non-indigenous theoretical paradigms controlling Indigenous representation as ‘primitive’ or the ‘other’ (Moreton-Robinson, 2004; Miley, 2006).

3.3 Postcolonial or Post-colonial?

The definition of the term postcolonial is fraught with ambiguity, and has raised disagreement among literary critics around attempts to define the postcolonial term (Appia, 1991; McClintock, 1992; Shohat, 1992; Ashcroft, Griffith and Tiffin, 1995; Gandhi, 1998; Cook- Lynn 2012). The term causes confusion among scholars with the difference between the term ‘post-colonial’ and the non-hyphenated ‘postcolonial’. Some critics attribute the hyphenated form post-colonial as a temporal marker, a historical process denoting after-colonialism, whereas postcolonial (without a hyphen)
refers to the cultural characteristics acquired from the beginning of the colonisation to the present (Gandhi, 1998).

‘Postcolonial’ literature was initially used to narrate the period that began after the Second World War. This understanding also explains the confusion of the term ‘post’, as writers from the colonised countries began to ascribe critical discourses emanating from the colonial period (Shohat, 1992). However, according to Gandhi (1998) the value of the term must be judged according to its capability to conceptualise the aftermath of the historical condition during colonial occupation. Accordingly, academics and critics in general provide different definitions of the term to account for its meaning. For example, Ashcroft et al. (2003) claim that postcolonial theory is the result of the complex interaction between non-indigenous imperial culture and Indigenous peoples. Yet others, such as McLeod (2000, p. 5) asserts that, ‘postcolonial’ theory refers to a particular historical period (after-colonialism), while postcolonial theory is the “disparate forms of representation, reading practices and values that can circulate across the barrier between colonial rule and national independence”. As such, postcolonial theory ‘is not contained by tidy categories of historical periods or dates’”. In the same vein, Shohat (1992, p. 101) claims that ‘postcolonial’ is:

A new designation for critical discourses which thematize issues emerging from colonial relations and their aftermath, covering a long historical span (including the present).

Similarly, Ashcroft et al. (1989) contends that it is necessary to consider that the meaning of postcolonial theory should not be restricted to ‘after colonialism’ or after independence:

We use the term ‘post-colonial’, however, to cover all the culture affected by the imperial process from the moment of colonisation to present day. This is because
there is a continuity of preoccupations throughout the historical process initiated by European imperial aggression (Ashcroft et al. 1989, p. 2).

Further, Bush (2006) argues that, there is continuity between the political independence and decolonisation and that there are no apparent gaps between colonial and postcolonial. This is because all postcolonial societies are still subject to modern colonial domination and inequities of power and wealth. Indigenous peoples are as dominated and dependent as they were when ruled by the British power (Said, 1993).

Sleman (1991) highlights the importance to adopt a position considering that the meaning of postcolonial should not be restricted to ‘after-colonialism’ or ‘after independence’.

Definitions of the ‘post-colonial’ of course vary widely, but for me the concept proves most useful not when it is used synonymously with a post-independence historical period in once-colonised nations, but rather when it locates a specifically anti-or post-colonial discursive purchase in culture, one which begins in the moment that colonial power inscribes itself onto the body and space of its Others and which continues as often occulted tradition into the modern theatre of neocolonialist international relations (Sleman 1991, p.3).

Using the term ‘post’ has implications for how colonial practices are perceived in the current period. Although the notion of the prefix ‘post’ implies a period after colonialism, suggesting that colonialism has ended. However, it is argued that traces of colonialism continue to exist today “in economic terms of progress and development” (Banerjee 1999, p. 4). According to this perspective, postcolonial theory has two limitations: first, it ignores the present legacies of colonialism (Said, 1986). Second, ‘it obscures’ unequal power relations between settlers and the colonised in the present by “prespecifying the path the former colonies must take – the path to “development”, “progress” and “modernity”, which continues” (Banerjee 1999, p. 5) the same unequal distribution of resources between non-indigenous peoples and Indigenous peoples. Also, postcolonial theory is problematic in accounting for the struggles of s peoples “to negotiate with and survive colonial
conditions in countries like “postcolonial” Australia where Aboriginal peoples are denied their rights” (Banerjee 1999, p. 5), especially, mining and land rights such as the case of the Fortescue and Yindjibarndi.

In summary, the above definitions of postcolonial theory contend that ‘economic development’ and ‘progress’ is the reason sustaining postcolonial societies under colonial relations.

Development always entails looking at other worlds in terms of what they lack, and obstructs the wealth of indigenous alternative (Sachs 1992, p. 6).

Since the term postcolonial covers the process from the moment of colonisation to the present day, this thesis will use the term ‘postcolonial’ without a hyphen. Therefore, postcolonial implies that, even after State independence, the domination, subordination and unequal treatment of Indigenous peoples still prevails in Australia. The continuing process of British colonial traces are present in the land right struggles of Indigenous peoples where multinational mining companies dominate the landscape. As Shohat (1991, pp. 102-105) argues that;

[t]he term “post-colonial”, in this sense, masks the white settlers, colonialist policies towards indigenous peoples … [it] carries with it the implication that colonialism is now a matter of the past, undermining colonialism’s economic, political, and cultural deforming traces in the present … leaves no space, finally, for the struggles of aboriginals in Australia dominated by First World multi-national corporations.

In Australia, after the Second World War, ‘economic development’ emerged with mineral extraction (Banerjee, 1999). However, this economic progress had and continues to have adverse impacts on Indigenous peoples. Contemporarily, in Australia these facts can be interpreted in different forms. For example, the profit objective of mining companies is justified on the basis of potential economic benefits and development. However, the environmental damage, social and cultural impacts on Indigenous peoples is often ignored (Banerjee, 1999). In addition, relics from the past
are still visible in the enactment of legislation and policies, such as the NTA, that are intended to protect land rights of Indigenous peoples.

3.4 Postcolonial Theory and Australia

Postcolonial theory is a term that denotes the material effects of colonialism and its continuing process of imperial supersession throughout societies and institutions (Said, 1993; Smith 1999; Ashcroft, 2003; Alfred, 2005; Prasad, 2003). At the same time, postcolonial theory is concerned with an understanding and revaluation of the colonial heritage and “economic, psychological, social, cultural and aesthetic dimensions of colonialism in both past and present circumstances” (Prasad 2003, p. 263).

As stated by Weaver (2000, p. 223), “colonialism is not dead”, it is still present as a continuous process of colonialism in its new guise of the corporate power and domination and accountability systems grounded in the colonial period. Trees (1993, p. 264) for example asks;

[d]oes post-colonial suggest colonialism has passed? For whom is it ‘post’? Surely not for Australian Aboriginal people at least, when land rights, social justice, respect and equal opportunity for most does not exist because of the internalised racism of many Australians.

In addition, Lucashenko26 states:

What’s post-colonialism? Then you have to ask what’s colonialism? which is the process of coming in and taking people’s land and sovereignty away from them. The process of actually taking that has almost ended, but it hasn’t quite ended because of Mabo and Wik where it’s politically still going on, and psychologically, because people in the bush are much closer to that stuff I think, than people in the city, so to them they are far more in the colonial period than we are.

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The mining land rights controversy between Fortescue and the Yindjibarndi community demonstrate how the former dominates the latter. While the Yindjibarndi had valid fears and have worked to gain protection through the NTA, they still continue to struggle to resolve their land rights claim. In this regard, Phillips\textsuperscript{27} states that;

> if only they’d realise the way in which they carry themselves in society today is still colonial. They take an ownership stand, saying if we didn’t colonise these people they wouldn’t be able to create this stuff.

Therefore, in Australia independence has not been a solution to overcome the effects of colonial power for the Yindjibarndi community.

The development of new elites within independent societies, often buttressed by neo-colonial institutions; the development of internal divisions based on racial, linguistic or religious discriminations; the continuing unequal treatment of indigenous peoples in settler/invader societies (Ashcroft et al. 2003, p. 2).

Said (1993) states that negotiation, dialogue and exchange could result in mutual transculturalism where the Indigenous are not oppressed and ignored. Therefore, postcolonial theory, in its effort to bring out cultural differences, sheds light on different ways of seeing, and seeks to ensure that Indigenous voices are not silenced through the imposition of British power structures of cultural domination (Bush, 2006). Steenkamp (2010, p.10) contends that postcolonial theory is “characterized by a desire to challenge ‘normative’ [British] notions of power by giving voice to the marginalized, misrepresented and silenced other”. This thesis explores the unequal power relations between the Yindjibarndi and Fortescue. Using the lens of postcolonial theory, it enables a better understanding and identifies the effects and consequences as a continuation of colonial exploitation. It captures how colonial practices and ideologies influence contemporary socio-political disputes (Gandhi, 1998).

\textsuperscript{27} Phillips is an Australian Indigenous writer. Excerpt from: Anita Heiss, Dhuulu-Yala: To Talk Straight, Aboriginal Studies Press, Canberra, 2003, pp. 44.
3.5 Accounting and Postcolonial Studies

This study will explore notions of power, imperialism and colonialism and the diversity of culture that underpins practices of accountability. The use of a postcolonial lens within the accounting literature is limited because of a resistance to acknowledge the role of accounting’s calculative practices in the objectification of Indigenous peoples (Neu, 1999). Nevertheless, this section illustrates accounting studies that have explored these issues in different contexts (Chew and Greer 1997; Gibson 2000; Neu 2000a, 2000b; Davie 2005; Thornburg and Roberts 2005; Neu and Graham 2006; Moerman and van der Laan, 2011).

As a theoretical framework, postcolonial theory has been used to research Indigenous issues in accounting in four areas: accounting techniques and domination; accounting as a tool for dispossession; culture and assimilation and concepts of accountability (Buhr, 2012). The majority of this literature focuses on five countries settled by the British including: Australia, New Zealand, Canada, Fiji and USA. Studies by Chew and Greer (1997), Gibson (2000), Neu (2000a; 2000b), Davie (2005), Thornburg and Roberts (2005) and Neu and Graham (2006) have explored how governments support the role of accounting and accountability practices in the assimilation of Indigenous peoples into non-indigenous culture. These studies concur that accounting technologies, grounded in calculative techniques, objectivity and rationality, supported colonial practices to dispossess Indigenous peoples from their lands and culture.
For example, the study by Neu and Therrien (2003) draws on colonial discourse and postcolonial theory to highlight the role of accounting numbers in shaping fiscal policy. They demonstrate the complicity of accounting with bureaucracies to construct societal governance, thus, contributing to violence against Indigenous peoples. Neu and Therrien (2003) demonstrate how the Canadian government with the help of accounting calculative practices disguised economic progress to dispossess Indigenous peoples from their lands and control Indigenous social and economic lives. Neu and Therrien (2003, p.5) state that “accounting techniques and calculations have been, and continue to be, essential tools in translating imperialist/colonial objectives into practice, and that genocide is often the result”. Therefore, their research demonstrates that the Canadian government has enacted legislation and fiscal policies to continue exploitation. Thornburg and Roberts (2005) also examine accounting’s complicity with the United States government to dispossess Alaska Natives of their land and the forceful assimilation into Western economic practices. Their study concludes these practices were enabled through the creation of legislation to protect non-indigenous private property rights and to favor their economic interests.

Further, Davie’s (2005) research focuses on accounting as a calculative practice that provides information to perpetuate imperialist activities. She provides insight from colonialism and postcolonialism to draw attention to forceful racist exclusion and highlights the role of accounting, in supporting racism for development purposes in Fiji’s pine industry. Davie’s (2005) study illustrates how the traditional social-racial philosophies of organisation and ownership that define the pine industry still prevail.
By respecting the values encapsulated in different cultures, Gallhofer et al. (2000) claim that Indigenous peoples can assist in the development of environmental accounting. Their study suggests important Indigenous cultural principals that can shape development in external disclosures in relation to the environment. Some of these Indigenous principles include respecting all human and non-human life in a way that constitutes one whole life that can engender a responsibility to care for “the earth’s resources and a concern to assess, in some detail, the impact of activity upon the full diversity of life including upon the earth itself” (Gallhofer et al. 2000, p. 402). They suggest that corporations need to recognise that the concept of ‘value’ can be non-financial and, as such, needs to be reported accordingly.

Studies of Australian Indigenous peoples have highlighted the differences in cultural values between indigenous and non-indigenous peoples (Chew and Greer, 1997; Greer and Patel, 2000; Gibson, 2000). Greer and Patel’s (2000) study demonstrates the conflictive cultural differences between non-indigenous and Australian Indigenous. Their study draws on the yin/yang framework to examine this cultural difference. The yin values of sharing, relatedness and kinship obligations implicit in Indigenous conceptions of work and land conflict with the yang values of quantification, efficiency, productivity and reason imposed by accounting and accountability systems. They infer that Indigenous societal structures are rooted in perceptions of human beings as one family that implies a relationship with the natural environment of cooperation, sharing and coexistence with animal species. This relationship is grounded in non-hierarchical values where material wealth is not as important as human value and spiritual knowledge that is shared with others. Greer and Patel (2000, p. 307) argue that mainstream cross-cultural research approaches are
limited because “it effectively disfranchises the culture of minority groups such as indigenous people”.

The study by Chew and Greer (1997), examine the issues emanating from the imposition of Western form of accountability on the Australian Aboriginal and Torres Strait Islander (ATSI). According to Chew and Greer (1997) the ATSI Commission was established to set up Indigenous policy of self-determination. However, it “is accused of continuing the system of oppression and alienation of the ATSI peoples and that accounting is implicated in this process” (Chew and Greer, 1997, p. 277). Chew and Greer (1997, p. 293) claim that Western forms of accountability on “Aboriginal communities cuts across [Aboriginal] ways of doing things”. They argue that to overcome this ‘form of accountability’, it should take into account Indigenous world views based on reciprocity and community.

The study by Gibson (2000), in particular, demonstrates how the language and terminology of accounting has been and continues to be a powerful tool in the disempowering and dispossession of Australian Indigenous peoples. Gibson (2000) argues that accounting terminology supports economic growth and development that is grounded in objectivity and scientific measurement. Therefore, accounting expresses the value of economic power as seeking wealth at the expense of social infrastructure and social interaction. This economic paradigm is reinforced by accounting language that contributes to the dispossession of Indigenous peoples, who do not value material wealth as a measure of economic success.
Gibson (2000) also claims that the dispossession of Indigenous Australians and accounting’s role during the colonial period is still persistent in contemporary times. She argues that accounting and accountability requirements were imposed by the Australian government on the Aboriginal and Torres Strait Islander Commission (ATSIC). In the same vein, Neu (2000) contends that accounting calculations and techniques have been, and continue to be, implicated in the colonisation of Indigenous peoples in Canada. Using the work of Foucault (1991), he found that the notion of governmentality is useful to investigate how accounting functions as a technology of government. Neu (2000) further considers the roles played by what he calls the ‘hardware’ (i.e. military technology) and ‘software’ (accounting techniques) of colonialism. Neu’s (2000) study makes a significant contribution that links accounting techniques and government activities directed toward Indigenous peoples, making accounting role visible in the reproduction of colonialism.

In light of the above, and other postcolonial literature, the aim of this thesis is to provide empirical evidence of current Indigenous dispossession of the land and oppression and to illustrate, the mining land rights controversy between Fortescue and the Yindjibarndi community. This is a current and unresolved Australian Indigenous land right issues since important decisions regarding land ownership and native title were made in the Mabo case and NTA (Strelein, 2009). In doing so, this thesis demonstrates how accounting and accountability practices grounded in colonial ideology continue to contribute to Indigenous subjugation. Since this thesis explores corporate disclosures within the mining industry, it is concerned with corporate social responsibility and accountability within the context of Indigenous land rights.
3.6 Accountability in a Postcolonial Context

The discovery, extraction and processing of mining activities is recognised as one of the most environmentally and socially disruptive activities (Peck and Sinding, 2003). As such mining companies have come under society’s increased pressure from different stakeholders to discharge accountability for their impacts on Indigenous communities. Consequently, mining corporations have responded to such criticism by undertaking procedures to become more socially responsible. However, some academics argue that:

> [a]ccountability is a key concept in the management of social affairs. Its meaning is dependent upon relations of power and has always been contested. It can be changed through social struggle and practice (Cousins & Sikka 1993, p. 53).

As such,

> [p]arallel to the growing CSR rhetoric, CSR is primarily about projecting a suitable image in order to placate critics and ensure ‘business as usual’. The objective of CSR is to align corporate policies and practices to sustainable development, in order to ensure companies’ reputation and their access to capital, land and markets (Hamann and Kapelus 2004, p. 86).

In recent years, for example Fortescue has been the subject to criticisms in relation to the disturbance of Yindjibarndi sacred places and mining agreements without the approval of the Yindjibarndi community. In response to this criticism Fortescue has undertaken procedures to become more socially and environmentally responsible. For example, in its 2013 Annual Report, Fortescue incorporated the CSR section entitled *Aboriginal Engagement*. In this section, Fortescue made disclosures regarding its commitment to accept norms such as United Nations Guiding Principles on Business and Human Rights.

Our established Land Access Agreements, along with our management practices help us to uphold fundamental human rights and respect for Aboriginal communities touched by our activities. This approach is in keeping with Fortescue’s Human Rights Policy, and is aligned with the United Nations Guiding Principles on Business and Human Rights (Fortescue Annual Report 2013, p. 26).
Fortescue commits to strengthen its relationship with Indigenous communities and argues that communication reduces the disparity in reaching Land Access Agreements with Indigenous peoples (Fortescue Annual Report, 2013). However, corporate environmental disclosures seek to project a good public image, simply reflecting, “the narcissistic concerns of the corporation to appear responsible” (Messner 2009, p. 922) or a concern for how others see the corporation (Roberts, 2003). Other scholars have found that corporations’ non-financial disclosures do not represent the reality of the organisation but are a set of practices that construct and shape organisational reality (Roberts, 1991). These different views and forms of accountability are further explored in the following section.

3.6.1 Accountability

Within an accounting context, there are different and multiple styles of accountability (Ahrens, 1996; Miller, 2001) that are “subjectively constructed and changes with context” (Sinclair 1995, p. 219) and relationships (Miller, 2001). Accordingly, the concept of accountability has been contested (Cousins and Sikka, 1993) and subject to interpretation (Gibson, 2000). In its simplest definition “accountability entails a relationship in which people are required to explain and take responsibility for their actions” (Sinclair 1995, p. 221) or what Robert and Scapens (1985, p. 447) refer to as “the giving and demanding of reasons for conduct”. However, accountability is “complex, multi-dimensional and processual” (Miller 2002, p. 554). Given these tensions and complexities about accountability, accounting researchers acknowledge different forms of accountability. For instance, Goodin (2003) identifies that accountability adopts different forms within the state, the market and non-profit sector contexts. According to Sinclair (1995), accountability changes according to political, managerial and public contexts. Further, Roberts (1991; 2001) sees accountability as
hierarchical, and infers that the corporation develops systems of accountability based on corporate power and control that promotes individualism. As such Roberts (1996) argues for a more socialising view of accountability, achieved through communication that can overcome this hierarchical accountability. Further, Arrington and Francis (1993, p. 123) adopt a hermeneutic approach to accountability where “a broader sense of the possibilities of accountability” can be developed.

A number of accounting researchers contend that accountability is concerned with giving an account that entails “an obligation to answer for the execution of responsibilities” (Gibson 2000, p. 1) where the rights of the individuals to give or receive an account are grounded within the confines of hierarchical accountability (Roberts, 1991; 2001). This thesis explores a hierarchical concept of accountability to argue that there is a distinction between different practices and processes of accountability according to their individualising (hierarchical) effects. Individualising effects occur when;

[the] market mechanisms and formal hierarchical accountability, involve the production and reproduction of a sense of self as singular and solitary within only an external and instrumental relationship to others, (Roberts 2001, p. 1547).

This thesis examines the form of accountability discharged by Fortescue within the context of mining land rights. Within this context Roberts (1991) asserts that annual reports disclose information that play an important role in the way corporations discharge information. In the case of Fortescue accounting information is produced to render the corporate activities visible in a way that reflects information relating to the maximisation of profits (Lantos, 2001; Wickert and Schaefer, 2011) and neglects the social impacts of their activities on some members of society, such as Indigenous peoples (Flores, 2001).
[abuses] of power or the fraudulent potentials of a local group. In all this bureaucracy at the least mitigates the destructive potentialities contained within localized communities, to the benefit either of those within or in the larger group (Roberts 2001, p. 364).

The annual report information, consistent with the accounting practices grounded in objectivity and neutrality of traditional accounting, is based on scientific technology and reflects the practices and legacy of the colonial period. Hopwood (in Sinclair, 1995, p. 179) noted that to discharge accountability is to give “selective visibility” to some organisational outcomes. For example, Australian corporations, like Fortescue, use their corporate power so that “rather than enhancing accountability and improving effectiveness … [it has] created incentives for deception” (Kirsch 2014, p. 147).

It becomes the mirror [accounting information] through which others must view, judge and compare individual and group performance. It becomes the mirror through which to secure self, we must view ourselves and our relation to others. It is in this way that the routines of hierarchical accountability individualise (Roberts 1991, p. 363).

Hierarchical accountability then, is grounded in corporate power, focusing on self-interest as success, a good self-image that offers the possibility to misrepresent information disclosed in annual reports. This form of disclosure seems to be iniquitous, so that the corporation is successful and at the same time unable to create commitment and shared meaning (Roberts, 1990; 1991). Since accountability is multidimensional and complex (Ahrens, 1996; Miller, 2002), accordingly, the form it takes should be flexible enough to take into account a system of accountability mechanisms that can align with Indigenous cultural meaning (Rossingh, 2012).

