
He once negotiated native title deals for Andrew Forrest. Now Tony Shaw says the traditional owners were betrayed.



Tony Shaw

The Weekend Australian Magazine,

May 20-21, 2017

Story: Andrew Burrell

Photography: Colin Murty

The smoke stacks and jutting steel of the Murrin Murrin nickel mining operation rise like an improbable city from the mulga scrub and red soil of the Great Victoria Desert. It was here on the edge of Western Australia's Goldfields, 800km northeast of Perth, that a cocky Andrew "Twiggy" Forrest launched his glittering mining career as the chief executive of an upstart company called Anaconda Nickel. And it's here that Tony Shaw, the Aboriginal negotiator he engaged to persuade the indigenous people of the Goldfields to allow the project on their traditional lands, has returned with deep sorrow and regret, and to tell his story for the first time.

It's a story that involves money hastily changing hands in remote towns, in hotel rooms and around the waterholes of the Goldfields as the fast-talking Forrest won approval

for his \$1 billion project. Shaw has previously turned down offers to talk about his work as Forrest's right-hand man in negotiating those deals and is reluctant to speak now. "I'm not proud of what I did," says Shaw as he stands on a hill overlooking the processing plant, recalling the chilly day in July 2000 that prime minister John Howard flew in to formally open the Anaconda mine and Forrest led his 300 invited guests in a lengthy prayer session.

Two years later, Forrest was gone. He would reinvent himself as an iron ore miner in the Pilbara, founding Fortescue Metals Group and soon joining Australia's rich list. As his wealth grew, so too did his philanthropic efforts and activism on behalf of Aboriginal people. He cultivated the image of a champion of indigenous people, and an advocate for the mining industry's power to lift Aboriginal communities out of crushing despair and dysfunction.

That image has long grated with Tony Shaw. "Andrew Forrest is not the messiah for our people," he says in a soft but stern voice. Shaw doesn't deny he got his first break working for Forrest, or that it has led to a successful career negotiating land use agreements between mining companies and traditional owners — he has finalised deals with a cumulative value of \$70 million. After decades of hard work, Shaw now has his own business and lives in one of Perth's better suburbs. He has never strayed from his belief that the native title system — which turns 25 next month with the anniversary of the High Court's momentous Mabo decision — can deliver genuine economic and social benefits for his people. But what Shaw keenly knows from his Murrin Murrin experience is that there have been winners and losers. Among the biggest losers, he claims, are the Goldfields Aboriginal people who were persuaded by the promises of Andrew Forrest in the late 1990s.



The Murrin Murrin nickel mining operation at the edge of the Great Victoria Desert.

From the top of the hill, Shaw points towards the struggling town of Leonora, just 50km from Murrin Murrin, where at least six young Aboriginal people have taken their own lives in the past 18 months. Beyond it lies the Goldfields centre of Kalgoorlie, a town awash with hard drugs and crime. In such towns, says Shaw, many Aboriginal people still live in extreme poverty, trapped in a cycle of hopelessness in a region that has one of the highest rates of indigenous suicide in the nation.

In the Pilbara, where Fortescue employs hundreds of Aboriginal people at its iron ore mines, Forrest is widely regarded as a visionary. But as *The Weekend Australian Magazine* discovered on a recent visit to the Goldfields, the magnate's name is mud among many indigenous leaders in that region. They speak bitterly of the divisions and distrust that were fomented during the frantic negotiations between Anaconda and 18 native title claimants before construction of Murrin Murrin began in 1997.

Shaw recalls Aboriginal elders — one of whom was gravely ill — signing documents without any legal representation as Forrest sought to seal the deal on mining leases and beat his corporate deadlines. He says there were promises to create hundreds of jobs for Aboriginal people and award lucrative contracts for indigenous businesses at Murrin Murrin. Many of those promises never eventuated, Shaw and other indigenous people claim. A Murrin Murrin community fund to be worth \$1 million, aimed at

supporting Aboriginal health and education, was never set up as intended. Cheques for \$25,000 each were handed out to claimants under the confidential deals — it was a small fortune for many but a tiny sum compared to the amounts most other mining companies, then and now, pay to traditional owners for access.



Andrew Forrest.

“He should have paid between \$30 million and \$60 million [in total] for royalties, contracts, employment, scholarships, health programs — all of the holistic stuff that I’m involved in at the moment and that I’m so proud of,” says Shaw. “Under a fair regime each claim should have been \$2.5 million to \$3 million. They [the claimants] don’t realise what they should have got. Paying next to nothing for a \$1 billion-plus laterite nickel project, which is now the biggest in the world, is glaringly wrong.”

Throughout his career as a mining boss, Forrest has stridently opposed making large cash payments to indigenous groups, believing them to be a form of “mining welfare”. When he was running Anaconda Nickel, he told journalists that his native title agreements provided jobs and business opportunities rather than money. This, he said, would “get rid of the handout mentality” among Aboriginal people and “take them off the streets and out of the hotels”. Forrest declined requests to speak or to be emailed specific questions about the issues raised by Shaw. But he has previously

defended his actions at Anaconda, referring to the difficulties he faced in negotiating overlapping native title claims lodged by so many groups and individuals.

