NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title:	YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC v STATE OF WESTERN AUSTRALIA & ORS
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
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Place:	To Be Advised

SEAL OF THE FEDERAL COURT OF AUSTRALIA

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Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 122
Rules 36.01(1)(b); 36.01(1)(c)

Notice of Appeal

No. WAD of 2026

Federal Court of Australia

District Registry: Western Australia

Division: General

On appeal from the Federal Court

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Appellant

STATE OF WESTERN AUSTRALIA and others named in the schedule

Respondents

To the Respondents:

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the *Federal Court Rules 2011* (Cth), Division 36.5.

2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:
Place:

Date:

Signed by an officer acting with the authority of the District Registrar

The Appellant appeals from Orders 2, 3 and 4 of the Orders of the Federal Court of Australia made on 1 July 2026 at Sydney.

In this notice:

FMG tenements means the future acts in respect of which Yindjibarndi Ngurra Aboriginal Corporation RNTBC claimed compensation, comprising 16 miscellaneous licences, 9 mining licences, 3 prospecting licences and 8 exploration licences granted by the State of Western Australia to, variously, the second to sixth respondents.

Land means the land covered by the FMG tenements.

GROUNDS OF APPEAL

Ground 1: In circumstances where the primary judge correctly held that compensation under the *Native Title Act 1993* (Cth) (**NTA**) for the loss, diminution, impairment or other effect of the compensable acts (the grants of mining tenements) on the Yindjibarndi people's native title rights and interests must involve a component for economic loss to be calculated on the basis of the objective economic value of the native title rights and interests (at [9]), the primary judge erred in law in holding that:

a) the Yindjibarndi people's claim for economic loss based on the negotiation or exchange value of their native title rights and interests determined having regard to what miners in the Pilbara commonly and routinely agree to pay native title parties for their assent to mining on their country (**exchange value case**) was not available under section 51(1) of the NTA (at [19]-[20], [366]-[369], [377] and [493]; and

b) the assessment of economic loss by reference to the baseline of the freehold value of the Land in accordance with *Northern Territory v Griffiths* [2019] HCA 7, 269 CLR 1 meant that the Yindjibarndi people would, by definition, receive compensation on just terms as contemplated by section 51 of the NTA, (together, the **just terms findings**) (at [22], [328], [391] and [397]).

<u>Particulars</u>

1. The primary judge erred in holding that the exchange value case was not available because, as a matter of law, the objective economic value of the native title rights and interests equates to the objective value of a hypothetical freehold estate in the Land (at [366]-[370]).

2. The primary judge erred further:
   a) in rejecting the exchange value case because, as was accepted, the native title rights and interests of the Yindjibarndi people do not include a right to minerals (at [371]);
   b) in holding that the exchange value case fixes attention solely on the benefit to the miner (or the State) but fixes no attention on the value of the native title rights and interests (at [377]);
   c) in holding that the exchange value case leads to inconsistent outcomes (at [378]);
   d) in holding that the exchange value case would lead to an "incongruous outcome" (at [380]); and
   e) in rejecting the exchange value case as a complex and difficult metric for assessing compensation for economic loss (at [381]).

Ground 2: If the primary judge did not err in making the just terms findings, then the primary judge erred in his determination of the economic value of an unencumbered freehold estate in the Land as a proxy for the economic value of exclusive native title in relation to the Land (at [667]-[669]).

Particulars

1. The primary judge based his determination on the valuation prepared by Mr Gregory Preston (at [668]). Mr Preston's valuation was deficient in one or more of the respects set out in particulars 2 to 7 below. The primary judge's use of this valuation as the basis of his determination meant that the Yindjibarndi people would not receive compensation on just terms as contemplated by sections 51(1) and 53(1) of the NTA.
2. The valuation was artificial:
   a) prior to mining the Land was relatively untouched terrain within Gamburdayinha (Hamersley Ranges) (at [1208]); and
   b) with the exception of exploration licence E47/3205, there are no freehold estates held over the Land.
3. The sales of pastoral leaseholds around the Pilbara were not an appropriate comparator for the purposes of the valuation.
4. The valuation adopted rural purposes as the highest and best use of the Land when industry extractive or mining was the correct or preferable highest and best use (at [332], [334] and [560]).