The concept of Indigenous and corporate forms of accountability has been researched within accounting (Broadbent et al. 1996; Chew and Greer, 1997; Cooper, 1988; Greer, 2009; Greer and Patel, 2000; Gibson, 2000; Hines 1992) and this thesis
extends the discussion of accountability within the unique context of Fortescue, the Yindjibarndi and mining land rights.

3.7 Summary

This chapter discussed the theoretical framework as an important element of analysis for this thesis. Since the focus is on the impacts of colonialism, postcolonial theory is appropriate to understand modern systems of corporate accountability and how British colonial ideology continues to impact Indigenous peoples in particular the Yindjibarndi. Also, this chapter discussed the background of postcolonial theory, its definition, and its application within an accounting context. Therefore, a discussion of accountability in a postcolonial setting was also discussed. The following chapter describes the methodology and data for the analysis in Chapter 5.
CHAPTER 4: CORPORATE SOCIAL PRACTICES AND THEME ANALYSIS

4.1 Introduction

The previous chapter outlined the theoretical framework used in this thesis and issues of accountability. In addition, an explanation of postcolonial theory and its application to the case of Fortescue and the Yindjibarndi community. The chapter begins with a discussion of accountability disclosures and an explanation of the documentary evidence including: annual reports; CSR and environmental reports; and, media releases. Then, theme analysis is introduced as the method to identify postcolonial themes in this empirical material. Finally, a discussion of the phases of the analysis and the themes applied to the case study conclude this chapter.

4.2 Accountability disclosures

De Schutter (2008) asserts that entities need to understand their role in society to be socially responsible, and accordingly, business owes duties to the community at large and not only to its shareholders. Concern about the sustainability and social responsibility has evolved over the last forty years. Different industries across the world have faced increased public demand to show how they contribute to a better society and environment (Patten and Zhao, 2014). However, “the levels of social and environmental impacts can vary greatly from industry to industry” (Guthrie et al. 2008, p. 2) especially in the mining industry since a significant number of the social and environmental disasters have occurred from mining operations (Tilt and Symes, 1999; Warhurst 2001; Hamann, 2003; Jenkins, 2004). This chapter first addresses social and environment disclosures in annual reports, followed by alternative media including stand-alone reports and media releases.
4.2.1 Annual Reports

The objective of financial reports is to provide information that is useful to investors, creditors and other users for decision-making purposes. This definition is consistent with a conventional or mainstream understanding of accounting as being a neutral and rationalist measurement activity using the special language of business where “financial reports, listing only income, expenditure and other financial measures, fail to take into account the complexity of the issues upon which they purport to report” (Chew and Greer, 1997; Gibson 2000, p. 302). This concept of mainstream accounting reflects “capital values” that are not necessarily consistent with Indigenous “beliefs, norms and values” (Greer and Patel 2000, p. 307).

Annual reports, including financial reports, are available in the public domain and are considered to form part of a corporation’s accountability discharge activity (Gray et al. 1995). Annual reports have a level of credibility in comparison with other types of media, such as CSR and media releases, because they undergo a mandatory audit process. In Australia annual reports are the main source of data available to stakeholders interested in information regarding environmental and social impacts of corporation’s activities. Environmental disclosures relate to the natural environment, environmental protection and use of natural resources while social disclosures relate to the interactions of a company with the community, employees and society (Jenkins and Yakovleva, 2006).

Annual reports are required by legislation, companies produce them regularly and are considered and chosen as the most important publicised and visible source of information (Guthrie and Parker, 1989, 1990; Roberts, 1992; Jenkins and Yakovleva,
Fortescue’s annual reports are general-purpose financial reports prepared in accordance with Australian Accounting Standards (AASBs) adopted by the Australian Accounting Standard Board (AASB) and the Corporations Act 2001 (Fortescue Annual Report, 2008).

The annual report is the major communication medium that corporations use to disclose environmental information and it is also the primary source to which users refer in seeking environmental information about corporate activities (O’Donovan 2002, p. 346).

Therefore, annual reports are means of communication through which corporations influence society’s way of thinking about the organisation’s social and environmental position (Adams and Harte 1998; Laine, 2009). In this regard, corporations construct its own social image to the community in which they operate (Hines 1988; Deegan et al. 2002). Corporations seek to portray a good public image, simply reflecting, “the narcissistic concerns of the corporation to appear responsible” (Messner 2009, p. 922) and a concern for how the other sees the corporation (Roberts, 2003). According to Roberts (1991), in its annual reports, corporations do not represent the organisation but indicate a set of practices that seek to construct and shape organisational reality.

Several accounting studies have examined the social and environmental disclosures that organisations make in their annual reports (Gibson and Guthrie, 1995; Gray et al. 1995; Guthrie and Parker, 1990). Most environmental disclosures involve management reflections and views about their relationship with the environment to inform on how business activities affect the natural environment (Buhr and Reiter, 2000). However, corporate social responsibility is said to integrate environmental goals and sustainable resource use with capitalist values such as shareholder wealth maximisation (Buhr and Reiter, 2000; De Schutter, 2008). In this respect entities identify profits for its shareholders as their most important social responsibility.
Claims regarding representational faithfulness and neutral map making ignore the fact that decisions about what to count and how to measure are based on a set of social relations that privilege capital at the expense of other groups ... an emphasis on providing information that is useful for investors and creditors obscures and perpetuates the subordination of labour to capitalists: it also fails to acknowledge that other societal members are affected by the outputs of accounting (Neu and Taylor, 1996, pp. 440-441).

The above quote emphasises that a view based on an economic rationality seeks scientific and technological solutions to natural environmental problems (Buhr and Reiter, 2000). In the following section, alternative media for social and environmental disclosures is discussed

**4.2.2 Other Social and Environmental Disclosures**

Due to the increased awareness of corporate activities on the physical environment there are other stakeholders such as employees, customers, communities and the general public, who are potentially interested in social and environmental information (Jenkins and Yakovleva, 2006). However, it is argued that there is no agreed definition of CSR (Dilling, 2010; Patten and Zhao, 2014), but CSR relates to the activities of businesses, particularly in terms of their contribution to achieving economic, social and environmental sustainability. The evolving CSR agenda is driven by a global shift in the way that business is perceived (Jenkins and Yakovleva 2006, p. 272). CSR is defined as;

>a means by which companies can frame their attitudes and strategies towards, and relationships with, stakeholders, be they investors, employees or, communities, within a popular and acceptable concept (Jenkins 2004, p. 24).

A variety of media for CSR disclosures such as advertisements or articles detailing corporate activities, community reports, videotapes, websites and others (Jenkins and Yakovleva, 2006) is used to communicate in the public domain. An important media for YAC, for example, was through media releases to inform the public of the mining
land rights dispute and negotiations between Fortescue and the Yindjibarndi community.

Media releases are an important alternative to disseminate social information disclosures outside the corporation, especially because they are accessible to the wider audience and serve the general needs of all users. They can also be easily understood by members in the public domain who are not familiar with the information provided by annual reports (Walton, 2007). Another advantage of using media releases is that they are both timely and flexible (Zeghal and Ahmed, 1990).

According to Gray et al. (1995, p. 82);

> [a]ll forms of data reaching the public domain can be considered to be part of the accountability-discharge activity and, thus, not only annual reports and dedicated employee and environmental reports but also advertising, house magazines and press notices, for example, can be seen as part of CSR.

Environmental concerns from various stakeholders have raised pressure on corporations to publish information regarding their compliance with regulation and their environmental performance (Burritt, 1997). For example, to respond to community concerns regarding mineral environmental practices in Australia the Code for Environmental Management was introduced in 1996. According to Ellis (1996, n.p.) the President of the Minerals Council of Australia (MCA):

> The future of the minerals industry hinges on excellence in environmental management. More than in any other way, the community judges the minerals industry by its environmental performance. Recognising the need to achieve environmental excellence and to be open and accountable to the community, Australia’s minerals industry has developed this Code for Environmental Management. The Code has been strengthened by contributions from government and non-government organisations.

> The Code is the centrepiece of a renewed commitment to respond to community concerns through consultation, demonstrated environmental performance, continual improvement and public reporting. We want to lift our environmental management practices and guide them into the next century and the Code and its reporting requirements will provide a measurement of our progress.
The importance of social and environment disclosures in the mining industry is primarily due to the negative social and environmental impact of mining activities on Indigenous communities. Therefore, corporate social and environmental disclosures play an important role in the corporate narrative to describe its practices (Hamann and Kapelus, 2004).

The extraction and process of the mining activities disrupts Indigenous communities and it has adverse impacts on their cultural heritage and spiritual traditions. Mining companies can also destroy or damage forest and sacred places that are important for the conduction of Indigenous religious ceremonies. These environmental and social consequences of mining activities on Indigenous lands have created negative public opinion, providing one of the most significant reasons influencing mining corporations to develop CSR (Kapelus, 2002; Walker and Howard, 2002). However, corporate involvement in local communities has been critiqued as a way of deflecting criticism and consolidating corporate power, just as it has been shown to constrain the interests of Indigenous people (Brueckner et al. p. 120).

According to Kemp et al. (2011), mining companies have been accused of causing conflict and disputes within Indigenous communities in which they operate in Australia as elsewhere in the world. These disputes within communities are primarily concerned with economic security, use of land, mining impacts on sacred places, cultural beliefs and the inequality between the distributions of mining benefits (Kemp et al. 2011). In Australia, there are several examples of mining land rights disputes between mining corporations and Indigenous peoples. For example, in Tom Price and Paraburdoo in WA, mining conflicts arose on a large scale in the late 1960s and early 1970s (Brueckner et al. 2013).

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28 Indigenous cultural heritage includes burial sites, middens created by discarded shells, rock and cave paintings and scatters of stone tools that are more than 50000 years old. It also includes places, sites or landscape that are of spiritual significance (O’Faircheallaigh, 2008).
One of the most recent examples is the topic of this case study; the Yindjibarndi community who oppose Fortescue’s development of the Solomon Hub Project in the Pilbara region, WA. Due to public concern and negative media coverage, Fortescue says that it has developed CSR strategies and policies to minimise the environmental impact of its mining operations. However, Fortescue is also committed to “ensure the company’s longevity, success, growth and positioning in the domestic and global markets” (PER 2009, p. 6). As Hamann and Kapelus (2004, p. 86) argue;

> CSR is primarily about projecting a suitable image in order to placate critics and ensure ‘business as usual’ … [However], CSR has to guarantee that companies are accountable for the direct and indirect impacts of their activities.

Therefore, if CSR is developed ‘to placate critics’ there is the possibility that corporations are not effectively addressing the concerns of Indigenous peoples (Kapelus, 2002) and may well be doing so;

> [t]o align corporate policies and practices to sustainable development, in order to ensure companies’ reputation and their access to capital, land and markets (Hamann and Kapelus 2004, p. 86).

### 4.3 Data

This section outlines the public disclosures from both Fortescue and the Yindjibarndi community that form the analysis in chapter 5. Due to a division within the Yindjibarndi community a splinter group WMYAC was created in 2010. Therefore, media releases from both YAC and WMYAC have been accessed. In addition, the analysis is supported by reference to case law and legislation introduced in chapter 2.

#### 4.3.1 Fortescue’s Disclosures

Fortescue’s annual reports are informative with regard to its social and environment disclosures and what it deems ‘accountable’. Fortescue includes CSR performance in
In previous years we have referred to our “Sustainability” performance rather than CSR. This year we have adopted CSR terminology to better align with industry practices (Fortescue 2012, p. 13).

In addition to CSR provided in the annual reports, Fortescue also produces separate or standalone environmental reports called Public Environmental Reports (PER). These reports are prepared according to environmental reporting indicators from the Global Reporting Initiative (GRI) G3 reporting guidelines and the Mining Sector Supplement to guide the corporation’s CSR performance reporting (PER, 2008; Fortescue Annual Report, 2012). GRI provides the framework for corporate public environmental reports on corporate governance and economic, social and environmental impacts (GRI, 2011). Since 1997, the GRI has developed four versions of its reporting guidelines.

The PER reports include information regarding energy and greenhouse, water management, air quality, habitats protected and restored, environmental awareness and training and approvals and compliance. Fortescue’s standalone CSR reports have the objective to provide stakeholders with information regarding the corporation’s potential environmental impacts, in a way that stakeholders are able to make informed decisions (PER, 2009). Hopwood (2009, p. 437) argues that standalone reports have “potential to give a greater degree of visibility to corporate environmental activities and consequences, casting light on what is often invisible”. However, Fortescue’s environmental disclosures are prominent rather than social disclosures regarding the adverse impacts of mining activities on the Yindjibarndi’s cultural heritage.
In 2013, Fortescue became a signatory to the United Nations Global Compact (UNGC) to help improve its CSR reports performance (Fortescue Annual Report, 2014). The UNGC consists of 10 universal principals in the areas of human rights, environment and anti-corruption (see Appendix 3). This new approach was fully implemented in the CSR section of Fortescue’s 2014 Annual Report with the objective to ensure that “communication to stakeholders is clearly linked to [its] CSR priorities, the creation of shareholder value and performance results” (Fortescue Annual Report 2013, p. 16). In relation to the UNGC principals Fortescue (2013, p. 26) stated:

> [our] established Land Access Agreements, along with our management practices help us to uphold fundamental human rights and respect for Aboriginal communities touched by our activities.

Consequently, in keeping with the corporation’s Human Rights Policy and the UNGC, in 2013, Fortescue began to include in its CSR report a small section under the headings *Aboriginal Engagement* and *Respecting Traditional Owners and Cultural Heritage*. The former referred to Fortescue’s commitments to reduce the disparity between non-indigenous and Indigenous Australians and the latter to respecting the culture, heritage and traditions of Indigenous peoples and the communities that are adversely impacted by its mining activities (Fortescue Annual Report, 2013).

Since 2014, Fortescue prepares a CSR in its annual reports in accordance with the core requirements of the GRI G4 guidelines. Also, it introduced the new Heritage Consultant Standards (The Standards) with the objective of improving the cultural heritage protection and identification of Indigenous cultural sites (Fortescue Annual Report, 2014).
Wharhurst (2001, p. 58) argues that it is “corporate strategy that can make the difference between disaster and prevention and between irresponsibility and responsible business practice”. CSR for the mining industry;

*[i]*s about balancing the diverse demands of communities, and the imperative to protect the environment, with the ever-present need to make a profit. In doing so they must recognize newly empowered stakeholders (such as indigenous peoples), identify the interests, concerns and objectives of stakeholders and recognize the need to balance or accommodate these different interests (Jenkins 2004, p. 24).

For example, in its 2012 PER report Fortescue disclosed information regarding two significant environment incidents in the Solomon Hub: one hydrocarbon spill and one significant fauna-related incident where a vehicle killed a Pilbara Olive Python. In the case where there are not disclosures relating to the damage of Indigenous heritage by mining impacts, CSR standalone approach suggests “reports are more about image enhancement … [and] CSR disclosure is not leading to transparent accountability” (Patten and Zhao 2014, pp. 132-133).

It is as if the report serves as a corporate veil, simultaneously providing a new face to the outside world while protecting the inner workings of the organization from external view. Done with skill and a fair amount of planning and thought, it is possible for some modes of reporting to thicken that veil such that even less is known of the corporation despite the apparent openness of its reporting (Hopwod 2009, p. 437).

In addition to standalone environmental reporting, alternative forms of public media are often used as empirical material in cases of disputes as they are released at the time of an event and are not subject to either accounting standards or guidelines for preparation. The audience (the public) is more diverse and the information is more accessible.

4.3.2 YAC Annual Report

YAC is an Aboriginal Corporation established under the Corporations (Aboriginal and Torres Strait Islanders) Act 2006. It is domiciled in Australia and was registered
on March 2004 (YAC, 2014). The corporation, as a not-for-profit private sector entity, reports under the reduced disclosure framework for eligible corporations that currently prepare general-purpose financial statements. The Corporation applies the Australian financial reporting standard AASB 1053 Tier 2 reduced disclosure level. The Yindjibarndi Aboriginal Corporation (YAC);

[i]s a non-profit Association and its Constitution does not allow any portion of its funds or property to be paid or applied directly or indirectly by way of dividends, bonus or otherwise however by way of profit to any member, except for the payment in faith of reasonable and proper remuneration to any member, officer, servant, agent or employee of the Corporation for, or in return for, services actually rendered to the Corporation (YAC 2014, p. 3).

At the time of writing this thesis, due to the conflictive relationship between Fortescue and YAC, only one annual report (2012) was available, as YAC had closed its website. The 2012 YAC Annual Report consists of 20 black and white pages where the activities of YAC are detailed, including financial statements such as the statement of comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows and notes to the financial statements. The statements are general purpose (reduced disclosure level) financial statements that have been prepared in accordance with applicable Australian Accounting Standards (including Australian Accounting Interpretations) and the Australian Accounting Standards Board and the Corporations Act (Aboriginal and Torres Strait Islander) 2006 and the provision of grant funding agreements (YAC, 2012). The financial statements are prepared on an accrual basis and are based on historical cost, modified, where applicable, by the measurement at fair value of selected non-current assets, financial assets and financial liabilities.
YAC has a strong community focus and is bound by Indigenous cultural obligations to improve the wellbeing of the Yindjibarndi people. As such, the organisation includes the following activities in its annual report (YAC 2012, p.2).

- Provide direct relief from poverty, sickness, suffering, misfortune, destitution or helplessness among Indigenous peoples, especially the common law holders,
- Protect, preserve and advance the traditions, laws, languages, culture and customs of the Indigenous peoples, especially the common law holders.
- Maintain, protect, promote and support the culture, native title traditions and customs and economic development.

While YAC prepares accounting reports according to accounting standards, its reports are community oriented and based on strong Indigenous cultural values. Due to the paucity of annual reports available from YAC, this thesis has also used other forms of public media produced by YAC. These are discussed in the next section.

4.3.3 Media releases

In 2011, there was considerable media coverage concerning the dispute between Fortescue and the Yindjibarndi community. For the purpose of this thesis YAC’s media releases are an important tool in the transmission of knowledge about Yindjibarndi mining land rights. YAC’s media releases reported the mining land rights terms and negotiations that Fortescue offered to the Yindjibarndi to allow the proposed Solomon Hub iron ore mine in the Pilbara region in WA. The media releases highlighted the adverse effects that mining activities were going to cause to their land and the disturbance to sacred places where the Yindjibarndi conduct cultural and religious ceremonies.
Due to the dispute between Fortescue, YAC and the Yindjibarndi community, and, the high coverage and media attention, YAC was forced to close its website in 2013, consequently, most of the information regarding the mining land rights dispute disappeared. Therefore, this thesis relies only on YAC’s media releases that were available on its website. A total number of 10 media releases were sourced mainly in 2011 and 2012. As there was a limitation of other public documents such as YAC’s annual reports, these media releases became the primary source of publicly available information to conduct this study.

4.4 Theme Analysis

Boyatzis (1998) infers that theme analysis can be used as a part of qualitative research studies by researchers from different fields. There are aspects of theme analysis that make it appropriate to analyse publicly available documents, such as annual reports, CSR and media releases. Therefore, theme analysis is an analytical method to analyse different texts to identify trends in the form of themes (Boyatzis, 1998; Flick, 2006; Braun and Clarke, 2006) that “offers an accessible and theoretically flexible approach to analysing qualitative data” (Braun and Clarke 2006, p. 77). For example, theme analysis;

[a]llows the researcher to associate an analysis of the frequency of a theme with one of the whole content. This will confer accuracy and intricacy and enhance the research’s whole meaning. Qualitative research requires understanding and collecting diverse aspects and data. Thematic Analysis gives an opportunity to understand the potential of any issue more widely (Malhojailan 2012, p. 40).

Also, theme analysis, requires more involvement and interpretation than other methods as it “moves beyond counting explicit words or phrases and focus on identifying and describing both implicit and explicit ideas” (Marks and Yardley 2004, p. 138) within the available data. A theme;
[c]aptures something important about the data in relation to the research question and represents some level of patterned response or meaning within the data set (Braun and Clarke 2006, p. 82).

Themes allude to a pattern found in the information that “at minimum describes and organizes the possible observations and at maximum interprets aspects of the phenomenon” (Boyatzis 1998, p. 161).

Theme analysis implies searching the data that has been collected with the objective to find themes involving some relevant meaning of the research study. This is important for the purpose of this thesis because qualitative data analysis is dependent on interpretation. For example, words or phrases were identified that have meaning for the purpose of this study. These were developed into themes that are classified according to similarities and differences (Miles and Huberman 1994; Malhojailan, 2012). The theme analysis process is illustrated in Figure 4.1.

![Figure 4.1](image-url)
Consequently, the information collected requires several explanations (Malhojailan, 2012) and the data analysis is distinguished by: “merging of analysis and interpretation and often by the merging of data collection with data analysis” (Cohen et al. 2011, p. 537). In this thesis, in order to conduct theme analysis, the data identified in the previous section was collected and read several times to identify relevant themes. The second element to conduct theme analysis involves the display of the data collected.

According to Miles and Huberman (1994, p. 11), data display is “[an] organised, compressed, assembly of information that permits conclusion drawing and action”. In this thesis, the process focuses on visualising the data by employing different techniques such as quotations (Gibbs, 2007). The presentation of quotations and narratives has the objective of providing evidence aimed to validate interpretations and increase the reliability of the research (Miles and Huberman 1994; Alhojailan, 2012).

