



Mining Companies, Traditional Owners, & the application of FPIC + OECD Guidelines

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The perspectives shared in this presentation reflect my personal views and do not necessarily represent those of my current employer.

TOPICS

- 1. FPIC AND THE ROLE OF TRADITIONAL OWNERS**
- 2. WHY IS FPIC SIDELINED?**
- 3. HOW PROGRESSIVE COMPANIES ARE SHIFTING TOWARD ETHICAL AGREEMENT MAKING**
- 4. FPIC IN PRACTICE: A SHIFT TOWARD INDIGENOUS-LED NEGOTIATION**
- 5. FPIC FAILURES IN THE MINING SECTOR (YINDJIBARNDI - FMG CASE)**
- 6. LESSONS FROM THE YINDJIBARNDI CASE**
- 7. FPIC LESSONS FROM THE YINDJIBARNDI CASE**
- 8. JUUKAN GORGE: A TURNING POINT FOR ETHICAL ENGAGEMENT**
- 9. THE PUSH FOR LEGISLATIVE REFORM**
- 10. GLOBAL STANDARDS IN PRACTICE: IRMA, FPIC & OEDC**



FPIC and the Role of Traditional Owners

WHY IT MATTERS IN WESTERN AUSTRALIA

- **Native Title holders** have legally recognised rights over specific land and waters.
- **Mining companies** must engage directly with **Traditional Owners**—not just broader Indigenous groups.
- Agreements (e.g. land access, heritage protection, benefit-sharing) must be negotiated with:
 - **Prescribed Body Corporate (PBC)** or
 - Other **representative entities** of Traditional Owners.
- Ensures **place-based, legally valid**, and **culturally respectful** engagement.

CONNECTION TO FPIC & OECD GUIDELINES

- **OECD Guidelines** stress engaging with stakeholders who hold **legal and cultural authority**.
- **Free, Prior, and Informed Consent (FPIC)** applies to any Indigenous community affected by legislation, development, or resource extraction;
- It is not limited to those with formal legal recognition (like Native Title holders); and
- It encourages self-determination so that Indigenous Peoples can have the right to freely decide what happens on their land - without coercion, and with full information provided before any activity begins.
- **Initiative for Responsible Mining Assurance (IRMA)** recognises Indigenous Peoples broadly, including Traditional Owners under Australian law and requires companies to engage respectfully, even in jurisdictions where FPIC is not legally mandated.
- Supports:
 - **Self-determination**
 - **Indigenous governance**
 - Alignment with **international standards** for responsible business conduct.

Why is FPIC sidelined?

- **Legal ambiguity:** In many jurisdictions, FPIC is not codified in domestic law, allowing companies to meet minimum legal requirements without engaging in genuine consent processes.
- **Project timelines and cost pressures:** Companies may perceive FPIC as time-consuming or costly, especially when early engagement is not built into project planning.
- **Power imbalances:** Structural inequalities and lack of capacity or resources among Traditional Owners can hinder meaningful participation.
- **Misunderstanding of FPIC:** Some stakeholders treat FPIC as a one-time event rather than an ongoing process of dialogue and agreement.

How Progressive Companies Are Shifting Toward Ethical Agreement-Making

1. ENGAGING EARLY AND CONSISTENTLY THROUGHOUT THE PROJECT LIFECYCLE

Rather than waiting until regulatory approvals are in place, leading companies initiate engagement **at the earliest stages** of project planning.

They maintain **ongoing dialogue** throughout exploration, development, operations, and closure. This continuous engagement:

- Builds trust and transparency
- Allows Traditional Owners to shape project design and decision-making
- Reduces conflict and delays by addressing concerns proactively.