5. The valuation failed to take into account the valuable rights conferred on an owner of "private land" by sections 29(2) and 29(7) of the *Mining Act 1978* (WA) (***Mining Act***) in circumstances where the primary judge:
   a) found that such 'access rights' can provide the basis upon which land owners and occupiers can negotiate substantial payments from a prospective miner based on the value of the minerals on the Land (at [461]-[465]); and
   b) referred to and relied upon evidence that there were waterholes and springs on the Land (at [124], [892] and [978]) and there were trees on the Land (at [850] and [944]).
6. The valuation did not take into account the value of the minerals in the Land (at [332]-[336] and [385]-[390]).
7. Further, the valuation determined the value at the date of the grant of each future act (at [668]) and the primary judge erred in finding he was bound to determine the valuation as at that date (at [287], [666]), whereas he should have held that the value can be assessed at a date prior to each act, if that were necessary in the circumstances of this case to achieve just terms compensation, having regard to section 29(2) of the *Mining Act*.

Ground 2A: The primary judge erred in failing to make findings, or if he did make findings, failing to provide reasons for those findings, as to the highest and best use of the relevant Land in circumstances where this was an issue between the parties.

Ground 3: In circumstances where the primary judge assumed that the grants of the mining leases are acts that have resulted in an acquisition of property in accordance with section 51(xxxi) of the *Constitution*, the primary judge erred in rejecting the alternative claim for compensation for economic loss on just terms under section 53(1) of the NTA equivalent to the exchange value case (and its analogues) (at [397]).

<u>Particular</u>

1. The primary judge held that the just terms findings precluded the success of the Appellant's alternative claim, being the exchange value case, under section 53(1) of the NTA (at [397]).

Ground 4: On the footing that section 51(3) of the NTA required the Court to apply the principles or criteria in the *Mining Act* for determining compensation for the grants of the FMG tenements, the primary judge erred in law by holding that:

a) the application of those principles or criteria was not discriminatory and did not attract the operation of section 10(1) of the *Racial Discrimination Act* 1975 (Cth) and section 45 of the NTA; and

b) accordingly, the Yindjibarndi people were not deprived of receiving compensation on just terms under section 51(1) of the NTA (at [21], [25], [313]-[324], [408] and [466]).

Particular

1. The primary judge held that his earlier just terms findings precluded the success of the exchange value case, that is, compensation for economic loss in relation to the freehold value of the Land does provide just terms compensation (at [397]).

Ground 5: The primary judge erred in rejecting the Appellant's contention that the hypothetical freehold estate in the Land for the purposes of determining the uppermost limit of compensation imposed by section 51A of the NTA:

a) must be determined on the assumptions that:
   i. the hypothetical freehold estate includes the minerals; and
   ii. the highest and best economic use of the Land on which to base the valuation is extractive industry or mining;

b) with the result that the appropriate valuation method is to use a discounted cashflow method using revenues produced from mining on the Land (at [332]-[336] and [385]-[390]).

Particulars

1. Section 2B of the *Acts Interpretation Act 1901* (Cth) defines the term "land" in any Commonwealth Act as including "corporeal hereditaments", which include minerals (at [387]).
2. A hypothetical freehold estate for the purposes of section 51A of the NTA excludes a reservation of minerals to the State of Western Australia with the consequence that the valuation of that estate over the Land must include the minerals (at [333] and [387]).

Ground 6: The primary judge erred in concluding that section 123(1) of the *Mining Act* is not invalid by reason of section 109 of the *Constitution* because it is inconsistent with the terms of the NTA (at [401]).