According to Miles and Huberman (1994, p. 11) data reduction is an important element to begin conducting research analysis because it is a;

form of analysis that sharpens, sorts, focuses, discards, and organises data in such a way that “final” conclusion can be drawn and verified through selection, through summary or paraphrase, through being subsumed in larger pattern.

In this thesis, the analysis is conducted in stages as discussed in the following section. In order to conduct the analysis an adaptation of the guide provided by Braun and Clarke (2006, p. 87), as shown in Table 4.2, was applied.
Table 4.2 Phases of theme analysis (adapted from Braun & Clarke, 2006)

<table>
<thead>
<tr>
<th>Phase</th>
<th>Description of the process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Becoming familiar with the information</td>
<td>Fortescue’s annual reports and PER; the 2012 YAC annual report and media releases; WMYAC media releases; relevant legislation and case law documents were read several times. Ideas and thoughts were organised.</td>
</tr>
<tr>
<td>2. Developing and identifying themes</td>
<td>All relevant information was gathered to form themes and identify specific topics relevant to postcolonial theory.</td>
</tr>
<tr>
<td>3. Finishing and writing the theme analysis</td>
<td>Implies selecting relevant quotes from the information available on annual reports and media releases to illustrate themes and provide answers to the research questions, analysing and interpreting results.</td>
</tr>
</tbody>
</table>

Braun and Clarke (2006) claim that the process of theme analysis is recursive rather than linear, that is, movement is back and forth as needed throughout the steps.

4.4.1 Phase 1: Becoming familiar with the information

The analysis uses the themes identified in Fortescue’s annual reports 2003-2014, selected quarterly reports and PER reports for the period 2008-2012. For the Yindjibarndi, the YAC 2012 annual report, media releases from both YAC 2011-2012 and WMYAC 2011 were accessed. Legislation and case law (see Appendix 1) also form part of the empirical data to be analysed since they represent public communication devices that provide corroborative and contextual evidence regarding the controversial mining land rights dispute between the two parties.

Familiarisation occurs through the close reading and re-reading of the data and identifying relevant patterns of meaning across the data. During the process of the first phase, reading the data several times is important as it provides the basis for the

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29 The quarterly reports were selected based on whether they contained information regarding Yindjibarndi dispute.
rest of the analysis (Braun and Clarke, 2006). Also, during this phase, ideas and themes began to be shaped through the immersion of reading; it also allows one to appreciate the complete picture and make links between the data collected (Miles and Huberman 1994). Consistent with Miles and Huberman’s (1994) and Braun and Clarke’s (2006) recommendations, detailed notes were taken to facilitate the development of ideas during the following phases.

4.4.2 Phase 2: Developing and identifying themes

Developing themes implies working through the entire data with the objective to find, give attention and evaluate all items of information that may form the basis for the elaboration of themes. Since this thesis used a postcolonial lens to analyse the empirical material, themes were developed with a focus on aspects drawn from a colonial past.

Following Phase 1, the specific themes were identified. In this thesis, for example, when reviewing the initial development of themes it was revealed that much of the data provided in the annual reports referred to Fortescue’s economic view that focused on improving shareholder value and providing training and employment to the Yindjibarndi community. However, it was identified that the data initially constituting the economic view as a theme, actually elicits shareholder value as a salient element and offered more information to respond to the research questions (Braun et al. 2015). As such, shareholder value, Yindjibarndi value of the land and mining welfare were developed as three of the five major themes identified within the data. These themes reflect different world views regarding the value of the land and include the following:

1. Land and Tenure
2. Profit and Resource Allocation
3. The Role of the State
4. Social and Environment Issues
5. Divide and Conquer

4.4.3 Phase 3: Finishing and writing the thematic analysis

The aim of writing the final analysis is to reach a conclusion to answer the research questions with an objective to tell “the complicated story of [the] data in a way which convinces the merit of the reader and the validity of [the] analysis” (Braun and Clarke 2006, p. 93). Illustrative extracts from the data were included and combined with relevant accounting and postcolonial theory literature in order to provide a concise analysis and evidence of the selected themes across the data. A valid argument is reached through convincing analysis stemming from relevant examples provided from the data. This is consistent with Braun and Clarke (2006, p. 93) who argue that;

[examples], or extracts which capture the essence of the point you are demonstrating, without unnecessary complexity. The extract should be easily identifiable as an example of the issue.

Phase 3 provides a description that goes beyond the data, that is, moving to an analytical and interpretative level of the data extracts in terms to make a valid argument in relation to research questions (Braun and Clarke, 2006). The objective of the analysis was to highlight information in relation to the Yindjibarndi land right claims and compensation that frame the controversial mining land rights dispute in relation to postcolonial theory. The arguments or analytical claims were in accordance with postcolonial theory. According to Braun and Clarke (2006, p. 95) “a good thematic analysis needs to make sure that the interpretations of the data are consistent with the theoretical framework”.

89
The postcolonial analysis focuses on the continuity of British ideology, grounded in colonial thinking, within the complex relationship between corporations and Indigenous peoples (Prasad, 2003). Of importance to this thesis, as indicated in Chapter 1, is the unequal distribution of profits resulting from mining operations and the different cultural views about the concept of ‘land’ that exacerbated the conflict between Fortescue, YAC and the Yindjibarndi community. This divergence of views represents the complex relationship between Fortescue and the Yindjibarndi.

According to a postcolonial theory, the economic dependency that Indigenous peoples have upon former colonial powers, often in the form of a corporation, is problematic and one legacy of colonialism that still prevails after political decolonisation (Neu and Taylor, 1976; Neu, 2000; Prasad, 2003). In this thesis, by adopting a postcolonial lens, the material conditions of the Yindjibarndi people are still dominated by colonial practices.

4.5 Summary

In this chapter the concept of CSR was discussed and acknowledged that corporations are becoming aware of their social and environmental responsibilities. Following this discussion, the importance of the use of Fortescue’s annual report disclosures in terms of public communication devices was highlighted. Fortescue’s annual reports were examined to determine environmental information disclosures in relation to the protection of Yindjibarndi’s sacred places and other cultural values. Also, this chapter introduced the themes developed and identified that form the basis of the analysis in Chapter 5.
CHAPTER 5: POSTCOLONIAL CONTEXT: FORTESCUE AND YINDJIBARNDI

5.1 Introduction

In earlier chapters, the history of colonial practices affecting Indigenous peoples in Australia was introduced. Chapter 2 discussed the relevant historical background of Indigenous Australians including land and cultural dispossession, oppression, welfare dependency and the high rate of unemployment as a consequence of British imperialism and the actions of colonial government authorities in Australia (Government of Western Australia, Department of Indigenous Affairs, 2009). In addition, the postcolonial framework and different views of accountability that underpins the theme analysis was introduced. In Chapter 4, corporate reporting and other forms of public disclosures was discussed, prior to a description of the method and specific themes for the analysis.

The thesis draws on the negotiations between Fortescue and the Yindjibarndi from 2003-2011. During this period the Yindjibarndi were represented by the YAC and later by the WMYAC. The WMYAC was formed “[f]ollowing unsuccessful attempts by FMG to again secure YAC involvement in heritage clearances” (Cleary 2014, p. 13).

This thesis provides an understanding not only of the Indigenous land rights, but the “techniques of government to current day federal government” (Neu 2000, p. 181) and also the relations between Fortescue and Yindjibarndi community. The following section briefly outlines the importance and the development of the Solomon Hub.
Project in the Pilbara region in Western Australia, as an example of the land rights controversy between Fortescue and the Yindjibarndi community.

5.2 Solomon Hub Project

During the period 2003 to 2006, Fortescue lodged 18 applications for the Solomon Hub mining exploration rights in the area of the Yindjibarndi community (Irving, 2012\textsuperscript{30}, cited in Cleary, 2014). However, during this period Fortescue did not provide any information in their annual report disclosures regarding these applications. Despite lodging applications in 2003 (see Cleary, 2014), it was only in 2008 that they announced 1.7 billion tonnes of resources at the Solomon Hub (Fortescue Annual Report, 2008). During 2009, feasibility studies with the plan for a two stage development where concluded.

Construction of key infrastructure is progressing well at the Solomon Hub, the site of the majority of the growth to 155mtpa. The Solomon Hub is at the leading edge of Fortescue’s transformation and will become a showcase for innovative and progressive mining technology at all stages of the process from mine planning through to processing and transport (Fortescue Annual Report 2011, p. 7).

To increase Fortescue’s production, the Solomon Hub Project was considered “the world’s best underdeveloped major mineral resource” opportunity (Fortescue Annual Report 2010, p.2). Fortescue declared that, with the Solomon Hub Project, its vision was to: be the most efficient iron ore supplier in the world; deliver the very best customer service to clients; and, underwrite future revenue through further exploration and development. Andrew Forrest, the CEO stated that:

We have also opened up the Pilbara by providing infrastructure services to third parties, commissioned our new facilities which were built in record time, established new markets across China and generated strong interest through Asia. The Chichester range is now a new major new iron ore supply region and our central Pilbara Solomon Group project promises to be even bigger again (Fortescue Annual Report 2009, p. 6).

\textsuperscript{30} Unpublished information held by Cleary, 2014.
This statement is an example of Fortescue’s focus on expansion in international markets, especially China. At the time, for Fortescue, the development of the Solomon Hub project proposed to contribute to even faster economic growth. The crystallisation of the exploration rights gave rise to the dispute between Fortescue and the Yindjibarndi community.

In the following sections the themes identified in Chapter 4 are used with reference to their relevance to Australian colonial ideology and practices, and the impacts of colonial practices on the Yindjibarndi people. The themes developed and identified relating to the postcolonial context from the perspective of Fortescue and Yindjibarndi contrasted with the colonial past are presented in Table 5.1 below.
<table>
<thead>
<tr>
<th>Theme</th>
<th>Colonial Practice</th>
<th>Poscolonial and Colonial Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land and Tenure</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>Role of the State</td>
<td>ALRA</td>
<td>Paternity</td>
</tr>
<tr>
<td>Environmental Issues</td>
<td>TERRA nullius</td>
<td>Paternity</td>
</tr>
<tr>
<td>Social and Environmental</td>
<td>Food and Rations</td>
<td>Paternity</td>
</tr>
<tr>
<td>Economic advantage through</td>
<td>Missions</td>
<td>Paternity</td>
</tr>
<tr>
<td>Forestry</td>
<td>WMYAC</td>
<td>Paternity</td>
</tr>
<tr>
<td>Secular framework – GRI</td>
<td>ALRA</td>
<td>Paternity</td>
</tr>
<tr>
<td>Comply with heritage</td>
<td>WMYAC</td>
<td>Paternity</td>
</tr>
<tr>
<td>Preserving social license</td>
<td>ALRA</td>
<td>Paternity</td>
</tr>
<tr>
<td>Certificate</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>Dispossession of land and</td>
<td>ALRA</td>
<td>Paternity</td>
</tr>
<tr>
<td>Preserving Sacred Places</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>Resource allocation</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>Employment, hand–n’ip</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>WMYAC</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
<tr>
<td>Total</td>
<td>Yindjibarndi</td>
<td>Paternity</td>
</tr>
</tbody>
</table>

Table 5.1 Poscolonial and Colonial Practices
5.3 Land and Tenure

Land and tenure whether through private commercial or native title gives rise to access and use of resources. These issues are explored from the perspective of Fortescue and Yindjibarndi below.

5.3.1 Fortescue

Fortescue’s Annual Reports reflect the ambitious strategy of the company in acquiring mine sites on native title land in the Pilbara region. Fortescue’s objective was to build empire, generate and maximise profit and become the biggest iron ore producer and supplier in the world. Accordingly, profit maximisation is considered to be the primary responsibility of corporations - to survive as a business and generate shareholder value (Lantos, 2001; Wickert and Schaefer, 2011). However, Carroll (1979) believes that corporations should not exist just for favorable economic results but also for non-economic outcomes. Consequently, this generates a controversy for those demanding profit maximisation and those demanding better social performance (Lantos, 2001). For this thesis, Fortescue represents the private interests of its shareholders compared with a different view than that reflected in the “incoherence of thought embodied in the unquestioned pursuit of growth and profit” (Roberts 1996, p. 58). For example, Andrew Forrest, in his first Chairman and Chief Executive Officer’s message stated:

Welcome to your rapidly evolved company – Fortescue Metals Group Ltd – creating the new force in iron ore. I am delighted to say we have embarked on an exciting journey to capitalise on a unique opportunity – to develop and market previously stranded massive iron ore deposits in the Pilbara region of Western Australia, to the global steel industry (Fortescue Annual Report 2003, p. 4).

He further states:

The major customers, firmly aware of the potentially precarious business model of very few suppliers, having the ability to act in concert, enjoying both a broad and deep customer base – have demanded the creation of a fourth force in the world of sea-
borne iron ore. That force, in conjunction with our many partners who will use the new infrastructure catalysed by it – is FMG (Fortescue Annual Report 2003, p. 4).

The above extracts reflect the values of ‘corporate power’ and ‘corporate imperialism’ that represents a model based on power, control and individualism (Roberts, 1991). Fortescue’s objective to acquire massive iron ore deposits in the Pilbara and to become a major iron ore force in the world is reminiscent of the objectives of the imperialistic nature of colonial economic expansion. Similarly, Fortescue’s rapid economic expansion also controls, exploits and appropriates Yindjibarndi ‘country’.

Fortescue’s economic expectations were not only focused on iron ore explorations, it included the development of infrastructure that was going to facilitate port and rail availability for Fortescue and other mining companies in the Pilbara:

FMG will build, own and operate rail and port infrastructure from its mining tenements to Port Hedland. FMG will develop true multiuser rail and port infrastructure that will stimulate resource development across the Pilbara. In addition to ore from FMG’s own mines, the infrastructure will carry ore from other stranded resources in the region (Fortescue Annual Report 2003, p.9).

As this quote reveals, Fortescue strongly believes that infrastructure leads to economic growth and development. This demonstrates that Fortescue is focused on material acquisition where land is an opportunity for expansion. This is an example of the continuation of the colonial period when British settlers were focused on power consolidation, empire building and the acquisition of Indigenous land to extract wealth from the exploitation of it resources (Helin, 2008).

There is an interrelationship between colonialism and imperialism, in that, colonialism is an expression of imperialism as economic expansion (Smith, 1999). According to Smith (1999), British settlement can be explained through a series of developments related to exploitation, distribution and appropriation of Indigenous land. These events led to the
economic expansion of British settlers, whose capital was shifted to new markets, and in the process controlled, secured and subjugated Indigenous populations.

For example, in a very short period of time the company accumulated large tenements, thus, achieving further and faster economic growth. The following quotes demonstrate Fortescue’s ‘acquisitive’ factor as indicative of strong competition with other mining corporations. In the Chairman and Chief Executive Officer’s Message, Andrew Forrest stated that:

The size of the Company’s tenement interests within the Pilbara region has grown from 3,009 square kilometres as noted in July last year, to the current portfolio of over 16,700 square kilometres (Fortescue Annual Report 2004, p. 8).

Within the Pilbara - one of the best iron ore provinces in the world and geographically, the closest to the huge East Asian markets - Fortescue Metals has secured the largest tenement footprint, covering just over 16,700 square kilometres (Fortescue Annual Report 2004, p. 4).

The economic phenomenon occurring at Australia’s doorstep, presents an unique opportunity for mineral commodity suppliers. The fact that Fortescue has a tenement foothold of some 35,500km2 within the Pilbara region – an area widely regarded as one of the world’s richest mineral provinces – gives your Company an extraordinary platform for growth (Fortescue Annual Report 2006, p. 3).

The above disclosures reflect Fortescue’s economic potential based on Western ideas that follow mainstream accounting objectives of information for financial decision making needs. An ideology whereby increased profits, through iron ore production in record time and the accumulation of tenements within the Pilbara region, will expand world markets and increase shareholder value. Fortescue’s approach to increase market share is what Roberts (2001, p. 1151) calls “market for corporate control”.

Conventionally, at the level of interaction, power has been treated as an individual possession that allows individuals to realize their will despite other’s resistance. Such approaches view power as an external constraint upon the individual or group such that one person’s power is another’s lack of power (Roberts 2001, p. 1552).

The company’s strategy, to become the major iron ore exporter, was achieved through the high demand of iron ore from China.
That opportunity has come about as a direct result of the increasing demand for iron ore. China is quickly fulfilling its promise of becoming a major long term iron ore importer. Its rapid development has finally arrived, leading to unprecedented levels of demand for sea-borne supply. While this demand has been widely reported in recent times it is yet to be well understood by the market – in particular its significant structural change, its depth and long term growth (Fortescue Annual Report 2003, p. 4).

As a result of the iron ore demand from the Chinese market, Fortescue expanded its mining exploration within the Pilbara region. The following quote emphasises this mining exploration on Yindjibarndi lands:

Beyond the initial mine life, the second stage exploration objective is to develop other prospective areas within Fortescue’s broader Pilbara tenement portfolio. Fortescue is developing a portfolio of new exploration targets across its tenement holdings. These will provide for the next generation of mine sites to ensure the Company’s longevity and production capacity extends well beyond the initial mining operation (Fortescue Annual Report 2006, p. 6).

At this point, Fortescue’s annual reports provide significant disclosures with regard to its high economic expectations, developing infrastructure and plans for the expansion of mining tenements and mining explorations on Yindjibarndi lands. In contrast, Fortescue provided minimal disclosures on land right negotiations with the traditional owners of the Pilbara region. For example, the 2004 Annual Report includes a small section titled ‘Review of Operations’ which includes disclosures on Fortescue’s relationship with Indigenous peoples, environmental and Indigenous heritage and native title approvals.

Addressing the key issues of developing a sustainable and consultative approach to project building, is being handled by Fortescue Metal’s Sustainability. The team’s efforts over the last year have significantly advanced the project in the critical areas of environmental approvals, aboriginal heritage and native title approvals, land tenure consents and overall general community consultation. Fortescue Metals has established a close working relationship with the five Native Title Claimant Groups within the project’s footprint. There have been extensive consultations and negotiations with these groups, inclusive of their legal representative body and the wider Aboriginal community. Negotiation protocols are in place and individual (indigenous) agreements are targeted for this calendar year. Specific site heritage surveys are ongoing particularly in regards to exploration clearance (Fortescue Annual Report 2004, p. 7).

The above statement indicates that, since the commencement of Fortescue’s operations in the Pilbara region, the company complied with environmental laws and approvals concerning Indigenous heritage, native title approvals and land tenure. In reaching an
agreement to secure mining land rights, the quote reinforces unproblematic negotiations with the traditional owners of the land. This expansion of markets is reminiscent of colonial ideology and, the following quote by Armitage and Braddick (2002, p. 120), describes how colonial settlement changed over time and created controversies among British settlers and Indigenous peoples:

The first period [of colonialism] was mercantilist, and it began with a primary interest in the extraction of wealth. This interest expanded to include the establishment of settlements and the direct exploitation of the resources of the colonial territories. The second was acquisitive, and competition among colonial powers was a major factor. Territory was taken not because it was considered valuable but to prevent it being taken by another European power. Commercial exploitation, settlement, and missionary activity followed acquisition. The pre-eminence of British naval acquired more territory than any other European power.

Today, Western forms of land title often prevent the takeover of land acquired by mining companies. In contrast, expansionism for the future operations of Fortescue allowed the dispossession of Indigenous land under native title.

5.3.2 Yindjibarndi community

This section considers the Yindjibarndi opposition to Fortescue’s Solomon Hub Project. As discussed previously, Indigenous cultural values and mining land rights compensation creates disagreement. As discussed in the previous section, the Yindjibarndi traditional Indigenous community, mining land rights and land ownership have a different meaning to the Western notion of a free-market economic system (Gibson, 1994). For the Yindjibarndi, the land cannot be traded for profit, due to their spiritual connection and obligation to produce, care and share its resources with the Yindjibarndi community according to Birdarra Law (YAC, 2011h).

Also, Indigenous spiritual connections to land have been acknowledged in Australia and internationally by the United Nations (Greer and Patel, 2000). For example, for the Yindjibarndi their spiritual connection to land:
[i]s demonstrated, reinforced and reproduced through the songs, stories, culture, traditions, language, actions and customs, taught by the Elders. Each element of flora, fauna, traditions, language, cultural heritage and landscape are incorporated and interconnected, with this knowledge network being the key to Ngarda survival. This complex web of understanding, tradition, communication and action, describes the contemporary social reality of Yindjibarndi people today, contributing to and supporting their special and unique personal and collective identity (Atkins et al. 2011, p. iii).

The Honorable Justice Nicholson has acknowledged the Yindjibarndi’s spiritual connection to land.

[H]istorical circumstances has not broken the Yindjibarndi connection with their lands and waters … evidence of connection is that despite the substantial impact of European settlement, they have remarkably maintained a strong sense of connection to their lands. This is particularly so in the case of the Yindjibarndi people whose movement out of their lands has not broken their attachment to it (YAC 2011h, p. 1).

Similarly;

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationships with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard (Article 25, United Nations Draft Declaration of the Rights of Indigenous Peoples, cited in Greer and Patel 2000, p. 317).

The Yindjibarndi and other Australian Indigenous peoples see themselves as custodians of the land. As such, land cannot be given away, lost, sold or abandoned (Greer and Patel, 2000). They have a duty to continue to look after their land and reinforce and reproduce its spiritual connection through the songs, stories, culture, traditions, language, actions and customs because land is alive and connected to them (YAC, 2011h). Therefore, for the Yindjibarndi people land “take[s] priority over all economic matters” (Greer and Patel 2000, p. 319).