2. BUILDING LONG-TERM RELATIONSHIPS BASED ON TRUST AND TRANSPARENCY

Companies are investing in **relationship-building**, not just transactional interactions. This includes:

- Regular face-to-face meetings with Traditional Owner groups (incl site tours)
 - Transparent communication about risks, benefits, and timelines
 - Honouring commitments and following through on agreed actions
 - Monitoring programs / initiatives on Country
- These relationships foster mutual respect and create a foundation for sustainable partnerships.

3. SUPPORTING CAPACITY-BUILDING WITHIN TRADITIONAL OWNER GROUPS

• Recognising that informed consent requires informed communities, companies are supporting **capacity-building initiatives** such as:

- Funding for independent legal, cultural, and technical advice
- Training in governance, negotiation, and financial literacy
- Support for cultural mapping and heritage documentation
- Building in-house capacity (increase employment / resources at PBC's)

• This empowers Traditional Owners to **participate meaningfully** and make decisions aligned with their values and priorities.

4. EMBEDDING FPIC INTO INTERNAL GOVERNANCE AND DECISION-MAKING FRAMEWORKS

• Rather than treating FPIC as an external obligation, progressive companies are integrating it into their **internal policies and governance structures**. This includes:

- Establishing FPIC protocols within corporate social responsibility and legal teams
 - Requiring FPIC compliance at key decision gates
 - Training staff on Indigenous rights and cultural competency
- By embedding FPIC internally, companies ensure it is **consistently applied**, monitored, and respected across all levels of operation.

5. RECOGNISING CULTURAL AUTHORITY AND RESPECTING INDIGENOUS GOVERNANCE STRUCTURES

• Companies are increasingly acknowledging and respecting **Indigenous governance systems** and **cultural authority**. This involves:

- Engaging with the appropriate Traditional Owner representatives, such as PBCs
- Adhering to cultural protocols in negotiation and decision-making
- Allowing time and space for decisions to be made in accordance with cultural practices

• This affirms **self-determination** and ensures that engagement is **culturally legitimate and respectful**.

FPIC in Practice: A Shift Toward Indigenous-Led Negotiation

- **Progressive shift in mining sector:** Companies increasingly adopting FPIC principles in response to Traditional Owners asserting authority in negotiations.
- **Indigenous-led decision-making:** Traditional Owners are calling the shots, if rights and interests are not respected, they may:
 - Withhold heritage surveys
 - Decline to enter agreements
 - Refuse engagement on key approvals (resulting in regulatory delays and project risks)
- **Impact on project timelines:** Without Indigenous consent, regulators cannot approve key permits/approvals causing delays and reputational risks. Ethical engagement with Traditional Owners is now a key indicator of responsible business conduct.
- **FPIC as strategic imperative:** No longer optional, FPIC is central to:
 - Ethical engagement
 - Regulatory success
 - Project legitimacy
 - ESG (environment, social and governance) outcomes
- **OECD Guidelines reinforce this:** Recommend seeking FPIC even where not legally required, reflecting global expectations for responsible business conduct.
- **Conclusion:** Companies that embed FPIC and respect Indigenous governance are better positioned for sustainable, trusted, and timely project outcomes, essential for ESG performance, investor confidence and long-term legitimacy.



FPIC Failures in the Mining Sector: Yindjibarndi-FMG Case

Overview: Yindjibarndi-FMG Dispute

1. **Location:** Solomon Hub, Pilbara region, Western Australia
2. **Traditional Owners:** Yindjibarndi People
3. **Company Involved:** Fortescue Metals Group (FMG)
4. **Key Issues:**
 - Absence of a Land Use Agreement
 - Engagement with wrong Indigenous Corporation
 - Cultural and Environmental Harm
 - Destruction of Cultural Heritage
 - Spiritual and Psychological Harm
 - Disruption of Ceremonial Practices and Community Cohesion



Lessons from the Yindjibarndi Case



LEGAL ACTION AND COMPENSATION CLAIM

- YNAC have filed a \$1.8 billion compensation claim, including:
 - **\$1 billion for cultural loss**
 - **\$678 million for economic loss**
 - **\$3.4 million for site destruction**
 - **\$1.1 million for trauma-related services**

WHY THIS CASE MATTERS?