Native title expert Ciaran O’Faircheallaigh, a professor of politics and public policy at Brisbane’s Griffith University, ranks the Murrin Murrin agreements among the least beneficial he has seen between a mining company and indigenous people. He says it was unusual — even by the standards of the late 1990s — for a mining company to sign contracts with people who had limited understanding of their rights and did not have access to lawyers. “It was a particularly egregious example because of the way it was done, because of the pressure tactics that were applied, because of the fact that it involved visits to people in hotel rooms and paper bags changing hands,” he says.

O’Faircheallaigh says Forrest’s native title deals didn’t improve in the 2000s when he was chief executive of Fortescue. The company has long been entangled in a dispute with the Yindjibarndi people of the Pilbara over its refusal to pay industry-standard compensation. “It is self-serving justification for not paying for the resources that he’s taking from their land,” O’Faircheallaigh says of Forrest’s hardline approach. “There are many cases where Aboriginal people are making very good use of money from mining agreements and where they are using it to promote their self-sufficiency. Of course there is a danger [money will be wasted] but there is a danger of that with anybody who gets money in these sorts of situations.”

Shaw, 46, admits he was naive about the business world when he first encountered Forrest, a brash former stockbroker looking to make it big in mining. Born on an Aboriginal reserve in Leonora, Shaw was taken from his mother as a toddler; he never knew his white father. By the time he was 13, he had lived in 14 foster homes and institutions. A promising football career was cut short when he was hit by severe depression at age 18.

Shaw recalls meeting Forrest for the first time in the small town of Laverton, a 30-minute drive from the Murrin Murrin site, as the Anaconda boss tried to woo local indigenous people to support his mine. Shaw’s only experience at that time involved

working at an Aboriginal health service and at a mine, but he spied an opportunity when he saw Forrest and his Anaconda colleagues struggling to get the mining leases they needed for the project.

“The Murrin Murrin people had no idea what they were doing,” Shaw says. “That was until I tapped Andrew Forrest on the shoulder very quietly and said, ‘I can help you with this’. I was good at relationships and I knew that the [Aboriginal] people there — more often than not — liked me.” In vivid detail, Shaw describes his role in helping to apply pressure on people to support the project and sign documents. But the final agreement is one that Shaw remembers most clearly. A senior Aboriginal elder, Ted Evans from Leonora, had refused to come on board and was known to be seriously ill after recent open heart surgery. Without Evans’ agreement, the project could not start.

Forrest flew in to the Goldfields and, along with Shaw, spoke to Evans around a campfire until after midnight before the old man was convinced to sign. “This old fella at the end of his days signed for \$25,000,” Shaw says. “Forrest lodged the claim that morning and the trucks were on site that afternoon.” Ted Evans’ son Richard confirms his father was gravely ill on the night he signed the agreement and believes he did not properly understand it. “Andrew got everything for nothing,” he says.



Fred Chaney

Of course, not all Aborigines are bitter about the outcome of native title deals. That's because many of the agreements inked between mining companies and indigenous groups over the past 25 years have delivered genuine benefits. But the Mabo decision has achieved even more than that, says Fred Chaney, a former Liberal Aboriginal Affairs minister and former deputy head of the National Native Title Tribunal. "It has transformed the status of Aboriginal people from perpetual mendicants to stakeholders," he says. "Mabo and the Native Title Act represent the biggest single shift in the power equation since 1788."

Chaney recalls the mining industry's belligerent opposition to the Mabo decision but is heartened that most companies — with the exception of some remaining cowboys — have adapted to the regime. "Until 1992 mining companies were hostile to Aboriginal interests," he says. "They saw Aboriginal people as a nuisance, as an obstacle to be pushed out of the way." A turning point came in 1995 when the then chief executive of Rio Tinto, Leon Davis, delivered a speech that backed the Keating government's Native Title Act and committed the company to improving economic conditions in Aboriginal communities. Within weeks, Rio Tinto had negotiated a landmark native title deal with traditional owners for exploration around the Roper River in the Northern Territory.

Today, Rio is the biggest private sector employer of Aboriginal people in Australia with about 1500 direct employees and a further 300 if contractors are included. At the company's Argyle diamond mine in the Kimberley, the indigenous employment rate has been as high as 40 per cent. In the Pilbara, where massive wealth has been generated over the past decade, Rio Tinto has negotiated 10 agreements with all of the main native title groups. These deals cover the company's 15 iron ore mines, four ports and 1700km of railways across the vast region. O'Faircheallaigh, the native title expert, says Rio Tinto's comprehensive life-of-mine agreements are regarded as among the best in the industry.

Joanne Farrell, head of Rio Tinto's operations in Australia, rubbishes talk that paying Aboriginal people compensation for their land is a form of mining welfare. Rio's payments are structured so that some money can be used for current expenses and the

rest is set aside in trusts for long-term activities such as education funds and investments in infrastructure. “We actually fundamentally believe that Aboriginal people own the land on which we are operating,” Farrell says. “Not every Aboriginal person wants to work for us, so why think the only way they can participate is through employment?”