In the case of Fortescue, “land access agreements with Aboriginal groups” (Fortescue Annual Report 2008, p. 8) is ambiguous, as it does not give a clear idea of which Indigenous groups the company is referring to. Where the Solomon Hub mining project is to be developed, the Yindjibarndi community is not addressed specifically as the
traditional owners of the land. On the other hand, it is stated that “the Company is active in the direct engagement of relevant stakeholders” (Fortescue 2008, p.28) in terms to achieve mining land rights approvals. This claim, however, does not reveal who these relevant stakeholders are.

According to Michael Woodley (2009) the Yindjibarndi people are opposed to Fortescue mining land rights because:

Yindjibarndi People belong to the country that will be affected by the Tenements. We do not see, or feel, ourselves as being separate from that country because we were put into that country and we remain in it. Each year we visit the area where FMG wants the Tenements to collect the sacred rocks and stones that we use in our ceremonies; and, each year we sing that country in our ceremonies, to keep it alive. This is the way it has always been (NNTTA 99, 2009, p. 12).

The above statement reflects the Yindjibarndi’s opposition to the Solomon Hub mining leases on cultural grounds. The Yindjibarndi want to protect their culture and spiritual attachment to land “because economic life [is] distinguished by its emphasis on co-operation and sharing of resources” (Gibson 1994, p. 13). For them, culture cannot be separated from land and, therefore, to discuss land is synonymous with spirituality, culture and community.

Today this resembles a continuous feature of British colonialism in Australia. During Australian colonisation, British settlers appropriated Indigenous lands to extract wealth, control and impose cultural and religious changes to civilise Indigenous peoples. Davies et al. (1993, p. 38) argue that;

[the two pillars of Western civilisation: Classicism and Christianity shared a triumphalist image. Each invented ‘Otherness’ to define itself and the process of maintaining boundaries [racial, class], required the perennial reinvention of real peoples.

During the colonial period, the British held the notion that the Australian Indigenous peoples were ‘savages’, primitive, partially human with non-Christian religious beliefs.
As such, the British reinforced their superiority as “the centre of legitimate knowledge, the arbiter of what counts as knowledge and the source of ‘civilized’ knowledge” (Smith 1999, p. 3) and constructed and represented an inferior image of the Indigenous peoples as the ‘other’ (Fanon, 1963; Said, 1978; Said 1993; Smith, 1999; Bush, 2006; Cook-Lynn, 2007). These characteristics disqualified them from being considered civilised and, therefore, could be controlled and re-shaped by the settlers.

This ‘cultural deprivation’ (Cook-Lynn, 2007) justified the British settler practices of ‘civilising’ Australian Indigenous peoples. These conceptions of inferiority and inequality between non-indigenous and indigenous peoples constructed during the colonial period are also exemplified in the relationship between the Yindjibarndi and Fortescue.

Allowing the Tenements to be granted and used by FMG in the way that FMG has described, without the agreement and consent of the Yindjibarndi Ngaarda will demonstrate once again to my countrymen that our rights, and our religious beliefs and practices, are not equal to the rights, and the religious practices and beliefs, of those who rule us, and are not worthy of their protection. It will add to the sense of despair I, and the other Yindjibarndi Ngaarda, already feel about the survival of our way of life, our culture and our traditions (NNTTA 99, 2009, p. 20).

According to the above quote the Yindjibarndi still feel the dissimilarity between coloniser and colonised. Michael Woodley’s statement, describes Fortescue as a ‘colonial hierarchy’ willing to assimilate the Yindjibarndi community, and the unwillingness to accept Yindjibarndi culture grounded in spiritual and religious values. Indigenous culture is based on their attachment to land and the preservation of the natural resources for future generations.

Land is the foundation of the lives and cultures of indigenous peoples all over the world. This is why the protection of their right to lands, territories and natural resources is a key demand of the international indigenous peoples’ movement and of indigenous peoples and organizations everywhere. It is also clear that most local and national indigenous peoples’ movements have emerged from struggles against policies and actions that have undermined and discriminated against their customary land tenure and resource management systems, expropriated their lands, extracted their resources without their
consent and led to their displacement and dispossession from their territories. Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples’ particular distinct cultures is threatened (UNPFII 31, 2007c, para 5).

Due to their strong connection to land and spiritual values, the Yindjibarndi opposed Fortescue’s mining compensation offer. As Michael Woodley (2011) indicates;

FMG’s compensation package is based on our agreement to give up our “procedural” rights, under the Native Title Act; but FMG’s agreement would stop us from ever seeking any further compensation for the loss or impairment of our substantive native title rights and interests once they have been determined to exist by the Court (NNTTA107, 2011, p. 19).

According to the above statement, the YAC did not agree to mine land right negotiations, and, by 2012 a land access agreement with Fortescue had still not been reached.

I want to make clear to all of FMG’s investors, lenders and joint venture partners that FMG has never obtained the consent of the Yindjibarndi People for its Solomon Project. FMG does not possess the social license or operational security that a legitimate Indigenous land use agreement would give, over any of its interests in our country (YAC 2012, n.p.).

These contemporary mining land right issues resemble land rights compensation controversies during Australian colonialism. For example, in 1841, the pastoralists dispossessed Indigenous land through the granting of licenses to prevent access to land (Reynolds, 1998). According to Robinson (1841, cited in Reynolds 1998, pp. 50-51);

… [t]hey were poor now White man had taken their good country, no ask for it but took it. Black men show white men plenty grass, and water and then White men say be off come be off and drive them away and no let him stop.

The Indigenous rejected the licenses granted to pastoralists and claimed compensation for the loss and the wealth extracted from their lands. However, despite claims by the government that it was committed to protect Indigenous land rights, there were no provisions to grant Indigenous ownership of their lands or compensation for their maintenance. Settlers declared that, “[f]or our own protection we find it necessary to

31 United Nations Permanent Forum on Indigenous Issues
declare the native population subject to our laws” (Reynolds 1972, p. 102). Also the
British settlers held the belief that;

> [w]e resolve to found a colony in a country, the inhabitants of which are not strong
> enough to prevent our so doing, though they evince their repugnance by a thousand acts
> of hostility (Landor 1847, cited in Reynolds 1972, p.102).

Comparing this to the Fortescue and Yindjibarndi dispute, Michael Woodley states that;

> [s]ince FMG came into our country, our people have been treated like unwanted aliens,
> or foreigners in their own land. To accept their conditions would be to accept FMG’s
> belief that we do not have rights in our country except for those that they want to give us
> (YAC 2011k, p. 2.).

The above statement indicates that the Yindjibarndi are still living under the pressures
and effects of colonialism and that little has changed in terms of the control of their
lands by Fortescue, for them the past replicates again in the present. For example,

> [w]hat the market needs to understand is that YAC, which is both the Registered Native
> Title Body Corporate and chosen representative body of the Yindjibarndi People, will
> continue to oppose FMG’s project, and when we win recognition of our native title the
> Solomon Project area, we will pursue our legal rights for fair compensation under the
> law (YAC 2011d, p.1.).

These statements demonstrate that YAC is clearly communicating they are the
representative body of the Yindjibarndi people and, as such, have the right to oppose the
Solomon Hub Project if they disagree with Fortescue’s compensation because;

> The Native Title in the Determination Area is held in trust by the Yindjibarndi
> Aboriginal Corporation (YAC), for the benefit of the Yindjibarndi People – a distinct
> society of Aboriginal People, united under and bound together by a traditional system of
> law As the legal owner of the Native Title, YAC alone has power to negotiate
> agreements which affect the exercise of native title rights in the Determination Area
> (YAC 2011c, p. 1).

Arguably, land right controversies between mining corporations and Indigenous peoples
have been corrected through the NTA; however, the Fortescue and Yindjibarndi case
suggests quite the opposite. It appears that not much has changed since the Australian
colonial period, even though the NTA was designed to reverse the dominance of
colonial-based land tenure and rights system of justice. The NTA, in this case, does not
uphold their native rights in situations that mirror colonial practices of land rights and tenure.

These issues highlight the differences between Indigenous and non-indigenous beliefs between conceptions of ‘value’ placed on land. The concept of private land and property rights were introduced during the colonial period (Bush, 2006). The Yindjibarndi land is based on collective ownership and Indigenous kinship (Chew and Greer, 1997; Bush, 2006). It also reinforces the domination of Fortescue reminiscent of the colonial practices of dispossession on the coloniser’s terms. These terms are given force through a legal system designed by the coloniser, e.g. NTA, which includes market based justice and fair compensation mechanisms.

5.4 Profit and Resource Allocation

In Australia, mining corporations distribute the benefits of their operations to various stakeholders. In this case, Fortescue delivers shareholder value to its investors. This section explores Fortescue’s approach to offer training and employment to the Yindjibarndi instead of royalties as compensation for mining land right agreements. Fortescue’s approach is “often presented as a panacea for some of the problems facing Indigenous communities” (Howlett 2010, p. 99) in the form of welfare.

5.4.1 Fortescue - shareholder value

According to mainstream ideas of the corporation, financial providers of capital are important and annual reports discharge principal-agent accountability and information for the decision making process of existing and potential shareholders. In its annual reports from 2003-2014, Fortescue disclosed significant information regarding ‘shareholder value’. For example, the investment in mining and ore processing facilities
(OPFs) maximised product quality to ensure efficiency and lower operation costs (Fortescue Annual Report, 2013).

Elliott\textsuperscript{32}, Chairman of Fortescue, stated that:

\begin{quote}
I believe Fortescue can keep delivering what our shareholders want - sustainable growth in the company and the ability to help the world grow and prosper accordingly (Fortescue Annual Report 2008, p. 6).
\end{quote}

As discussed with land and tenure, Fortescue increased its acquisition land tenements to enable the production of 1 billion tonnes of iron ore (Fortescue Annual Report, 2003) and raise capital to maximise the interests of shareholders. Furthermore, by 2009 they had accumulated 71400 square kilometers of iron ore tenements in the Pilbara region (Fortescue Annual Report, 2009). This acquisition focused on ‘cost and efficiency’ and contributed to the company’s economic growth (Fortescue Annual Report, 2008; 2009).

Therefore, Fortescue’s priorities are clearly shareholder value creation, profitable and sustainable growth and to be “the lowest cost, most profitable and safest iron ore producer” (Fortescue Annual Report 2010, p. 3). Comments relating to this expansion are exemplified in its 2011 annual report.

Fortescue is a major producer of iron ore and supplier to international markets. Our strategies and plans are focused on expanding our production capacity to take advantage of the expected continued strength in demand for iron ore. In order to maximise the benefits of our growth we have a vision to be the lowest cost, most profitable iron ore producer in the Pilbara. By achieving our goals, Fortescue will create sustainable long term value for its shareholders. The Board’s focus is to enhance and protect the interests of shareholders and other key stakeholders and to ensure that the Group is properly managed (Fortescue Annual Report 2011, p. 24).

In relation to its shareholders, Fortescue emphasises that;

\begin{quote}
[\textit{t}he Company Growth Performance category objectives are designed to protect the 67 long term interests of the shareholder (Fortescue Annual Report 2011, p. 51).\end{quote}

These disclosures exemplify Fortescue’s concern for the interests of shareholders since its disclosures present outcomes in terms of economic expansion and shareholder return.

\textsuperscript{32} Herb Elliot served as Fortescue’s Chairman from 2007 until 2011 (Fortescue Annual Report 2014).
Fortescue’s disclosures render the economic aspect visible while other aspects, related to adverse mining impacts on the Yindjibarndi land, are:

[m]arginalized and rendered relatively less visible … [in this sense] corporate annual reports are not the ‘motor’ of social change, [however], they can be mobilized to secure greater accountability and give voice to competing discourses (Cousins and Sikka, 1993, p. 55).

In contrast, the Yindjibarndi, as stakeholders or custodians, demonstrate a different allocation of resources from mining operations than the offer made by Fortescue which includes training and employment.

5.4.2 Fortescue and employment opportunities

Fortescue’s approach to negotiate mining land rights with the Yindjibarndi is focused on the provision of employment and training for Indigenous communities. The following quotes extracted from Fortescue’s annual reports provide some examples of disclosures in this regard.

Aboriginal people who belong to the native title groups with which Fortescue has formal agreements will be the primary target of the 300 jobs. Fortescue has recognised their desire to secure good jobs in exchange for supporting Fortescue’s mining operations on their land. This is one of the ways in which we are helping our communities to gain workforce skills for the long term (Fortescue Annual Report 2010, p. 15).

These claims reinforce Fortescue’s negotiations with the objective to develop a working relationship with the Yindjibarndi. Fortescue argues that, providing jobs through their Vocational Training and Employment Centre (VTEC), rather than high compensation payments, will benefit the Yindjibarndi people in terms of economic advantage. The following quote from Fortescue’s quarterly report reinforces this view.

Fortescue continues to build on the success of the “Billion Opportunities” program with the award of a further US$200 million worth of contracts and sub-contracts to Aboriginal businesses during the December 2013 quarter, taking the total value of contracts awarded to just over US$1.5 billion. The “Billion Opportunities” program provides sustainable business opportunities to Aboriginal businesses, providing an alternative to passive royalty income streams, access to training, employment and business development opportunities. Fortescue continues to see sustained growth in the employment of Aboriginal people throughout
the business. At the end of December 2013 approximately 12.5% of Fortescue’s workforce (508 employees) were Aboriginal. Fortescue’s contractors currently employ a further 450 Aboriginal people across Fortescue operational sites (Fortescue Quarterly Report December 2013, p. 2).

From a postcolonial perspective, Fortescue’s idea of “providing an alternative to passive royalty income streams” (Fortescue Quarterly Report December 2013, p. 2) is reminiscent of the assimilation-type policies in early colonial Australia. The settlers established policies focused on dismantling Indigenous cultural practices and traditions. They were provided with farm and institutional training in exchange for rations and supplies for the maintenance of their community (Husluck 1970; Helin, 2008; Edmunds, 2013). In addition, the Australian government developed legislation such as the Aborigines Protection Act 1896 and the Aborigines Protection Board with the intent to civilise through employment in the pastoral industry (Hasluck, 1970). During this period, funds were set aside to make payments to Indigenous peoples to compensate for the devastation they suffered during the British settlement. However, compensation was not forthcoming in monetary form but through rations in the form of flour, rice, sugar, tea and the distribution of blankets (Hasluck, 1970). By the end of the nineteenth century, Indigenous peoples working on pastoralists’ stations were not paid wages. The provision of rations was also extended to the family of the workers, and they also became dependent on the pastoralists (Edmunds, 2013).

Similar to the policies developed during colonial Australia, Fortescue argues that, providing employment through their VTEC, rather than high compensation payments, will benefit Indigenous peoples in terms of economic advantage. The following quotes are an example of this;

[w]e are also developing our own Vocational Training and Employment Centre (VTEC). This centre takes indigenous people of all educational levels and trains them into exacting and rewarding positions in our industry. It is our VTEC that is being adopted
nationally to finally “do welfare out of a job” by giving indigenous people self-determination through employment (Fortescue Annual Report 2010, p.5).

In addition to the above statements, Fortescue discloses the following.

Within this context, we recognise that our Land Access Agreements need to reflect real opportunities for local communities and Aboriginal people. The Fortescue social investment that gives local Aboriginal Australians a “hand up” is multi-dimensional. It is a story that embraces payments to traditional owners, training, employment and housing (Fortescue Annual Report 2011, p. 19).

Fortescue’s development of its own VTEC is meant to integrate the Yindjibarndi into the mining industry workforce.

Similarly, in early colonial Australia;

[i]t was thought that the best way to civilize Aboriginal populations that operated outside the accepted economic structure of the time was through a systematic process of assimilation so that they would fit into the emerging industrial society and market economy (Helin 2008, p. 98).

It can be argued that Fortescue practices the ideology that emerged in Australia during colonial times, where Indigenous peoples are framed as different from non-indigenous people. Although, the colonial period ended with the federalisation of Australia, the Yindjibarndi’s claim for a share of the mineral wealth in their traditional land is dictated by Fortescue. Therefore, they rejected the offer of training and employment as compensation for their land because it represents present day colonial practices. This is discussed in the following section.

5.4.3 Yindjibarndi and ‘welfare’

This section, presents an analysis of the case law and YAC media releases in relation to Fortescue’s offers of training and employment to members of the Yindjibarndi. The following statements demonstrate that the Yindjibarndi do not consider Fortescue’s offer of ‘training’ and ‘employment’ as ‘compensation’ for their land. For them, ‘mining welfare’ is a strategy used by the company to avoid compensation. Michael Woodley sates that;
FMG has insisted, for the sake of “consistency”, that it will not go beyond a compensation package that is equal to what it has previously offered to other indigenous groups in the Pilbara; namely, a fixed annual payment, (worth far less than what is offered by other iron ore mining companies to indigenous groups in the Pilbara); and, an annual VTEC allowance to train indigenous people to work in the mining industry, which potentially provides FMG with the benefit of a “local” work force (NNTTA 107, 2011, p. 19).

In a media release in 2011 Michael Woodley states that;

[t]he comments about mining welfare are demeaning and out of touch with reality. As the corporate trustee of the Yindjibarndi People, YAC rejects the whole concept of mining welfare (YAC 2011, n. p.).

Further;

FMG, like other mining companies, appears to believe that I, and the other Yindjibarndi Ngaarda, should be grateful: for a small hand out, which allows no real development of our social, cultural and economic structures; and, for a promise that FMG will train our people so they can be employed in FMG’s mines on our country (NNTTA 99, 2009, p. 20).

The above highlights that the Yindjibarndi people reject Fortescue’s offer of employment, as it represents controlled economic development for the Yindjibarndi people. The following statement by Michael Woodley illustrates this point.

Far from supporting our community to become independent, FMG’s ruthless drive to be the lowest cost producer, for its own benefit and that of its shareholder, mean Yindjibarndi will pay the price. This agreement locks us into a deal that falls far short of industry standards and deprives Yindjibarndi of the opportunity to benefit from the vast wealth that will be extracted from our traditional lands. We need an income capable of establishing our own sustainable economic, cultural and environmental enterprises, so we can have meaningful control over our future (YAC 2011e, p. 2.)

Furthermore, the Yindjibarndi seek to share Fortescue’s profits:

What we have been seeking from FMG, in our negotiations, is an opportunity to earn a share in that mineral wealth in our traditional country. We asked FMG to give us a leg-up, so that we could make a real difference for our people, by creating cultural appropriate governance and commercial structures institutions[sic] to deliver health care, education, training and employment opportunities for our people, which Yindjibarndi own and control. This would enable us to secure the means for the future survival of our distinct society, culture and religion (NNTTA107, 2011, p. 54).

The above quote indicates that the Yindjibarndi seek to be economically independent from Fortescue as a means to preserve their culture and develop their own business to train and work in their own community.
What we asked for was not handouts but real financial assistance to develop for Yindjibarndi – so that we, the Yindjibarndi community, can train and employ our own people to work in our country rather than have them work for FMG (NNTTA 107, 2011, p. 54).

According to the above statements it is clear that the Yindjibarndi want to determine what is good for their community and how to use their royalties. In contrast, the YAC argue that they are considered as lacking the knowledge to decide how to manage their own business, and therefore, they are not encouraged to participate in decision-making (YAC, 2011) processes. These concepts represent the colonial discourse of the past of an inferior people. On the other hand, Western skills are considered powerful and represent the only legitimate means regarding how mining agreements should be designed. YAC (2011a, p.6) in their media release states that:

There is a racist and discriminatory belief in Australia that aboriginal people, unlike white people cannot manage money and will waste it, and so they should not get royalties from their lands on an equal basis to other title holders. This grows out of other racist ideas in this country that in earlier times stopped us from being citizens, owning property, getting married and getting around the country freely…and then cooped on reserves, discriminated against our education and employment… and this put us on welfare.

In his study, Helin (2008, p. 39) has shown that:

For lasting solutions, decisions have to come from Aboriginal people themselves. Aboriginals have to consciously choose a more beneficial path than the dependency course they are currently on-and have the conviction to live with the consequences. We must look immediately to opportunities to generate our own sources of wealth and employment that could lead to the Holy Grail of rediscovered independence and self-reliance. It is time to re-take control of our lives from government departments, bureaucrats and the Indian industry. To do this, we must create our own wealth, develop a focussed strategy to educate youth, and control our own purse strings.

Similarly, to Helin (2008) Michael Woodley in the YAC Newsletter (2011a, p.6) contends that the creation of Indigenous business and jobs could improve their way of life for a better and sustainable future:

We want to set up a Yindjibarndi investment and development bank-a fund that we can use to educate our youth, invest into businesses and career and vocations, according to the aspirations and dreams and talents of our people-and not according to what Twiggy Forrest wants-black fellas working for him in his mines.
Further, Tough (1996) for example argues that, unlike the British idea that Indigenous peoples were and are unable to manage and understand economic change, there is evidence that since pre-settlement Indigenous peoples knew how to manage their lands and participated in a traditional economy. In the north of Western Australia, the Indigenous demonstrated western economic knowledge, especially in the early days of the pearling and pastoral industry (Hasluck, 1970). Thus, they understood and knew prices and economic changes.

Aboriginal people are the masters of land management as we have been able to demonstrate that for thousands of years. A diversity of land use and ensuring that a variety of land uses do not compromise each other is critical for sustainable and effective land management i.e. people, animals and plants existing in harmony. Aboriginal people should be part of the process as we are the custodians of the land and as the land is our temple we want to care for it so that we fulfil the wishes of our elders past and present who sought the integrity of country above all else (YAC, 2011a, p.6).