- **Precedent-setting:** Could shape future native title compensation under the Native Title Act
- **Legal limitations:** Highlights the gap between native title recognition and enforceable **FPIC mechanisms**
- **Corporate risk:** Demonstrates the long-term costs of ignoring Indigenous consent—legal liability, reputational damage, and community trauma
- **Policy influence:** May drive reform in corporate practice and government policy around ethical resource development

FMG and the WA Government have contested the claim, arguing the compensation is excessive and that the land's value should be assessed as pastoral, not mineral-rich.

Juukan Gorge: A Turning Point for Ethical Engagement

BACKGROUND

- In 2020, Rio Tinto destroyed the Juukan Gorge sacred site, sparking global outrage.
- Led to government inquiries, executive resignations, and industry-wide reform.

KEY LESSONS LEARNED

- **Legal compliance is not enough** – ethical standards must guide practice.
- **FPIC is essential** – consent must be ongoing, informed, and freely given.
- **Cultural heritage is dynamic** – protection must be co-designed with Traditional Owners.
- **Transparency and accountability** – early engagement and shared governance are critical.

INDUSTRY RESPONSE

- Review of heritage agreements and internal policies.
- Adoption of **OECD Guidelines** and **FPIC principles**.
- Commitment to co-management and culturally appropriate protocols.

WHY IT MATTERS?

Juukan Gorge is a powerful reminder that ethical engagement is not optional—it is foundational to legitimacy, sustainability, and reconciliation.



JUUKAN GORGE & THE PUSH FOR LEGISLATIVE REFORM

ABORIGINAL CULTURAL HERITAGE ACT 2021 (WA)

- Introduced to replace the outdated 1972 Act.
- Aimed to embed **Aboriginal decision-making**, strengthen **consultation**, and prevent future destruction.
- **Repealed in 2023** after backlash from landholders and industry.
- WA reverted to the 1972 Act with minor amendments, raising concerns about ongoing inadequacies.

FEDERAL REFORM EFFORTS

- The **Joint Standing Committee on Northern Australia** released two reports: *Never Again* (2020) and *A Way Forward* (2021).
- Recommendations included:
 - Strengthening **cultural heritage protections**
 - Reviewing the **Native Title Act**
 - Embedding **FPIC** in legislation and practice
 - A **Partnership Agreement** was signed with the **First Nations Heritage Protection Alliance** to co-design new federal laws.
- As of 2025, **no new federal legislation has been enacted**, and reform remains slow.

GLOBAL STANDARDS IN PRACTICE: IRMA, FPIC & OEDC IN MINING

STANDARD	KEY FOCUS	FPIC REQUIREMENT	ESG ALIGNMENT	RELEVANCE TO WA MINING
IRMA	Responsible mining across ESG domains	Mandatory FPIC & cultural heritage protection	Strong alignment with all ESG pillars	Greenbushes mine undergoing IRMA audit
FPIC	Indigenous rights & decision-making	Consent must be Free, Prior & Informed	Supports Social & Governance pillars	Essential for agreement-making with Traditional Owners
OECD GUIDELINES	Responsible business conduct	Recommend FPIC even if not legally required	Governance & ethical standards	Supported by Australian Government; guides corporate behaviour

■ Mining Proponents & Traditional Owners Can Co-Exist When:

Engagement is grounded in **respect, transparency, and shared decision-making**

Traditional Owners are treated as **equal partners**, not stakeholders

Embedding **Free, Prior and Informed Consent (FPIC)**

Supporting **cultural governance**

Co-designing agreements that reflect **Indigenous values and aspirations**

Collaboration Over Compromise:

- Co-existence is built on **collaboration**, where development:
 - **Respects Country**
 - **Honours culture**
 - **Supports community wellbeing**



Thank You