Mark Bennett.

Mining identity Mark Bennett — best known for developing the massive Nova nickel deposit southeast of Kalgoorlie — regards mining and exploration as akin to “going in someone else’s backyard”. Bennett engaged Tony Shaw to negotiate the indigenous land deal that paved the way for Nova a few years ago and he says Shaw was skilfully able to “walk the line between two entirely different universes”. Most miners these days, Bennett believes, are constructive rather than confrontational.

Yet one of the nation’s most experienced native title lawyers, Marcus Holmes, still sees many companies that pay scant regard to native title. Holmes, who has acted both for

mining companies and Aboriginal groups since the Mabo decision, says it's often forgotten that native title is a relatively limited right. "It's a good building block and it can lead to economic independence and self-determination," he says. "But I've also seen groups tear themselves apart as a result of native title."

Simon Hawkins runs the Yamatji Marlpa Aboriginal Corporation, which facilitated more than 1500 native title deals in the Pilbara between 2007 and 2013. He is adamant the mining boom has delivered real gains to many traditional owners and cites one remote group that is using royalties from a mining deal to buy a kidney dialysis machine. Another is filming its elders speaking in their native tongue in an attempt to keep their language alive. "The opportunities the traditional owners have in terms of resourcing is unparalleled," he says.

Farrell, of Rio Tinto, agrees that the boom has delivered for indigenous people. But she adds: "It's then debatable if they have benefited enough." And therein lies an issue at the heart of the native title system and its limitations. With hundreds of agreements producing so many benefits for indigenous communities, why are tangible gains so hard to recognise and why have some federal measures to "close the gap" gone backwards?

Chaney believes it's now up to governments to build on the success of native title by pushing for greater indigenous economic self-sufficiency in remote regions. "My criticism would be we have not sufficiently availed ourselves of the huge opportunities native title provides," he says. A starting point, according to Chaney, should be to allow traditional owners to more easily use the land they hold under native title to develop businesses and pursue other economic activities.



Ron Harrington-Smith

Back in the West Australian Goldfields, indigenous businessman Ron Harrington-Smith reckons native title has delivered “stuff all” to his people. He seethes at the mention of Andrew Forrest’s name. The 72-year-old recalls Forrest attending church with local Aborigines as he won them over. “People were willing to give up their bit of land without a fight and sign in good faith so it would benefit Aboriginal people and all of the community. But here we are and we are still struggling.”

An indigenous pastor in Kalgoorlie, Geoffrey Stokes, claims Forrest’s Christianity was a factor in winning over claimants. “He took some of them to meet the Archbishop in Perth and he took them for a picnic out at Murrin Murrin,” Stokes says. “They came back saying, ‘He’s a good Christian’.”

Harrington-Smith’s son, Wayne Smith, is also bitter. Smith was one of the most vocal Aboriginal backers of Murrin Murrin, even leading a protest rally in Leonora involving 200 people marching through the town to support the project. He later won a contract to supply water to the mine. “We were one of the first contractors on site,” he says. “We took Aborigines off the street and trained them — we told the unions to piss off. It was one hell of a feat. We had 30 blokes in total, all Aboriginal.”

But Smith admits he signed the water contract with Anaconda at an unsustainably low price. “I was stupid — I stuffed up the pricing,” he says. “I was actually 50 per cent off the mark.” He says he approached Forrest to ask for the contract to be renegotiated, but the Anaconda boss refused. “I went bankrupt, I lost \$2.8 million,” Smith recalls. “I lost everything — my marriage, house, cars, all because of that. I should have been smarter.”

Another indigenous Christian pastor, Greg Stubbs, who runs Morapoi Station near Murrin Murrin, says Forrest told him Anaconda would buy his property and others nearby to use as a place to train local indigenous people for the mine. “He sent his crew out here and they photographed the boys on bikes doing the mustering,” he recalls. But Stubbs says he didn’t hear back from Forrest and his attempts to make contact were unsuccessful. He claims his people have suffered because of Forrest’s business practices. “Some people got money and some got nothing,” he says. “It brought a lot of division among our people. I have forgiven him but he needs to come back to say he is sorry.”

For his part, Tony Shaw is adamant he will never work for Andrew Forrest again. He regrets working for Anaconda Nickel, now known as Minara Resources and owned by Swiss mining giant Glencore. Once Shaw finalised the native title agreements for Anaconda, “he [Forrest] gave me a job for \$75,000 a year for doing nothing — I was sitting in a room in Leonora with a desk and a pen. I ended up walking out.”

Shaw knows some of his fellow “blackfellas” in the Goldfields feel betrayed by his actions. He hopes to salve his conscience by confessing to his role in that betrayal. “In my youth and exuberance I was caught up in a process that was purportedly going to be a great thing,” he says. “But it ended up being very hurtful and it ended up destroying a lot of our people’s aspirations.”