Similarly, Bruce Woodley the former WMYAC CEO contends that;

I just want to see my people control our affairs, our business, our Country. We must make the decisions and we represent our people. It should not be Michael Gallagher or anyone else, not Fortescue, not anyone who tells our people what to do. I want to see our people at business meetings and all the information brought to our Board for our people to decide. This is how it should be. I also want to see peace with all Yindjibarndi, all of us as one again, our hearts one. We can fix the problems if Yindjibarndi are left alone and then we can all do our business, work together and benefit. We can negotiate with one voice and with trust in our hearts (Georgatos 2012, p.3).

This illustrates how the ideas that were constructed since the beginning of British settlement continue today in diminishing and marginalising Indigenous peoples of their capacity to govern themselves. As reflected in the above examples it is clear that the Yindjibarndi resist the control that was used to subjugate during early colonial Australia. The use of welfare as a mechanism of financial control has been a feature since the nineteenth and early twentieth centuries (Greer, 2009). For example, in 1897, 75 per cent of Australian Indigenous wages was placed into government trust accounts (Miley and Read, 2013). This trust money was used to pay for the removal of Indigenous families to reserves and to pay for the removal of Indigenous children from their
families to foster homes (Kidd, 2006). Also, according to the Standing Committee on Legal and Constitutional Affairs (2006) during 1925-1935, the money that was placed into trust accounts and its interests were illegally used by the state to reduce Government’s budget deficit. At this juncture, Indigenous people’s wages were stolen and never reimbursed.

Current day struggles over land are a continuation of earlier struggles as Indigenous peoples continue to resist colonisation attempts to control and assimilate. The example of Yindjibarndi resistance to training and employment dictated by Fortescue demonstrates how their lives continue to be governed and controlled by the company and legislation enacted by successive governments. The role of the state is discussed in the following section.

5.5 Role of the State

The Australian Federal government plays an important role in mining land right negotiations. Mining development is granted via “[the government] control of the institutional and legislative frameworks that govern [the] mineral development process” (Howlett 2010, p. ii) and this section analyses this ‘triad of parties’ (Miranda, 2011): the Yindjibarndi, Fortescue and the State and Federal government. This case reveals how the interests of the Yindjibarndi are “overridden by the powerful alignment” (Miranda 2011, p. 655) of the economic profit maximisation interests of Fortescue and the government.

Mining is considered the second wave of colonialism in Western Australia (WA) and in 1960, the State Government granted mining leases and approvals without the
requirement of legislative processes (Edmunds, 2013). The first legislation enacted in WA aimed to protect Indigenous land rights and heritage sites under the Land Act 1933, was the *Aboriginal Heritage Act 1972* (WA) (WAAHA). However, this legislation did not prevent mining development (Edmunds, 2013). Table 5.2 indicates examples of heritage destruction from 1980-2013.

**Table 5.2 Heritage destruction**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>Noonkanbah(^{33}), mining site in WA</td>
</tr>
<tr>
<td>1995</td>
<td>The Old Swan Brewery redevelopment</td>
</tr>
<tr>
<td>2004-2005</td>
<td>The lifting of the protected area status of the Woodstock Abydos art complex for the building of a railway line by Fortescue</td>
</tr>
<tr>
<td>2011</td>
<td>Destruction of sacred places by Fortescue for the development of the Solomon Hub Project</td>
</tr>
<tr>
<td>2013</td>
<td>Damage to Indigenous archaeological sites by Buru at the Ungani oil fields operations in the Kimberly</td>
</tr>
</tbody>
</table>

Source: (Vaughan, 2016, p. 254)

Therefore, the WAAHA has been ineffective in preventing damage to Yindjibarndi’s heritage sites.

The destruction of Yindjibarndi heritage sites in late 2011, which Fortescue Metals Group (FMG) committed with impunity, points to wider, endemic deficiencies in the Aboriginal Act 1972 (WA) and its administration (YAC 2012m, p. 1).

With the Mabo decision and the subsequent Native Title (NTA) Act 1993, the common law of Australia provided for compensation and the recognition of a form of native title. This means that Indigenous peoples continue ownership of their traditional lands and are entitled to possession and enjoyment of the land according to their own Indigenous law and not under grant of the crown (Strelein, 2009; Howlet, 2010). However, those

\(^{33}\) Sacred sites were destroyed at Noonkanbah, WA by Amax Iron ore Corporation (Vaughan, 2016).
appointed to protect Indigenous peoples amended the legislation in order to protect mining interests (Cook-Lynn, 2007; Strelein, 2009; Cook-Lynn, 2012), because;

[the procedures and institutions set up under the Native Title Act 1993 (NTA) to deal with native title, together with state heritage laws, provides a clear benefit to developers, and that these advantages are magnified by the substantial financial resources that companies have available compared with those of native title parties (Cleary 2014, p. 133).

Therefore, the NTA 1993 was amended in 1998 resulting in the Native Title Amendment Act 1998 (Cth). Table 5.2 includes some of the NTA’s reforms:

Table 5.3

<table>
<thead>
<tr>
<th>Native Title Amendments Act 1998 (Cth) Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Confirmation of extinguishment in relation to freehold, leasehold and other tenures</td>
</tr>
<tr>
<td>2. Rising the threshold for registration of applications, and therefore limiting access to procedural rights such as the RTN</td>
</tr>
<tr>
<td>3. Diminishing or removing the right to negotiate and introduction of more limited rights to notification and comment in relation to various classes of acts</td>
</tr>
<tr>
<td>4. And the suspension of the Racial Discrimination Act 1975 to achieve this</td>
</tr>
</tbody>
</table>

Source: Strelein (2006, p. 7)

In the case of the Yindjibarndi, these amendments diminish and limit their rights to negotiate (Strelein, 2009; Howlet, 2010) but provide certainty for Fortescue.

Diminishing or removing the right to negotiate and introduction of more limited rights to notification and comment in relation to various classes of acts and the introduction, and also introduced a detailed scheme of Indigenous Use Agreements that allowed greater certainty for non-Indigenous parties through the creation of binding agreements (Strelein 2009, p. 7).

For example, in order to secure mining land rights, Fortescue has developed a good relationship with the Australian federal government as demonstrated in the 2006 Annual Report.

The strong support of both State and Federal Governments has been fundamental to the progression through the statutory approvals process. Within the overarching framework of each agreement, there are a series of separate sub approvals that must be sought and the Company is now in the process of producing the necessary documentation and plans to facilitate this process. As with any large project, there are many approvals and
consents required to bring the project into operation. Fortescue’s project team has established an excellent government relations platform, covering areas of statutory approvals, environmental land management, indigenous affairs and local council consents. During the past year, the environmental team successfully concluded the three key approval processes (Fortescue Annual Report 2006, p. 9).

The above disclosure reflects a dependent relationship with the State and Federal Governments over the approval of agreements and consents to operate mining sites in the Pilbara. For mining corporations such as Fortescue the relationship with the government is important in order to obtain support and rights over the lands to secure its economic interests (Miranda, 2007). On the other hand, the government seeks;

[p]rimarily economic benefits to its economy produced by foreign investment upon such lands and ultimately possesses an equally significant economic stake in the project (Miranda 2007, p. 155).

In the June 2008 Quarterly Report Fortescue stated that the application for mining leases have commenced.

During the quarter, Fortescue applied for a mining lease covering 3km² within the area known as Sheila Valley area in the central part of Solomon. This new application brings the number of mining leases applied for in the Solomon area to 7 applications covering almost 200 km². Nine miscellaneous licenses have also been applied for in the eastern part of the Solomon project over areas required for future infrastructure. The licenses when granted will give Fortescue the rights to construct roads, powerlines pipelines, bores and where applicable, conveyors in three separate infrastructure corridors. Two potential permanent camp sites are also included in the applications. (Fortescue June Quarterly Report 2008, p. 3).

In addition to the above, Fortescue states that in order to secure faster governmental approvals, they continue to emphasise the importance of continued legislative assistance and legal legitimation:

A key focus for 2010 will be further building our relationships with Government regulators. We need to work with them to ensure we can deliver on our future expansion plans (PER 2010, p. 2).

The above quotes highlight the continuity of state structures and societal institutions that were acquired during British settlement in Australia.
The colonial state manipulated the law to protect its sovereignty and to intervene and exercise control over society in terms of legislation, supporting settler’s business’ interests and the development of infrastructure. Thus, establishing legal structures that were unknown to Indigenous peoples (Osterhammel, 1997). While these legal structures have evolved to acknowledge such issues as native title and the need for a negotiated settlement, the State and Federal government still have a veto role. Therefore, government:

[p]lays a critical role in determining the negotiating environments in which mineral development takes place via their control of the institutional and legislative frameworks that govern mineral development. [Government] thus play a significant role in determining outcomes for Indigenous people from mineral development processes (Howlett 2007, p. ii).

Within this context, to understand government behaviour, it was necessary to document and analyse the Australian colonial context assessing “the extent of the institutional, structural and strategic legacy inherited from the past” (Howlett 2011, p. 68) previously discussed in Chapter 2. Therefore, the role of the government in the mining land right negotiations process is considered a censorious period for the Yindjibarndi because it disempowers Indigenous peoples in negotiations (Howlett, 2011).

The Yindjibarndi claim that they continue to be victims of marginalisation and disempowerment from the activities of government. The Yindjibarndi people are disempowered through the lack of acknowledgement of land right agreements, laws and policies that addressed their land right issues. These policies such as the Aboriginal Heritage Act and the NTA are based on the colonial model whereby Indigenous peoples require the permission of the State, for certain activities which creates a sense of dependence on others (Alfred, 2005; Kanyinke, 2013). Imposing these laws and policies denies the Yindjibarndi the right or power to reject the control and authority imposed on them during colonial times. As Banerjee (1999, p. 30) argues, it is necessary to;
[d]emystify the dominant paradigm for indigenous communities so that they can take advantage of aspects of western society that benefits their way of life, aspects that provide for their rights and can be used to negotiate the form of their existence.

This also involves “constructing their own social and cultural models in ways not so mediated by a Western episteme and historicity” (Mudimbe 1988, p. 183). Furthermore, O’Faircheallaigh (2008), contends that, although Australian State and Federal government legislation enacted during the 1960s and 1970s was promulgated to protect Australia’s Indigenous cultural heritage, it has not been effective because it has been executed by the non-indigenous that lack appropriate knowledge about the value of sacred places. These issues of heritage are explored in the following section on social and environmental issues.

5.6 Social and Environment Issues

Fortescue releases its social and environment impacts in its Director’s report and the Corporate Social Responsibility section of its annual reports. However, in 2008 Fortescue released its first Public Environment Report (PER) to coincide with the commencement of mining activities in the Pilbara region. The objective of the report was to disclose information regarding the impacts on the environment. Fortescue’s PER reports are prepared in accordance with the environmental reporting indicators used in the Global Reporting Initiative (GRI) G3 Guidelines’ principals of materiality and completeness (PER, 2009). In 2010, the reports were prepared using “AccountAbility’s AA1000 (2008) Principles Standard to ensure that the content of the report addressed the principles of Inclusivity, Materiality and Responsiveness” (PER 2010, p. 2). According to PER (2010), this approach ensures reporting the most relevant information required by stakeholders.
According to PER (2008, p. 3), the company’s environmental policy has the following objective:

Minimising the environmental impact of our operations is essential to Fortescue’s longevity, success and growth; and the company’s positioning in the domestic and global markets. Our dedicated team of environmental professionals is building a culture and reputation of environmental excellence. Through its proactive work in minimizing environmental impact, Fortescue aims to raise environmental awareness within its operations - and consistently meet high standards of environmental management.

The above statement reflects Fortescue’s main objective of providing non-financial disclosures relating to its operational impacts on the environment.

An analysis of the PER (2008; 2009; 2010; 2011; 2012) indicate that the majority of disclosures provide details regarding environmental incidents related to energy and greenhouse emissions, air quality (dust), habitats and water management. However, for the purpose of this thesis only the social and environmental disclosures that consider approvals and compliance regarding the Yindjibarndi sacred places are discussed. Disclosures relating to the Yindjibarndi sacred places are important because they exist in the area where Fortescue’s mining activities occur, in particular, the Solomon Hub Project. For the Yindjibarndi people as for all Australian Indigenous peoples:

Australia’s heritage, shaped by nature and history, is an inheritance passed from one generation to the next. It encompasses many things – the way we live, the traditions we hold dear, our histories, stories, myths, values and places. The diversity of our natural and cultural places helps us to understand our past and our relationship with the Australian landscape. Heritage recognises the indivisible association of culture, nature, country, place, [and] religion for Aboriginal and Torres Strait Islander peoples (Commonwealth of Australia 2001, Chapter 1).

For the Yindjibarndi people it is important to preserve their sacred places because they are associated with their identity as Indigenous peoples. Sacred places are about spirituality, knowledge, stories and languages. The sites are part of the environment and the Yindjibarndi have a spiritual connection with their land.
Fortescue is selective in its disclosures regarding the environment.

We have chosen not to report on every environment topic. This report contains performance information on our highest priority issues. It is, however, important to note that an omission from this report does not mean this area of performance is not managed internally by the business (PER 2009, p. 6).

Under the heading Stakeholder Engagement in the PER (2009, p.9; 2010, p.10) the following disclosure is made.

Regular engagement with Native Title Claimant groups regarding access agreements and to provide information on potential impacts ahead of any ground disturbance.

Fortescue does not provide further details on the access agreement with Native Title claimants. Specifically, the company does not pay sufficient attention to the Yindjibarndi land right access agreements in its public disclosures to stakeholders. The majority of disclosures provide details regarding environmental incidents related to hydrocarbon, tailings and saline water spills to land.

While heritage and environmental approvals are provided in the Director’s report in Fortescue’s annual reports:

Heritage and environment approvals continue to be achieved on schedule, allowing access to site to begin construction in earnest during August. The final piece of mining tenure for Solomon has been granted following the favourable ruling from the Native Title Tribunal in relation to the ongoing negotiations with the Yindjibarndi community. This now gives certainty over the commencement of construction and subsequent mining activities on this final section of the Firetail deposit at Solomon. Also received during the period was Federal environmental approval that has enabled other construction works to commence (Fortescue Quarterly Report March 2011, p. 4).

However, Michael Woodley disagrees.

Fortescue does not have all the legal clearances it needs to proceed with Solomon. FMG is still awaiting the decision of the Full Federal Court as to the validity of three crucial mining leases, and the decision of the Mining Warden about the grant of a fourth mining lease and several other tenements that are important to the development of the Solomon Hub (YAC b, 2011).

FMG has obtained conditional consent, under WA Aboriginal Heritage Act, to disturb ‘for the first time’ an area of ground, which is situated in the Firetail M47/1413 lease area. However, FMG is required to work through those conditions with YAC and this has not jet occurred (YACd, 2011).
Michael Woodley further adds that;

[the] Yindjibarndi Aboriginal Corporation would like to clarify that FMG has not concluded a land access agreement with the Yindjibarndi people; that the Full Federal Court is now considering the validity of both the Firetail and Valley of the Kings Mining Leases, and either way, the validity of these leases may be the subject of a further appeal to the High Court … YAC has objected to all these Miscellaneous Licences (YAC, 2011d).

As reflected in the above quotes, heritage and environment approvals are controversial.

Despite Fortescue’s claims about heritage site compliance, YAC’s states that;

[i]n its rush to develop its Firetail mine in the Solomon Project, FMG has abused the process of heritage protection, and now has damaged an ochre quarry and an ancient creek bed were we collect sacred stones and ochre each year for our ceremonies (YAC 2011j, n.p).

Michael Woodley continues.

FMG has done this against all warnings and advice from the YAC, the authorized representative of the Yindjibarndi people. They were early advised by the minister that they should conduct heritage surveys with YAC but have failed to do so (YAC 2011j, n.p).

Furthermore,

[t]he Yindjibarndi Aboriginal Corporation has received evidence showing FMG forced heritage consultants to change a heritage report about the significance of the area by threatening to withhold payments on their invoices if we did not comply with FMG’s request (YAC 2011j, n.p).

However, the PER (2011, p.6) indicates that there have not been significant environmental incidents.

Extensive exploration and drilling activities continued during the year. An extensive program has been initiated for the current and on-going rehabilitation requirements of the entire Solomon Hub exploration area. This rehabilitation program involves a systematic approach to rehabilitate specific project areas as well as applying progressive rehabilitation practices to reduce both the aesthetic and direct impacts on the environment.

The above disclosures indicate that there is a controversy between Fortescue and YAC in terms of the protection of sacred sites. Despite YAC’s claims that Fortescue damages heritage sites, Fortescue does not provide disclosures regarding the exploration of Indigenous sacred sites or damage caused due to the drilling activities. Fortescue denies
YAC’s accusations and asserts that “[heritage] and environment approvals continue to be achieved on schedule” and that “the final piece of mining tenure for Solomon has been granted following the favourable ruling from the NNTTA in relation to the ongoing negotiations with the Yindjibarndi community” (Fortescue Quarterly Report March 2011, p. 4).

In addition, the Yindjibarndi have not been able to protect their sites from mining activities because;

Fortescue Metals Group has commenced destructive earthworks, including blasting, whereby ‘ground has been disturbed for the first time’ within the Yindjibarndi portion of the lease area that is termed by FMG, the ‘Solomon Hub’, that has permanently damaged and destroyed Yindjibarndi Aboriginal heritage sites, contravening the Aboriginal Heritage Act 1972 (WA) (AHA) (YAC 2011j, p. 1).

Since important aspects of the Indigenous cultural heritage were excluded from the Cultural Heritage Protection Act (1986), O’Faircheallaigh (2008) argues cultural heritage legislation, instead of protecting Indigenous cultural sites, destroys them for the benefit of mining companies. Michael Woodley also contends that legislation protects the mining industry at the expense of Indigenous social, cultural and environsmental heritage.

In effect everything with the Aboriginal Heritage Act is geared in favor of any organization with huge financial resources, and it is not protective of cultural, historical and customary rights. FMG is paying its way to an outcome - there should be protections from this, not making the road for such companies easier. We already have a David verse Goliath battle with them as it is (Georgatos 2012, p. 3).

Although YAC investigated incidents causing the destruction of sacred places, Fortescue claimed to have implemented the recommendations of the Cultural Heritage Protection Act (1986).

Fortescue has followed and complied with the legal and regulatory requirements of the Aboriginal Heritage Act at every step of the process. The company is proud of its outstanding track record in protecting Aboriginal sites of significance. Notably, Fortescue has avoided impact to many hundreds of sacred Aboriginal rock art engravings and other such sites across its project area. Fortescue dedicates a great deal of time and resources to this protective approach and will continue to do so (Fortescue 2014, 38.).
In addition to the above disclosure, Fortescue (2011, n.p.) states that: “Fortescue Metals Group (Fortescue) categorically rejects offensive claims that it is operating unlawfully regarding Aboriginal heritage sites at its Solomon Hub project”.

Michael Woodley indicates that the Yindjibarndi people will be affected if the mining leases are granted.

I am aware that the Government Party and the Grantee Party (“FMG”) are arguing that the Tenements should be granted subject only to the conditions that are set out in the Government Party’s Statement of Contentions (dated 14 April 2009) but I want to make it absolutely clear that the Native Title Party does not agree with, nor consent to, that happening, and neither do I (NNTTA 99, 2009, p. 12).

In addition, in the Court inquiry\(^3^4\), YAC gave testimony regarding the collection of sacred stones and ochre within the area that they use every year for their spiritual ceremonies. Consequently, this area will be destroyed if the mining activities are granted to Fortescue by the WA State government\(^3^5\). Despite the Federal Court accepting the validity of YAC’s testimony, it held that the NNTTA acted correctly in granting the mining leases to Fortescue. In this regard YAC stated that;

> [w]e are disappointed with the decision but it comes at no surprise. This confirms what we have known all along, that the Native title Act is a bad piece of legislation that consistently works against the interests of the first Australians. What is worse is that the system gives us no chance against the teams of company lawyers, land access managers and FMG’s unlimited war chest. The deck has been stacked against us (YAC 2011e, n.p.).

This quote demonstrates that the NTA proved to be an inadequate instrument to avoid mining development. This is important as Fortescue has the funds as well as government backing that reflect the continuing relationship of power and domination similar to the colonial “facts of domination” (Said 1978, p. 6) supported “by a government that

\(^3^4\) YAC’s testimony in the FMG Pilbara Pty Ltd/Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and others on behalf of the Yindjibarndi People/eastern Australia.

\(^3^5\) Federal Court of Australia - Full Court/ Cheedy on behalf of the Yindjibarndi People v State of Western Australia [2011] FCAFC 100 (12 August 2011).
endorse what they do” (Said 1978, p. 34). In Western Australia, all pastoral leases under land regulations such as the Land Regulations of 1864, the Land Act 1898 (WA) and the Land Act 1933 (WA), had the provision to favour Indigenous peoples by allowing them the right to hunt and meet for ceremony (Edmunds, 2013). Despite attempts to incorporate cultural rights - when mining is concerned these are overturned.

According to its 2012 Annual Report, Fortescue did not provide further details of mining right negotiations and heritage approvals with the Yindjibarndi. The controversial dispute between Fortescue and the Yindjibarndi could be the reason to explain this lack of disclosure. However, in 2013, Fortescue made the following disclosure.

We proactively manage cultural heritage through a team of people located across our operations including Perth, Port Hedland and at our Christmas Creek, Solomon and exploration sites. Our team includes representatives of the Traditional Owners who help Fortescue manage their heritage. The identification and management of culturally important sites is fundamental to Fortescue’s approach to sustainable operations. We have identified over 5,000 heritage sites, during extensive archaeological and anthropological surveys. Our approach ensures that Fortescue's operational and expansion activities comply with statutory obligations under the Aboriginal Heritage Act 1972 (AHA) and our commitment to heritage management made in our Land Access and heritage agreements (Fortescue Annual Report 2013, p. 28).

The above extract indicates that Fortescue is following its legal obligations in relation to good management of the Yindjibarndi heritage sites. This reinforces an image of a responsible company that adheres to regulation in order to protect cultural places. Fortescue’s image therefore is consistent with Guthrie and Parker (1990, p. 165) who claims that corporations communicate only positive environmental information:

emphasising the corporation’s positive contributions to social welfare and highlighting its attempts to minimise its harmful effects on various elements of society.

In regard to the good management of heritage sites, Fortescue makes the following statement:

During the year our Heritage Team made a historic and significant discovery. A rock shelter near Fortescue’s Christmas Creek mine was found to contain evidence of the oldest known Aboriginal occupation in the Pilbara. Using carbon dating analysis, archaeologists were able
to ascertain that charcoal pieces excavated from the rock shelter are at least 41,000 years old (Fortescue Annual Report 2013, p. 27).

Previously, Fortescue had not presented any evidence of historic discoveries within the mining activities in the Pilbara region. It confirms a close working environment with heritage consultants and Indigenous communities where mining activities are carried out. Fortescue in its 2013 Annual Report’s section states that:

To ensure that we maintain our social licence to operate, it is important that the entire Fortescue family behaves with respect and care for our local communities, in particular the cultural heritage of Aboriginal People. It is also important for us to do what we say we will do (Fortescue Annual Report 2013, p. 27).

In previous years, Fostescue’s annual reports did not raise concerns in relation to the topic of ‘respect cultural heritage of Indigenous people’. In addition, it states that;

Fortescue has had a long term commitment to reduce the disparity between Indigenous and non-Indigenous Australians and to improve the economic capacity of Aboriginal Australians. We enter into comprehensive Land Access Agreements with Traditional Landowners which provide for best practice cultural heritage management and maximise the opportunities for training, employment and business creation. Our established Land Access Agreements, along with our management practices help us to uphold fundamental human rights and respect for Aboriginal communities touched by our activities (Fortescue Annual Report 2013, p. 28).

The above assertions reinforce that Fortescue adheres to international Indigenous frameworks in land right negotiations. Also, the quote indicates that, during 2013, Fortescue made significant disclosures regarding the importance of protecting cultural heritage. In order to do this, Fortescue introduced a new approach to align its Human Rights Policy with the United Nations Guiding Principles on Business and Human Rights. Fortescue’s new approach is indicative that it discloses positive information regarding respect for Indigenous peoples and protection of sacred places. This is an improvement from previous years where it had a record of poor environmental performance relating the destruction of the Yindjibarndi’s sacred places.
5.7 Divide and conquer strategies – division of the Yindjibarndi community

This section, discusses the creation of the ‘splinter’ group WMYAC. WMYAC was created and registered on 23 November 2010 with the Federal government’s Office of the Registrar of Indigenous Corporations (Cleary, 2014). According to Cleary (2014, p144) this group was created with;

> [t]he stated purpose to provide health and community services to the Yindjibarndi people. Fifteen days later, it became clear that the real aim of WMYAC was to replace YAC and the members of the Applicant to the native title claim.

Divide and conquer strategies are practiced by mining companies in Australia by providing financial support to a group of Indigenous peoples that are not the legal representatives of a community.

One method used by mining companies to side-step proper consultation processes is documented in North America and Canada as well as Australia. Mining companies incorporate small Aboriginal groups in areas under dispute and give them financial support. These groups are then regarded as the official representatives for that area and mining companies proceed to consult with them. Thus, it seems as if the companies are going through the correct legal processes whereas, in fact, they are ignoring parties who have legitimate interests (Friends of the Earth Australia 1996, p.1-2).

Specifically, in Australia:

> All the broader issues of underprivilege, welfare-dependency and self-determination that have been debated nationally in recent month are present and magnified in the WA native title debate. Land councils and claimants speak of mining companies cynically creating and exploiting divisions with underprivileged communities; paying thousands of dollars to a few key individuals or factions within communities in order to gain their signature for mining approval or heritage clearance. In one case, an Aboriginal elder in the Pilbara was paid 12 mango trees in return for the necessary heritage clearance (Priest 2006, p. 43).

For example, the Western Mining Corporation (WMC) created a splinter group to divide and conquer Indigenous peoples in Finniss Springs, South Australia;

> It appears that WMC has embarked on a course of side-stepping consultation with the Arabunna as the traditional custodians. It has also taken similar actions in regard to the Kokotha, the traditional custodians for the actual site mine (Friends of the Earth Australia, 1996, p.1).

According to YAC (2012n, p. 1), Yindjibarndi Elder Bruce Woodley provided evidence of Fortescue’s tactics to divide the Yindjibarndi community.
What Bruce Woodley revealed yesterday about FMG’s manipulation and duping of the Wiru-murra splinter group, which Fortescue helped set up and continues to fund, is not news to the Yindjibarndi Aboriginal Corporation (YAC). FMG has done everything it can to avoid dealing with the lawful representative institution that was appointed by the Federal Court, and is elected by the Yindjibarndi People, to take care of the native title rights and interests of the Yindjibarndi People.

Cleary (2014, p. 145) also contends that:

In a separate avenue of legal pressure on YAC, FMG funded and initiated an action in the Supreme Court of Western Australia an administrator appointed to YAC. FMG provided substantial funding to WMYAC for both the Federal and Supreme Court challenges. For the 2011-2012 financial year, WMYC reported gross revenue of $8.5 million and net assets of 3.6 million. The main source of revenue was described in the notes to the accounts as ‘services’ income which included $1.6 million from FMG in addition to $2.98 million from other services, and $1.79 million as survey income.

Fortescue and the YAC broke their relationship following disagreements over the benefits offered by Fortescue and heritage agreements. YAC proposed an agreement that would economically benefit the Yindjibarndi community. However, Fortescue opposed YAC’s proposal and began mining land right negotiations with The WMYAC, “which has not legal right to negotiate anything that affects Native Title in Yindjibarndi Country” (YAC 2011f, n.p.). Under the NTA, the YAC holds the right to represent the Yindjibarndi people when dealing with native title rights (YAC, 2011). However, according to (Cleary 2014, p. 133);

[the] nature of the NTA is likely to be divisive for native title holder groups especially when a developer chooses to provide financial support to one favoured faction within a multi-party language group. I such situations, an opportunistic company can divide and conquer a group and remain within the law, even though such actions can be considered a breach of the principal of good faith in negotiations, as required by section 31 of the NTA.

The controversy between Fortescue and YAC resulted in a division among the Yindjibarndi people.

They have invaded our community and divided our families by promising cash to the weakest of our country man. They have wrecked any possibility of trust (YAC 2011n, n.p).

Michael Woodley also stated that;

[o]n the promise of a one-off, half-million dollar signing fee – ‘mining welfare’ at its worst – the breakaway Wiru-lumurra (WYAC) group have been conned into supporting FMG (YAC 2011, p. 1).
He further adds that;

YAC has tried to negotiate an agreement with FMG that is in line with mining industry standards for compensation, and that ensures comprehensive surveys and protection measures for the Yindjibarndi culture in place before mining commences. However, instead of negotiating an equitable heritage and land access agreement, FMG have implemented a series of divide and conquer actions designed to break the will of the Yindjibarndi Aboriginal Corporation by seeding misinformation and fear in the community (YAC, 2011j, p.1).

Fortescue’s practices reflect traces of the past that happened during the colonial period. During the colonial period, Indigenous leaders were separated from their own Indigenous cultural values and traditions. In addition, they were forced into a different world that was not understood by them: “divide and rule still operates as a basic strategy for dealing with indigenous peoples. It still operates because unfortunately it still works” (Smith 1999, p. 99). For example, Fortescue’s first mining projects included Cloudbreak and Christmas Creek in the Pilbara region WA (Fortescue Annual Report, 2009; 2010; 2011). The development of this project required the grant of 112 mining leases and 71 exploration licenses for the mine and rail line. To secure the leases Fortescue had to negotiate with four groups of Indigenous communities holding native title claims over the area to be leased: the Nyiyapardi; Paliku; Martu Idja Banyjima; Puutu Kunti Kurrama and Pinikura and eastern Gurama (Priest, 2006). However, five members of the Nyiyapardi, and David Stock prepared and registered a claim for 40,000 square kilometres of land with the NNTTT (Priest, 2006). Two months earlier Fortescue signed an agreement with David Stock and the five members without legal representation and without consultation with the broader claimant group by “using a tactic that might be described as divisive” (Cleary 2014, p. 139). David Stock received an $80,000 payment to buy motor vehicles. David Stock was quoted in the press a day after signing the agreement.

36 David Stock is a member of the Nyiyaparli Indigenous community on Mindaroo, WA who has a close relationship with Andrew Forest and his brothers (Priest, 2006).
I didn’t know what was going on. I feel like they made me sign; they kept calling me ‘uncle’ … I’ve done a silly thing (Priest 2006, p. 43).

The broader Nyiyaparli group disavowed the deal and the Indigenous community was divided and conquered.

In relation to heritage agreements, the WMYAC favored Fortescue, stating that the proposed mining site did not have culturally significant places.

Senior law men with responsibility for the area have surveyed the sites and recommended appropriate action to protect it. The sites have been not disturbed. There is now a buffer zone around the sites and access is restricted to people with permission from the Yindjibarndi elders. Mr Woodley is reported as saying that there were 250 sites which are important for religious ceremonies in the area is not correct. Yindjibarndi people have not conducted ceremonies in the area for several generations (WMYAC, 2011).

According to the above statements, YAC remains concerned that the area contains spiritual heritage sites. This contradicts the WMYAC view that the area had insignificant spiritual value. Therefore, they approved mining activities that would be performed for the benefit of future Yindjibarndi generations through training and employment. This dispute has exacerbated and contributed to the division of the Yindjibarndi. The following quote by Fanon (1963, p. 306-307) resonates with this controversy: “[In] the colonial context . . . the natives fight among themselves. They tend to use each other as a screen, and each hides from his neighbor the national enemy”. This ‘divide and conquer’ between Fortescue and the Yindjibarndi corroborates Fanon’s arguments, the Yindjibarndi are ‘using each other as a screen’, and the dispute among them distracts from the decolonisation process, and as such, erodes the possibility of confronting a new face of colonialism under the guise of corporate power.

According to Alfred and Corntassel (2005) Indigenous efforts to confront corporate or State power by mimicking state institutions via land rights claims will only serve to strengthen Indigenous internal disagreement.
5.8 Summary

This chapter analysed Fortescue and Yindjibarndi mining land rights dispute through an examination of documents. This analysis focused on the arguments developed on the themes used by Fortescue and YAC in the empirical data and anchored this meaning in relation to postcolonial theory. First, land and tenure was an important theme that denoted Fortescue’s ideology encapsulated in the acquisition of mining land within the Pilbara region. The acquisition of land to develop the Solomon Hub Project was concerned with the expansion of world markets, thus, creating economic growth and increasing shareholder profit maximisation. In contrast, the Yindjibardi people expressed a different point of view on the concept of value of the land. For the Yindjibarndi, land represents a spiritual value.

Another key theme that was analysed was profit and resource allocation. The importance of this theme alludes to Fortescue’s approach to offer the Yindjibarndi people employment and training rather than mining land rights compensation. In contrast, the Yindjibarndi considered Fortescue’s mining welfare as controlled economic development where they do not have the opportunity to be economically independent.

The role of the state on the Solomon Hub Project is another relevant theme that was analysed in this chapter. Fortescue had strong support from the government to the progress of the mining land rights approvals and consents to develop the Solomon Hub Project. The Yindjibarndi did not have any support from the government to protect their land rights interests. Finally, the divide and conquer tactics of the past fractured the Yindjibarndi and escalated the power and control of Fortescue.
The analysis found that the Yindjibarndi case demonstrates that the colonial period has not ended; the colonial effects are still present in contemporary times because Indigenous peoples continue to be governed by legislation enacted by successive governments. Chapter 6 will elaborate with the implications for accountability and concluding comments.
CHAPTER 6: DISCUSSION AND CONCLUSIONS

This chapter begins with a summary of the thesis followed by a discussion of the research questions including the implications for accountability; concluding comments; contribution to accounting; and, further research directions.

6.1 Summary

This thesis began with an examination of the Australian historical colonial period to provide the context and to understand the current mining land rights controversies over the Solomon Hub Project between Fortescue and the Yindjibarndi as a postcolonial issue. Since British settlement, Australian Indigenous peoples’ land has been appropriated to extract wealth. Based on the notion of terra nullius or land belonging to no one, the colonisers developed State and societal structures that gave rise to policies, such as assimilation and legislation, such as the antecedents to the Native Title Act (1993). While recognizing a form of Indigenous land title, this legislation continues to disempower and affect the way in which Indigenous peoples control and manage their land. Mining activities implicates the interrelationship between mining companies, the State and Indigenous land tenure (Miranda, 2009). These impacts are reflected in the ongoing battle between mining companies and Indigenous peoples over land rights.

The thesis presented the Yindjibarndi case as a recent example of the continuing colonisation of Indigenous peoples in Australia as a salient example. In Australia, for many Indigenous landholding is “under the control of multinational corporations, which have all the worst aspects of state control and none of the virtues” (Manuel and Posluns 1974, p. 253). For mining corporations land represents an opportunity to maximise profits. For Indigenous peoples it represents the continuing guise of colonialism in an
epoch referred to as ‘postcolonial’. For the Yindjibarndi, large-scale mining and urbanisation in the West-Pilbara is an example colonisation without the guns and chains of the British settlement (Edmunds, 2013).

The Fortescue and Yindjibarndi case demonstrated that Indigenous peoples have opposed and continue to fight against the development of mining on traditional lands because it represents continuous dispossession, not only of their lands, but also their culture. Within this context, progress and economic development play a key role. As Michael Woodley states, the Yindjibarndi people are still living the ‘darkest ages’ dating pre-1967 laws that;

controlled when and where our people could go, made us beg for travel permits, and kept us under constant surveillance and the fear of punishment. It was laws like this that try to break the connections of our people to country and all the rituals that are the foundations of our religious belief and language. Such laws were abolished half a century ago because they were destructive, and because the Australian people recognized that they rabished our Human rights as the first Australians. Now, in country they wish to mine, Fortescue wants to bring back these dark ages (YAC 2011k, p.2).

Fortescue and the Yindjibardi operate in different worldviews with respect to ‘land’ and this disjuncture gives rise to systems of accountability that differ. Therefore, this thesis:

1. Explores how an Indigenous community values their land in contrast to Western values of land use, and;
2. Examines how Fortescue discharges its accountability to traditional owners regarding use of their land, and;
3. Analyses to what extent colonial practices continue to impact Indigenous communities

6.2 Indigenous community and Western values of land use

In response to question one, this thesis suggests that Fortescue primary objective and responsibility has been the acquisition of native title land to develop one of the biggest iron ore deposits in the Pilbara region. In its pursuit for economic development and
progress the corporation built, owns and operates rail and port infrastructure. From Fortescue’s perspective the value of land is considered as an economic asset that generates profits and increase shareholder value. This conception of land is entrenched in Western ideas of land and valued as tangible property including “individual rights of possession, use [and] exclusion” (Greer and Patel 2000, p. 320).

In contrast, for the Yindjibarndi, land has a different meaning to the Western notion of an economic asset. For the Yindjibarndi, land is acknowledged as ‘sacred’ and as a ‘holy place’. The Yindjibarndi cannot see themselves separate from the land because it is vital for their subsistence and they have a spiritual connection: “[w]e do not see, or feel, ourselves as being separate from that country because we were put into that country and we remain in it” (NNTTA 99, p.12). From the Yindjibarndi’s perspective, land ownership is not based on individualism. They see the land as a spiritual value that is shared with all the members of the community. For them, their primary objective is to protect and preserve land and culture for future generations.

Drawing on the analysis, it is revealed that the Solomon Hub Project brought negative economic, social and cultural effects for the Yindjibarndi. Fortescue’s major mining development on traditional lands sought economic advantage through training and employment instead of royalty income for the Yindjibarndi. The analysis has shown that Fortescue’s offer of ‘training and employment’ was not a solution that allows real development for the Yindjibarndi’s social, cultural and economic structures. The Yindjibarndi pursued fair compensation in terms that they could benefit from the wealth extracted from traditional lands. In addition, they sought to manage, use and control their land in accordance with their cultural and religious beliefs in community. The
Yindjibarndi believed that accepting ‘training and work’ was accepting a contemporary form of assimilation that continues to undermine their capacity to become economically independent. The Yindjibarndi sought to turn around the negative economic consequences of training and employment into development that could bring to their community better health care, education and lifestyle that they can own, control and govern under Yindjibarndi law.

This thesis revealed that the State and Federal Governments played a significant role in the development of the Solomon Hub Project. Fortescue’s strong relationship with the government and its corporate power had the capacity to influence the government and current legislation in order to secure mining land rights and facilitate the statutory approval process of the Solomon Hub Project. In this regard, legislation such as the NTA 1993 and heritage laws failed to recognise the Yindjibarndi native title of the Solomon Hub Project area. In this case, “Yindjibarndi country is currently managed, by both the Commonwealth and the State governments” (NNTTA 99, 2009, p. 21). Therefore, legislation was acting in benefit of Fortescue. On the other hand, the government supported the project because the grant of the development had significant economic benefits to the state such as obtaining mining royalties and “investment in minerals exploration which may lead, or contribute to, a viable mining project” (NNTTA 11, 2012, p.25). However, without sharing its economic benefits with the Yindjibarndi.

As the Yindjibarndi opposed the project, this was not convenient for Fortescue’s interests. As such, the corporation took advantage of the land rights dispute and divided the Yindjibarndi community establishing a new ‘splinter group’ (WMYAC) that supported the Solomon Hub Project and accepted the corporation’s offer of training and
employment. Therefore, the WMYAC signed the mining land rights agreement with Fortescue. However, “WMYAC have absolutely no legal authority to sign any deal on behalf of the Yindjibarndi Nation” (YAC 2011d, p. 2) because YAC was the only prescribed body to legally represent the Yindjibarndi community.

Due to the strong relationship between the government and Fortescue, the corporation was granted mining leases without the Yindjibarndi consent. Consequently, according to evidence in this thesis, the granted of the leases lead to the destruction of the Yindjibarndi’s sacred sites, giving place to mining development and port and rail infrastructure. In this regard, Fortescue and the government owe a responsibility to the Yindjibarndi. Fortescue had the responsibility to consult them about the approvals and negotiations and consider the Yindjibarndi’s native title on the land. These issues demonstrate lack of accountability towards the Yindjibarndi. Therefore, Fortescue and the government are found accountable for violating such responsibilities, they failed to recognise that the Yindjibarndi held the native title of the Solomon Hub area.

6.3 Accountability for land use

Despite a clear acknowledgement of the different forms and views of accountability, within an accounting context:

[a]ccountability is culturally determined. In Accounting, we ignore this important principle … Accountability clearly denies any kind of homogeneous arrangement. Individuals, including professional people who attempt to understand accountability in this way, are committing a kind of ethnocide which assumes all people are the same, or assimilation which encourages some people to behave in unfamiliar ways. Accountability framework [sic] should be negotiated arrangements considering fully the economic and cultural conditions of the parties concerned (Mataira 1994, p. 13).

The above quote implies that there exists the possibility to practice a different form of accountability. That is the need to move from accountability for the self to
accountability for the other (Shearer, 2002), a different accountability that acknowledges the needs, expectations and views of the other through:

[a] relative symmetry of power, the engagement of personal understanding and the challenging of other’s views, mutual understanding and ties of friendship, loyalty and reciprocal obligation; a sense both of individual difference and mutual dependence. Self is confirmed but in a sense that simultaneously acknowledges and articulates the interdependence of self and other (Roberts 2001, p. 363).

This challenge is important for the purpose of this thesis because it accommodates an empowering system of accountability that can enhance wellbeing and bring emancipatory effects for the Yindjibarndi people. This system of accountability can be achieved through the incorporation of Indigenous cultural knowledge that aligns their way of thinking with that system employed by corporations (Rossingh, 2014).

Further, Lehman (1999, pp. 226-227) acknowledges that:

[an] enabling technology that creates an interchange between all levels in society with a view to representing the interests of all citizens, not just a select or privileged few...modern forms of accounting, however, tend to focus on controlling and representing organisational reality and pay little perceivable attention to the idea that a corporation’s activities impact on the choices available to citizens. It is well known that accounting focuses on providing decision-useful information that steers accounting away from its role of narrating business activities to the community.

Both Lehman (1999; 2006) and Roberts (1991) contend that it is necessary to abandon the individualistic economic view of accounting and accountability through a system that represents the views, interests and common values of all citizens. These common values are not expressed in quantitative measures as represented by financial information. With particular attention to the Australian indigenous context, Gibson (2000, p. 304) argues that:

[u]ntil a supportive and empowering form of accounting reports, emphasising non-financial and social values, replaces the accountability measuring stick denominated solely in unserviceable financial terms, the process of Aboriginal dispossession, although changing in nature, is likely to continue.

For Indigenous peoples, corporate accountability is important and necessary to convey the effects of its activity on their community as stakeholders. It is understood as the
direct responsibility by the corporation for respecting, protecting human rights and the environment where they operate (Report of the Asia Indigenous Peoples Pact, 2012). For example, Fortescue’s environmental disclosures in its annual reports acknowledge that under Yindjibarndi law the Yindjibarndi people;

[are] responsible for everything that happens in [their] country and that [they] are obliged to make sure that whatever happens, accords with Yindjibarndi law. [Because] it is this law that should govern how people behave in Yindjibarndi country (NNTTA 99, 2009, p. 12).

The problem is that very often, corporate accountability represents the interests of a ‘privileged few’ because the corporation who is to be called to account controls the information (Coussins and Sikka, 1993). In this case, powerful corporations such as Fortescue have the potential to shape its disclosures according to its priorities. The analysis of Fortescue disclosures revealed that its reports focus on shareholders and creditors needs reinforcing ‘dominant power relations’ (Coussins and Sikka, 1993) whilst it neglects the interests of other groups such as the Yindjibarndi.

Despite Fortescue’s claims of CSR, the corporation failed to disclose any information regarding the Yindjibarndi’s sacred places. Since mining is developed on traditional lands it is important to consider new regulations to make mining corporations to discharge accountability towards Indigenous peoples, including the Yindjibarndi. The current heritage laws failed to protect the Yindjibarndi’s sacred places, as such, new regulations to protect these sites is important. To achieve improved results the Yindjibarndi should be taken into account to decide about the necessary regulations to protect their interests.

Fortescue practices a form of hierarchical accountability when the land and its mineral resources are traded for profit. This is in contrast to the Yindjibarndi worldview of land.
As argued previously, the Yindjibarndi have a spiritual connection with the land. For them, land is shared and it is held collectively. For the Yindjibarndi people, as for other Australian Indigenous communities, ‘collectivity’ and ‘sharing’ are important because they are the “lens through which they interpret the world” and “in [i]ndigenous enterprises illustrates the incompatibility of accounting and accountability systems” (Greer and Patel 2000, pp. 314-315) with that of hierarchical accountability. Fortescue and the Yindjibarndi is an example of this incompatibility of worldviews and therefore the contested nature, and the relations of power that exist in certain forms of accountability.

Indigenous society expresses a form of communitarian accountability based on collectivism. The Yindjibarndi people, under their Indigenous law, maintain a relationship based on respect and reciprocity, that is, it binds them together as a community to ensure that resources on their traditional lands “are shared by the present generation and preserved for future generations” (NNTTA 99, 2009, p. 16) –a concept that resonates with current definitions of sustainability. Consequently, for the Yindjibarndi people it is very important to preserve and respect their Indigenous culture to ensure their survival and wellbeing so that future generations can get ‘their proper inheritance’ (NNTTA 99, 2009). In Australia, there are legal obligations, such as the need to comply with cultural heritage legislation, which applies federally and in all states and territories (O’Faircheallaigh, 2006).

However, mining companies are concerned with profit maximization; therefore, to be considered as socially responsible there must be “much diversity in company policy and behavior” (O’Faircheallaigh 2006, p. 6). While some corporations engage in what is
termed as ‘window dressing’ to create an image of commitment to CSR, their behavior often “represents bare compliance with the law and possibly undermines it” (O’Faircheallaigh 2006, p. 6). For example, Fortescue’s disclosures in its annual reports and PER reports create an image of compliance with CSR; however, according to YAC it has undermined the rights of the Yindjibarndi people.

FMG has applied to the State Administrative Tribunal to have several of the Minister’s conditions [DELETED], including the conditions to: “[Avoid all sites that contain human remains (YAC 2011a, p. 2)

The Yindjibarndi people argue that;

[what] in fact FMG is doing, is rushing to destroy evidence that a pristine, greenfield, internationally significant Yindjibarndi heritage environment existed prior to the earthworks being conducted (YAC 2011a, p. 9).

Consequently, Fortescue is accused of not complying with legislation regarding the protection of sacred sites and has obtained land right agreements without the consent of the Yindjibarndi people (YAC, 2011).

Therefore, accountability systems reminiscent of the colonial period will continue a new form of colonialism and, as Neu (2000a; 2000b) and Greer and Patel (2000) contend, it is necessary to develop systems of accountability that can incorporate Indigenous worldviews that focus on non-financial and social values.

To overcome the colonizing potential of accounting systems, systems of accountability should take into account the particular context in which they operate (Chew and Greer 2000, p. 293).

Indigenous peoples communities need to operate within a system of accountability that represents their own views and ways of thinking. The implications are discussed with respect to colonialism and postcolonialism.
6.4 Modern day Colonial Practices

As outlined in Chapter 3, this research drew on postcolonial theory to conduct the analysis of Fortescue and the Yindjibarndi. Using postcolonial theory has shed light on the colonial context that gave rise to the imposition of British ideology that has facilitated an understanding of the impacts of colonialism on the development of legislation and policies relating to the control and management of the Yindjibarndi land rights. Postcolonialism revealed the persistence of contemporary forms of mining exploitation and domination, creating unequal power relations between Fortescue and the Yindjibarndi.

Aided by theme analysis, the theoretical framework provided a setting to identify and contrast these two different worldviews, suggesting that current accountability systems, legislation and policies embedded in Western ideology are not always useful to understand Indigenous land rights issues. The concept of land and colonialism has exacerbated disputes between mining corporations and Indigenous peoples in Australia. These contrasting worldviews created a controversial context where YAC and the Yindjibarndi community were required to understand and comply with systems of accountability that are entrenched in Western ideology. The Yindjibarndi accountability practices encourage responsibility to care for the environment and share its resources with others. In so doing, they have their own guidelines and rules that promote, guide and shape social responsibility and behavior with all members of the community. These rules and practices had been preserved for more than 40 000 years and are intended to maintain reciprocity between all members of the community. These contrasting worldviews and practices, as demonstrated in this thesis, are an impediment to deliver satisfactory economic development for the Yindjibarndi.
The Yindjibarndi case has demonstrated that Western ideology based on economic progress is not always appropriate in a mining land rights context. This implies the need for a new approach that can improve the relationship between mining corporations and Indigenous peoples. It is important for mining corporations to take new directions that incorporate Indigenous participation and close cooperation in decision making that enables control and management of their land under their own traditional land tenure. In so doing, they can preserve their land and keep alive their culture and religion as a community of people bound together.

6.5 Concluding Comments

Based on the evidence, mining corporations such as Fortescue work in an environment where power and dominant relations create a framework to secure economic progress. In this case, the Yindjibarndi people continue to live a form of economic subjugation where they are robbed of their right to decide and control the benefits of the land and its resources. In such a case, this promoted conflict between both parties, suggesting that the problem:

>m]ay lie precisely in its capacity to reveal the ‘incoherence of thought’ embodied in the unquestioned pursuit of growth and profit, without regard for the social and environmental consequences that flow from this (Roberts 1996, p. 58).

These issues arise the need for accountability systems that address the needs of the Yindjibarndi people through “a new and accountable world through the community level not at the corporate level” (Lehman 1999, p. 227). This needs to be a system of accountability that escapes the hierarchical form of accountability practices by Fortescue. This can be achieved through the incorporation of the Indigenous peoples in the process that can “[dissolve] the domination and exploitative structures of the problem they are addressing” (Puxty 1991, p. 44) that is:
[a]n enabling [accountability] that creates an interchange between all levels in society with a view to representing the interests of all citizens, not just a select or privileged few....modern forms of accounting, however, tend to focus on controlling and representing organisational reality and pay little perceivable attention to the idea that a corporation’s activities impact on the choices available to citizens. It is well known that accounting focuses on providing decision-useful information that steers accounting away from its role of narrating business activities to the community (Lehman 1999, pp. 226-227).

Fortescue’s annual reports disclosed compliance with government and law regulation regarding mining land right and heritage site approvals. In addition, the corporation stated that all mining rights approvals were in accordance with previous consultation and approval of the Yindjibarndi. However, there were not disclosures relating to the disturbance of heritage sites. Although sacred sites are considered part of the environment, the corporation remained silent regarding the damages that mining development caused to such places. The reasons behind Fortescue’s lack of disclosures regarding the land negotiations and agreements and disturbance of sacred places could be attributed to protect the corporation’s legitimacy to operate. Negative disclosures damage the corporation’s image and shareholders expect disclosures that can assure their investment and profit maximisation.

The problem with current legislation regarding native title is that they are formulated and issued by non-indigenous peoples. Establishing Indigenous participation may enable the developing of systems of accountability that help to achieve Indigenous interests. Roberts (1991), argues that the practice of the individualistic or hierarchical form of accountability can be overcome through the communitarian and socialising form accountability. This perspective of accountability can enable and accommodate Indigenous people’s view of accountability. As argued by Roberts (1991, p. 361) there is:

[a] variety of other possible experiences of accountability alive and flourishing, and that if one explores the conditions which encourage and allow these alternative forms
then they tend towards those which Habermas delineates as the basis for a rationally grounded consensus.

In this respect, the role of accounting is important because it has the capacity to “transform the world, can influence the lived experiences of others” (Francis 1990, p. 7). The Yindjibarndi have practiced their accountability system for many years, as such their knowledge can be incorporated to current systems of accountability. This approach sheds light to the creation of an emancipatory accountability system that include these values and knowledge that aims to improve the life of Indigenous peoples. This may help to improve the relationship between Indigenous peoples and the mining corporations and the state. Mining companies and Indigenous peoples need to bridge their different cultural views in terms to facilitate an understanding that avoids Indigenous communities to be divided.

6.5.1 Contributions

This thesis contributes to accounting literature by providing information regarding different alternatives of accountability that could improve the relationship between mining companies and Indigenous peoples in the context of land rights and mining negotiations. This case supports the findings of Chew and Greer (2007) who argue that there is danger in taking systems of accountability that were developed in a particular context, and applied to a context for which it was not originally designed. In addition, this thesis contributes by providing an example that extends the accounting literature in dealing with Indigenous land rights and heritage claims, helping to provide evidence that shows that:

the very foundation of the modern legal system (Australian) has been based on racist attitudes (Lachowicz, 1997, p.3). [...] Building such evidence and arguments may help to safeguard [I]ndigenous socio-economic priorities (Merlan, 1995; Sexton, 1996, p.15) As cited in (Greer and Patel 2000, p. 317).
This thesis contributes by providing evidence of how corporate power is obtained through legislative support and government policies that marginalise Indigenous peoples. In addition, this thesis provided a theoretical alternative to shed light on how accountability systems dealing with Indigenous land right issues continue to dispossess and disempower the Yindjibarndi. Postcolonialism identified how mining corporations control the environment through historical colonial institutions and worldviews.

6.5.2 Research limitations and future research

This research relied on publicly available documents since the thesis is concerned with how accountability in the form of public responsibility is discharged and value positions are framed. Documentary evidence in the public domain limits the scope of an investigation due to availability. The ongoing dispute between Fortescue and YAC meant limited access to YAC’s annual reports and media releases. Therefore, for further evidence of the Indigenous perspective, interview material could supplement the documentary theme analysis. In addition, further cases of land disputes with other mining corporations and Indigenous communities in Australia and elsewhere could strengthen the issues of accountability identified. Due to the scope of a master’s thesis, the issue of postcolonial resistance has been limited. Therefore, a focus on the use of colonial ideology to further the interests of the colonised is another area of enquiry, including more cases regarding the systems of accountability in the land rights context to enable Indigenous interests and rights.
APPENDICES

Appendix 1

Table of documents used in this research

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Reports</th>
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<tbody>
<tr>
<td>2003-2014</td>
<td>Fortescue Annual Reports</td>
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<tr>
<td>2008-2012</td>
<td>Fortescue Public Environment Reports</td>
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<tr>
<td>2008</td>
<td>Fortescue Quarterly Report – 30 June</td>
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<tr>
<td>2011</td>
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<tr>
<td>2013</td>
<td>Fortescue Quarterly Report – 30 December</td>
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<td>72012</td>
<td>Yindjibarndi Aboriginal Corporation Annual Report</td>
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WMYAC Media Releases

2011

Wirlu- Murra leaders object to exploitation of Solomon Issues

YAC Media Releases

2011

March (a) News letter No. 2 from YAC: FMG tenements spread to cover half of the Yindjibarndi Ngurra

29 July (b) Yindjibarndi rejects FMG’s return to “dark ages of Aboriginal paternalism”, and call instead for a return to negotiating table

4 August (c) The facts about FMG’s proposed ‘Solomon Hub’ in Yindjibarndi Country

15 August (d) FMG Solomon mining leases fact sheet

15 August (e) Yindjibarndi may appeal mining leases

15 August (f) FMG-Yindjibarndi fight over Solomon Hub far from over

16 October (g) Yindjibarndi ancestral burial

November (h) The Yindjibarndi people

6 November (i) Notes guide to maps showing damaged sites

7 November (i) Unlawful FMG heritage dealing and massive sites damage at Solomon Project

9 December (k) FMG imposes ‘apartheid-like’ rules on Yindjibarndi visits to country

2012

16 August (l) Federal court highlights FMG liability at Solomon

10 September (m) FMG ‘declassified’ then destroyed Yindjibarndi heritage sites. Chronology/digest of key facts from FOI documents

29 November (n) Yindjibarndi want solution to FMG debacle

Table of case law

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<th>Matter</th>
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<td>FMG Pilbara Pty Ltd/Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and others on behalf of the Yindjibarndi People/Western Australia</td>
<td>[2009] NNTTA 99</td>
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<td>17 June 2011</td>
<td>FMG Pilbara Pty Ltd/Need Cheedy and others on behalf of the Yindjibarndi People/Western Australia</td>
<td>[2011] NNTTA 107</td>
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<td>27 August 2011</td>
<td>FMG Pilbara Pty Ltd/ Ned Cheedy and others on behalf of the Yindjibarndi People/Western Australia</td>
<td>[2009] NNTTA 99</td>
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<td>7 February 2012</td>
<td>FMG Pilbara Pty Ltd/ Ned Cheedy and others on behalf of the Yindjibarndi People/Western Australia</td>
<td>[2012] NNTTA 11</td>
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<tr>
<td>17 January 2014</td>
<td>Yindjibarndi Aboriginal Corporation RNTBC v FMG Pilbara Pty Ltd and another</td>
<td>[2014] NNTTA 8</td>
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Appendix 2

Table of sacred places affected with the development of the Solomon Hub Project

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<th>Sacred Place name</th>
<th>Description</th>
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<td>Yandarniyirra Wundu</td>
<td>Watercourses: This is a holy place for the Yindjibarndi and the centre of Yindjibarndi law. It includes many pools, wells creeks and springs.</td>
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<tr>
<td>Yamararra</td>
<td>Caves and rock-shelters containing remains of old people.</td>
</tr>
<tr>
<td>Marnda</td>
<td>Hills, they allow a viewpoint to see all Yindjibarndi country from all directions. This place is within the relevant area to be developed.</td>
</tr>
<tr>
<td>Gurdi</td>
<td>Pebble mouse mound containing 150 gurdi sites. This place is within the relevant area to be developed.</td>
</tr>
<tr>
<td>Thurwanha Ngurra and Gulyin</td>
<td>Two separate hunting grounds and use for Yindjibarndi camps.</td>
</tr>
<tr>
<td>Marningarli</td>
<td>Engraving indicating that there is water nearby.</td>
</tr>
<tr>
<td>Garngambinha wundu</td>
<td>This is the proposed license area</td>
</tr>
<tr>
<td>Buthunha Wundu</td>
<td>Hooley creek religious site</td>
</tr>
</tbody>
</table>

Source: NNTTA 8 2014, pp. 42-44
Appendix 3

Yindjibarndi country before and after Fortescue disturbance

YINDJIBARNDI ABORIGINAL CORPORATION I.C.N. Number 4370 A.B.N. Number 97 456 543 455

Yindjibarndi Country before disturbance

Ganyjingarrinjuna Country Fortescue seek to mine

Figure 1: 28/10/11 Preparing to blast at FMG's Firetail tenement. Photo taken at 591056 E 7554789 N (Zone 50: MGA 94)

Source: YAC (2011g)
Figure 2: 28/10/11 Destruction wrought at Firetail: Photo taken at 593580 E 7554163 N (Zone 50: MGA 94)

Source: YAC (2011g)

Figure 3: 28/10/11 Destruction wrought at Firetail: Photo taken at 593308

Source: YAC (2011g)
Figure 4: 28/10/11 Blasting sign in Firetail: Photo taken at 592794 E 7553820 N (Zone 50: MGA 94)

Source: YAC (2011g)
Appendix 4

Environmental Performance Indicators of Sustainability Reporting Guidelines (GRI)

Aspect: Materials
EN1: Materials used by weight or volume. EN2: Percentage of materials used that are recycled input materials.

Aspect: Energy
EN3: Direct energy consumption by primary energy source. EN4: Indirect energy consumption by primary source. EN5: Energy saved due to conservation and efficiency improvements. EN6: Initiatives to provide energy-efficient or renewable energy-based products and services, and reductions in energy requirements as a result of these initiatives. EN7: Initiatives to reduce indirect energy consumption and reductions achieved.

Aspect: Water
EN8: Total water withdrawal by source. EN9: Water sources significantly affected by withdrawal of water. EN10: Percentage and total volume of water recycled and reused.

Aspect: Biodiversity
EN11: Location and size of land owned, leased, managed in, or adjacent to, protected areas and areas of high biodiversity value outside protected areas.

EN12: Description of significant impacts of activities, products, and services on biodiversity in protected areas and areas of high biodiversity value outside protected areas.

EN13: Habitats protected or restored. EN14: Strategies, current actions, and future plans for managing impacts on biodiversity. EN15: Number of IUCN Red List species and national conservation list species with habitats in areas affected by operations, by level of extinction risk.

Aspect: Emissions, Effluents, and Waste
EN16 Total direct and indirect greenhouse gas emissions by weight. EN17: Other relevant indirect greenhouse gas emissions by weight. EN18: Initiatives to reduce greenhouse gas emissions and reductions achieved. EN19: Emissions of ozone-depleting...
substances by weight. EN20: NOx, SOx, and other significant air emissions by type and weight. EN21: Total water discharge by quality and destination. EN22: Total weight of waste by type and disposal method. EN23: Total number and volume of significant spills. EN24: Weight of transported, imported, exported, or treated waste deemed hazardous under the terms of the Basel Convention Annex I, II, III, and VIII, and percentage of transported waste shipped internationally. EN25: Identity, size, protected status, and biodiversity value of water bodies and related habitats significantly affected by the reporting organization’s discharges of water and runoff.

195

Aspect: Products and Services

EN26: Initiatives to mitigate environmental impacts of products and services, and extent of impact mitigation.

EN27: Percentage of products sold and their packaging materials that are reclaimed by category.

Aspect: Compliance

EN28: Monetary value of significant fines and total number of non-monetary sanctions for noncompliance with environmental laws and regulations.

Aspect: Transport

EN29: Significant environmental impacts of transporting products and other goods and materials used for the organization’s operations, and transporting members of the workforce.

Aspect: Overall

EN30: Total environmental protection expenditures and investments by type.

196

United Nations Global Compact 10 Principals on the area of Human Rights and Environment

The UN Global Compact's ten principles

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work
The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

**Human Rights**

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

**Labour**

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

**Environment**

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

**Anti-Corruption**

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.
Appendix 5

Destruction of the Yindjibarndi sacred sites as a result of mining activities in the Solomon Hub Project

YINDJIBARNDI ABORIGINAL CORPORATION

10 September 2012
http://yindjibarndi.org.au/

FMG 'Declassified' Then Destroyed Yindjibarndi Heritage Sites

CHRONOLOGY/DIGEST OF KEY FACTS FROM FOI DOCUMENTS

1. DIA FMG 'DECLASSIFIED' THEN DESTROYED YINDJIBARNDI HERITAGE SITES
2. DIA INVESTIGATED & CONFIRMED SITES DESTRUCTION
3. DIA FAILED TO PROSECUTE FMG
4. THE MINISTER GRANTS CONSENT TO FMG S.18 APPLICATIONS REGARDLESS

The destruction of Yindjibarndi heritage sites in late 2011, which Fortescue Metals Group (FMG) committed with impunity, points to wider, endemic deficiencies in the Aboriginal Heritage Act 1972 (WA) and its administration. The following digest highlights key facts obtained from DIA under FOI, and provides insight into how companies like FMG destroy Indigenous culture and abuse the system without penalty.

1. 2010—In the course of site avoidance heritage surveys for FMG, Eureka Heritage (NSW) and Veritas Archaeology identify and record the existence of hundreds of Yindjibarndi sites in FMG’s Solomon Project area.

2. —“All potential sites identified during these surveys were protected in accordance with Fortescue’s standard heritage procedure [...] The key details of the potential sites were logged into Fortescue’s heritage sites register”. (Ref: 111205 Alexa Morecombe Group Manager Land Access FMG to Registrar.)

3. Ahead of application to the Minister of Indigenous Affairs for permission to destroy many of these sites (Section 18 Application), FMG contract a new heritage consultancy, Alpha Archaeology, to undertake further heritage surveys to Section 18 standard—that is, a more detailed and comprehensive level of recording.

4. FMG sets short deadlines for such assessment.
5. —“When it came time to record all the potential sites to a level required for Notices under s18 of the AHA, Veritas was unable to meet the schedule required and Fortescue sourced an alternate independent Archaeological firm, Alpha, that had requisite capacity.” (Ref: 111205 Alexa Morecombe Group manager Land Access FMG to Registrar.) This contradicts Ms Singleton’s information that Veritas/Eureka were terminated by FMG.

6. —“On 3 March 2011, Veritas informed Eureka that FMGL had terminated our services as they considered a ‘local’ archaeological firm could better provide the services (outcomes) required by them.” (Ref: 11105 Sue Singleton Eureka Heritage to Registrar)

7. 10 June 2011 Rebecca Yitan and Elizabeth McFarlane of Alpha Archaeology sign off on a Preliminary Advice of an Indigenous archaeological assessment of 24 sites previously identified by Eureka Heritage and Veritas Archaeology and advised with regard to 14 or 60% of these—“Location determined to be not a site”. By so doing Alpha archaeology effectively ‘declassified’ these sites.

8. 24 June 2011 Rebecca Yitan and Alexander Timms of Alpha Archaeology sign off on a Preliminary Advice of an Indigenous archaeological assessment of 10 sites previously identified by Eureka Heritage (NSW) and Veritas Archaeology and advised with regard to 3 of these: “Location determined to be not a site”. By so doing Alpha archaeology effectively ‘declassifies’ these sites.

9. 30 September 2011 Registrar Przywolnik to Roberta Molson Heritage Approvals Superintendent FMG—Deficiencies in the Alpha reports highlighted by DIA include—insufficient data to allow AMC to consider the density and distribution of cultural materials across sites; provision of ‘preliminary’ rather than ‘Final’ reports; no explanation of the methods used to record artefacts.

10. 30 September 2011 Registrar Przywolnik to Roberta Molson Heritage Approvals Superintendent FMG—Of most serious concern to Registrar Przywolnik was the direction given to heritage consultants in their Survey Request Forms: “If, during the survey process, the parties are prevented from accessing parts of the survey area due to terrain walking difficulties, it is expected that the Traditional Owners and Archaeologists agree that the aforesaid parts of the survey area are deemed surveyed”. Registrar Przywolnik responded: “I am quite concerned with the implications of this statement. Please be advised that any areas that are not accessed and inspected during heritage surveys are not considered to be surveyed by DIA or the AMC. Any suggestions that these areas are surveyed could be considered misleading and are problematic for the AMC in considering whether all sites on the Land have been located and documented sufficiently.”

11. 13 October 2011 AMC Meeting Agenda Item 3.1.1.1—With reference to a Section 18 Application by FMG, DIA assessments of the Application note:
1. “Although archaeologists have reported that sites on the land do not contain durable cultural deposits, two sites […] may contain subsurface cultural deposits and should be investigated.”

2. “It is not clear whether all the places on the land which might constitute a site under the AHA have been identified, sufficiently assessed and reported on within the Notice and accompanying documentation.”

3. “The purpose will have significant impact on the cultural landscape of the area and also on the information potential on past localised Aboriginal occupation, subsistence practices and socio-economic strategies.”

4. “[...] little information has been provided regarding the nature and significance of the large number of other identified Aboriginal sites recoded between 2007 and 2010 which surround the land. The lack of information means it is difficult to contextualise the nature and significance of the place and place features within the surrounding cultural landscape.”

12. 13 October 2011 ACMC Meeting Agenda Item 3.1.1.1—Proposed Recommendation re FMG Section 18 Application: “Resolved to recommend that the ACMC defer making a recommendation to the Minister in relation to the notice.” Reasons for Ministerial decline included:

1. “YAC has raised a preference that it be provided time prior to the Minister making a decision on the Application to conduct its own independent heritage surveys of the Land in order to clarify the status of the cultural heritage values on the Land.”

2. “Given that WMYAC representatives consistently indicated during ethnographic consultation that a history of dispossession has limited the group’s ability to ‘Know the Country’, there is a question as to whether all the sites on the land have been sufficiently identified and documented.”

3. “The conduct of heritage surveys by YAC, archaeological excavations at DIA 30409 and DIA 29610 and the prompt reporting of results to accompany this Notice would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented.”

13. On 23 October YAC representatives travelled to the Firetail lease to check on the safety of their sites, but were denied access by FMG security guards for “safety reasons”, because a blasting program and massive ground disturbance were already under way.

14. On 28 October senior Yindjibarndi Lawmen and YAC representatives again travelled to the area, avoiding FMG checkpoints by using an ancient “freeway”, known only to the most senior carriers of Yindjibarndi law. They found the landscape mutilated and sites damaged.

15. 7 November 2011—Yindjibarndi Aboriginal Corporation (YAC) hold press conference making public FMG’s conduct with particular reference to
coercion of heritage consultants, and call on Federal Minister Tony Burke to take action under emergency powers of the Aboriginal and Torres Strait Islander Heritage Protection Act to halt mass land disturbance and destruction of Yindjibarndi heritage sites by FMG at Solomon.

111107 Unlawful FMG heritage dealing & massive sites damage at Solomon Project

16. 7 November 2011—A DIA Case Flow log for 7 November 2011 notes: “Received information that Yindjibarndi Aboriginal Corporation is holding a press conference 11am this date in Beaufort St, North Perth discussed with the Registrar and will not be attending. Received further instructions and attended press conference albeit after it had started, decided not to enter as it may have put DIA in a bad light i.e. our late arrival would have drawn attention to ourselves (Crawford & Cook) and may have resulted in questions being directed to us as representatives of DIA. Printed off material from the press conference and have trimmed it to this file. Awaiting direction from Chief Heritage Officer re next steps.”

120313 Alleged Site Disturbance Case Flow

17. 7 November 2011 FMG responded to Yindjibarndi claims that Fortescue had damaged sites with a Press Release of flat denial—and an attempt to smear the integrity of YAC CEO, Mr Michael Woodley, by falsely claiming that he did not have his community’s support and that he was dishonest: “Michael Woodley’s allegations that Fortescue has damaged sacred sites are untrue and part of an ongoing campaign by a man who no longer has the support of the majority of the Yindjibarndi community and who has repeatedly failed to provide proof to support his claims. […] Fortescue Metals Group (Fortescue) categorically rejects offensive claims that it is operating unlawfully regarding Aboriginal heritage sites at its Solomon Hub project.”

111107 Fortescue rejects claims of unlawful heritage dealing

18. 8 November 2011 Lisa Maher Heritage Manager FMG to Gavin Fielding Chairperson ACMC—With correspondence that further seeks to mislead and to denigrate YAC: “YAC claims that Fortescue has permanently damaged or destroyed heritage sites, thereby breaching the AHA. Such claim is unequivocally denied by Fortescue. […] YAC’s submission contains may unsupported assertions. The ACMC must take care when assessing such matters. […] In June this year, the NNTT found that assertions by Mr Woodley were not supported by any other members of the Yindjibarndi. […] YAC regularly provides with the ACMC with incorrect claims concerning Fortescue’s conduct.”

111108 Lisa Maher Heritage Manager FMG to Gavin Fielding Chairperson ACMC

19. 9 November 2011 Minutes ACMC Meeting—The ACMC resolved to recommend to the Minister for Indigenous Affairs that consent with conditions be granted to FMG to carry out their Section 18 purpose vis-à-vis construction of a rail loop, roads, OPF, Crushing Hub, ROM pad and associated infrastructure at Solomon. The Minutes noted: “Mr Bennell and Ms Byron requested their dissent be recorded.”

111109 Minutes ACMC Meeting

20. 9 November 2011 Minutes ACMC Meeting—The Minutes noted: “The Committee requested the Director General of the Department to advise the Minister it was uncomfortable making a decision with respect to the Notice
given the challenge to the veracity of the information provided to it regarding sites in Yindjibarndi Country. It also requested the Director General seek additional resourcing for the Department if necessary to enable the Department to provide the Committee with information regarding the nature and significance of the sites relating to the FMG Firetail section 18 applications.”

21. —“Over the course of the ACMC consideration of the section 18 notices that have been lodged by FMG for this project to date, issues regarding the veracity, comprehensiveness of the heritage information provided by FMG have been raised through submissions from Yindjibarndi Aboriginal Corporation (YAC) and from a heritage consultant who had been engaged by FMG.” (Ref: 23 December 2011 Director General to Minister Indigenous Affairs)

22. —“At the request of the ACMC the Registrar and two other officers of the Department of Indigenous Affairs (DIA) on 22 November 2011 undertook a field visit of two locations within the Solomon Project area to test some of these allegations.” (Ref: 23 December 2011 Director General to Minister Indigenous Affairs)

23. 23-25 November ACMC order DIA staff to conduct on-site inspection of 17 sites previously recorded by Eureka Heritage (NSW) & Veritas Archaeology, which were subsequently ’declassified’ by Alpha Archaeology, to evaluate questions about the veracity of heritage assessments submitted by FMG to the DIA.

24. November 2011 DIA On-Ground Sites Investigation Report Solomon—“The areas targeted by the DIA investigation [targeted] those places that had been reassessed by FMG as no longer sites [...] the investigation was to visit potential Aboriginal heritage sites located on the Land of submitted section 18 Notices that were not included as ’sites on the Land' by FMG in the corresponding section 18 applications. These sites that were reassessed and not included in the section 18 notice are referred to as ’declassified’ sites by FMG.”

25. November 2011 DIA On-Ground Sites Investigation Report Solomon—“For section 18 Notice 11/0755 FMG had indicated in its application that the Land subject the Notice contained 22 Aboriginal heritage sites. Based on information from the Eureka report and spreadsheet the sites on the Land subject of this Notice may have been as many as 39.”

26. November 2011 DIA On-Ground Sites Investigation Report Solomon—“For section 18 Notice 11/0975 FMG had indicated in its Application that the Land subject the Notice contained six Aboriginal heritage sites. Based on information from the Eureka report and spreadsheet the sites on the Land subject of this Notice may have been as many as ten.”

27. November 2011 DIA On-Ground Sites Investigation Report Solomon—“Aside from allegations by the YAC that FMG has been underestimating heritage values at the Solomon Hub, the Registrar noted anomalies between information in heritage survey reports held at the DIA and Aboriginal heritage site information submitted by FMG for section 18 Notices. A Report titled
Report of an archaeological survey to avoidance standard of part of Firetail and Trinity Area was lodged with the Registrar by FMG on 9 September 2011. The report was authored by heritage consultancies Eureka and Veritas and included site avoidance level recordings of sites located within the Land section 18 Notices that FMG. The information supplied by FMG appeared to be consistent with the Eureka and Veritas information, as these sites had not been identified on the Land for those Notices and were subsequently not assessed by the ACMC.”

28. November 2011 DIA On-Ground Sites Investigation Report Solomon—“On 11 November 2011 the Registrar also received a spreadsheet from YAC listing coordinates of sites previously recorded by Eureka and Veritas. A review of the spreadsheet revealed several of the listed sites were located within section 18 Land and as above had not been included as sites on the Land by FMG.”

29. November 2011 DIA On-Ground Sites Investigation Report Solomon—“The areas targeted by DIA are portions of section 18 land parcels 11/0755and 11/0975 that contained the highest number of inconsistent site information.”


RESULTS—“A total of 17 locations were assessed by DIA staff. The findings confirmed that at least 11 of the locations were reported more accurately in the Eureka report and, as suggested by Eureka, may constitute Aboriginal sites under the AHA. Two of the sites inspected had been disturbed by ground clearing activity to the point where an assessment of their heritage values could not be completed. A third site that demonstrated the presence of sufficient cultural to be assessed as a site within the undisturbed portion had also been partially destroyed.”

31. —“The report by DIA staff indicates that FMG and Alpha Archaeology have under reported possible heritage sites on the Solomon Firetail Project Area by about 30%. (Ref: 120201 Memorandum from Compliance Officer James Cook to Director General Cliff Weeks)

120201 Memorandum Compliance Officer James Cook to Director General Cliff Weeks

32. —“FMG acknowledge [...] that previous surveys of the land had been carried out by Eureka/Veritas to site avoidance standard and that the Alpha Survey was to Section 18 Consent standard, which is supposedly a more detailed inspection and recording of sites. However, the level of detail provided in the Alpha report which declassified the sites is minimal, and less than the information provided by Eureka/Veritas.” (Ref: 120201 Memorandum from Compliance Officer James Cook to Director General Cliff Weeks)

33. November 2011 DIA On-Ground Sites Investigation Report Solomon—“... three of the 17 places inspected by DIA had been damaged or destroyed by ground disturbance work undertaken without s18 consent. The DIA is in the process of investigating possible breaches of the AHA.”

34. 5 December 2011 Alexa Morecombe, Group Manager Land Access FMG to Registrar—“Fortescue acknowledges that some sites may have been impacted. Any such impact is regretted, was certainly unintended and arose from incorrect and inaccurate information being provided to Fortescue by one of its independent Archaeological firms, Alpha Archaeology (Alpha).”

111205 Alexa Morecombe, Group Manager Land Access FMG to Registrar
35. 5 December 2011 Alexa Morecombe, Group Manager Land Access FMG to Registrar—“Alpha advised that several of these potential sites had been ’declassified’ […] Alpha’s assessment was based on a comprehensive and appropriate methodology that gave Fortescue every confidence that the advice was accurate and reliable.”

36. 5 December 2011 Alexa Morecombe, Group Manager Land Access FMG to Registrar—“Alpha has admitted to Fortescue, Yindjibarndi Elders and DIA staff members at Solomon that it has made a mistake and has accepted full responsibility for the recording and reporting error.”

37. NB: In fact no advice regarding the destruction of these sites was given to the most senior Yindjibarndi custodian or to the Yindjibarndi Native Title Representative Body, YAC—by either FMG or DIA.

38. 5 December 2011 Alexa Morecombe, Group Manager Land Access FMG to Registrar—“Fortescue has brought Alpha back to Solomon to record those 27 sites as a matter of urgency. The person responsible for the inaccurate recording and reporting of potential sites is no longer employed by Alpha.” NB: Nevertheless, FMG still retain the services of Alpha Archaeology.

39. 8 December 2011—DIA Director General Cliff Weeks briefs the Minister that Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) representatives informed ACMC Specialist Anthropologist Mr Michael Robinson, “that Kangeenarina Creek has a story associated and a song for it which is a part of traditions and customs central to the Yindjibarndi religious system”; and “The information provided by WMYAC is not consistent with the information presented in the anthropological report provided by FMG in support of the notices.” Mr Robinson recommended to DIA that they undertake another field visit to consult further with Yindjibarndi people and clarify the significance of the creek and the location of any areas of significance, so that if necessary damage to Kangeenarina Creek [Ganyjingarringunha] can be avoided or minimised. (Ref: 111223 Director General to Minister Indigenous Affairs)

111223 Briefing Director General to Minister Indigenous Affairs

40. 23 December 2011 Director General to Minister Indigenous Affairs—“The ACMC recommended the Minister decline [consent] as insufficient information had been provided for two sites on the land. The DIA field inspection did not include these two sites. It is recommended the shortcomings in the FMG site information could be addressed through a condition to require a more detailed recording, excavation and analysis of the sites.”

41. 23 December 2011 Director General to Minister Indigenous Affairs—“In considering a similar section 18 notice over a different parcel of land, the ACMC at its December meeting did not agree with FMG’s proposed conditions for addressing “declassified” sites. The ACMC preferred not to reference “declassified” sites as it is FMG’s terminology. DIA is however of the view proposed conditions appear to present a satisfactory outcome for management of the “declassified” sites and it is recommended the Minister accept. The revised letter of consent for the Minister to consider is enclosed.”

42. 9 January 2012 Alleged Site Disturbance Case Flow—“CHO advised compliance to proceed with preparing a brief for prosecution in this matter,
Meeting was held early in week commencing 3 January 2012. This matter is to be given priority.”

120313 Alleged Site Disturbance Case Flow

43. — “DIA commenced an investigation into the above matter in November 2011. Inquiries were made into the whereabouts of several possible witnesses. Senior Heritage Officers that attended on site in late November 2011 were interviewed by compliance staff.” (Ref: 120314 Memorandum from Chief Heritage Officer Rayner to Director General Weeks)

120314 Memorandum from Chief Heritage Officer Rayner to Director General Weeks

44. — “It became apparent during the investigation that the Minister had signed the Section 18 Consent over this portion of the land on 27 January 2012 (with a condition to avoid the site in question until the investigation had been completed). Whilst the compliance unit would not normally consider the public interest question during an investigation, it was decided after some consultation with DIA Legal and given the media attention that the Yindjibarndi Aboriginal Corporation had generated as a result of the Sue Singleton letters, that advice be sought from the State Solicitor’s Office (SSO) as to the likely prospects of a successful prosecution.” (Ref: 120314 Memorandum from Chief Heritage Officer Rayner to Director General Weeks)

45. — “It was known that a thorough investigation of this matter could take anywhere between two and six months and would be costly and time consuming.” (Ref: 120314 Memorandum from Chief Heritage Officer Rayner to Director General Weeks)

46. — “FMG are unable to use the land for the purpose until the investigation is complete. This is of concern to FMG as it will hamper their operations.” (Ref: 120201 Memorandum from Compliance Officer James Cook to Director General Cliff Weeks)

47. 27 January 2012 Minister Collier to Roberta Molson Heritage Approval Manager FMG—Minister grants section 18 consent with conditions that allow destruction of all sites (bar one) once their recording and salvage is completed.

120127 Minister Collier to Roberta Molson Heritage Approval Manager FMG

48. — With reference to the conditions pertaining to the Minister’s consent, “This would mean that despite the result of the investigation FMG would be free to impact the site once the DIA investigation was complete.” (Ref: 120314 Memorandum from Chief Heritage Officer Rayner to Director General Weeks)

49. Handwritten note—“DIA advise FMG to consult with YAC—not done but ACMC recommend consent anyway.”

120200 Handwritten note

50. 1 February 2012 Memorandum from Compliance Officer James Cook to Director General Cliff Weeks—“FMG’s compliance with the AHA has been variable. As FMG often work to tight timeframes, they often submit information relating to applications under section 18 at very late notice, resulting in insufficient time being given to the department to assess that information. FMG appear to submit minimal information in relation to annual
compliance reports and impacts to sites. On several occasions they have been asked to clarify information relating to their annual compliance reports.”

120201 Memorandum Compliance Officer James Cook to Director General Cliff Weeks

51. 1 February 2012 Memorandum from Compliance Officer James Cook to Director General Cliff Weeks—“It would appear to the compliance unit that FMG are indicating they have a defense to an offence under s17 of the AHA, that is, s62 of the AHA which states: ‘In proceedings for an offence against this Act it is a defense for the person charged to prove that he did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which this Act applies’.”

52. Handwritten note—S62 Defence: “Should FMG have reasonably known about ethnographic sites or the possibility of them?”

53. 2 February 2012 Lisa Maher FMG Manager Heritage to Registrar—FMG state, “the decision to ‘declassify’ each Area was made by senior archaeologist, Rebecca Yit of Alpha.”

120202 Lisa Maher FMG Manager Heritage to Registrar

54. 2 February 2012 Lisa Maher Heritage Manager FMG to Registrar—“Fortescue does not deny that the impacting works were undertaken pursuant to, and in accordance with, Permits issued by Fortescue. Those Permits were issued on the basis of (incorrect) information provided by Rebecca Yit of Alpha Archaeology Pty Ltd (“Alpha”).

55. 2 February 2012 Lisa Maher Heritage Manager FMG to Registrar—“To Fortescue’s knowledge, no decision was made that the ‘declassified’ areas survey information would not be provided to DIA for submission to the Aboriginal Cultural Materials Committee for a determination on whether the areas were or were not sites as part of the Section 18 Consent process. The question did not arise because Fortescue relied upon the advice received from Alpha, who Fortescue regarded as an independent expert archaeological firm.”

56. 2 February 2012 Lisa Maher Heritage Manager FMG to Registrar—“Alpha has admitted to Fortescue, Yindjibarndi Elders and DIA staff members at Solomon that the ‘declassification’ of the Areas was an error. To the understanding of Fortescue, Alpha accepts full responsibility for the recording and reporting error, and one of their staff member’s incorrect applications of Alpha survey and reporting methodology.”

57. 8 March 2012 A/Director General to Minister—“The Department has considered the letters from MS Sue Singleton and sought advice from SSO. Upon receiving that advice the Department has concluded its investigation into the matter and will not be pursuing under section 17 of the AHA.”

120308 A/Director General to Minister

58. 8 March 2012 A/Director General to Minister—“A letter has been sent to FMG notifying them that the investigation has concluded.”

59. 8 March 2012 Memorandum from Chief Heritage Officer Aaron Rayner to Director General Cliff Weeks—“That you consider the attached letter advising FMG that the Department of Indigenous Affairs (DIA) will be taking no further action in relation to the above matter and that DIA has now completed its investigation.”

120308 Memorandum from Chief Heritage Officer Rayner to Director General Weeks
60. 20 March 2012 Director General DIA Cliff Weeks to Roberta Molson heritage Approvals manager FMG—“I confirm that the investigation has been completed and DIA will not be progressing this matter any further.”

120320 Director General Weeks to Roberta Molson heritage Approvals manager FMG

END OF DIGEST

ALSO SEE

110408 Affidavit of Ned Cheedy Affirming Mr Woodley
110608 No faith in procedural fairness of Conflicted Minister and ACMC
120829 Yindjibarndi Plebiscite Rejects FMG Meddling
111020 FMG Exploits Crisis in WA Aboriginal Heritage Protection REFERENCE PAPER
110304 Registrar of Aboriginal Sites letter to FMG
111017 Registrar Przywolnik to Roberta Molson Heritage Approvals Superintendent FMG
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