Particulars

1. The right to negotiate provisions under Subdivision P of Part 2, Division 3 of the NTA which apply to the grant of a mining tenement make provision for compensation agreements negotiated under that Act to include conditions that are inconsistent with the statutory prohibitions in section 123(1) of the *Mining Act*.
2. Section 33(1) of the NTA expressly provides that negotiations between the prospective grantee of a mining tenement and the native title holders/registered claimants may include the possibility of including a condition that has the effect that the native title holders are to be entitled to payments worked out by reference to the amount of profits made, or any income derived or anything produced by, the grantee party.
3. Section 123(1) of the *Mining Act* would alter, impair or detract from the rights created by the NTA and from the object or purpose sought to be achieved by the NTA, which is to resolve compensation and future act applications through negotiation and agreement, including negotiation and agreement on conditions of the kind set out in section 33(1) of the NTA.

Ground 7: The primary judge erred in concluding that the exchange value case had not been proved on its facts by the expert evidence (at [22]).

Particulars

1. The primary judge erred in failing to have regard or attach any or any sufficient weight to the unchallenged expert evidence of Mr Meaton based upon his decades of experience in the negotiation of native title mining compensation agreements in the Pilbara that:
   (a) there is a surprising degree of commonality across negotiated compensation agreements between iron ore miners and native title parties in the Pilbara (Transcript P-1172.21);
   (b) in his experience, the negotiation of most such agreements take longer than the 6-month "right to negotiate period" referred to in the NTA (Transcript P-1122.21);
   (c) with the exception of the Solomon Hub Project, he is not aware of any iron ore projects in the Pilbara that have commenced since the NTA, where the miner did

not first obtain a land access and compensation agreement with the traditional owners, no matter how long that might have taken (Transcript P-1297.17-.25);

(d) the iron ore mining industry has decided that royalties are the most appropriate method for agreement-making and he has been involved in more than 100 agreements, all of which have involved some form of royalty (Transcript P-1160.02);

(e) the most common royalty by far and the most widely used royalty rate paid by iron ore miners to native title claimants / holders in the Pilbara is 0.5% FOB royalty rate (Mr Meaton's Report, p.7, [33] and Appendix C, p.23);

(f) in the case of the Yindjibarndi people that rate should be increased to 1%. Firstly, because their rights and interests were recognised in a determination; and secondly, those determined rights include a right of exclusive possession (at [536]).

2. The primary judge erred in concluding that Mr Meaton's evidence that 0.5% was the most common FOB royalty rate by far in the Pilbara, was "opinion" evidence based upon Mr Meaton's consideration of the particular agreements referred to in his report ([534]). It was factual evidence known to Mr Meaton by reason of his industry experience (Mr Meaton's Report, p.7, [33] and Appendix C, p.23).

3. The primary judge erred in failing to have regard or attach any or any sufficient weight to the following unchallenged expert evidence of Mr Jaski, based upon his industry experience and which, in important respects, corroborated the evidence of Mr Meaton:

(a) iron ore mining projects in the Pilbara take a long time to develop and the negotiation period between miners and native title parties can go on for years (Transcript P-1335.37-1336.21);

(b) Mr Meaton's evidence that there have been no iron ore projects commenced in the Pilbara since the NTA commenced where the miner has not first obtained a land access and compensation agreement with the native title parties was consistent with Mr Jaski's understanding (Transcript P-1335.37-.44);

(c) in Mr Jaski's experience with mining compensation agreements in the Pilbara both on the mining company's side and on the native title party's side, there was no attempt to look at the value of the native title rights and interests by either party rather, the basis of the negotiation came down to and centred around, the royalty rate of 0.5% (at [623]; Transcript P-1333.29-1334.11, 1335.01).

4. The primary judge erred in failing to have regard or attach weight to Mr Jaski's evidence (and by implication also that of Mr Meaton) that, in his experience, 0.5% FOB royalty is the starting point for native title mining negotiations such that negotiations are centred around this royalty rate. The primary judge said of that evidence that it was (simply) a figure "*known by those in the industry*" (at [623]). As such, it was factual evidence, which should have been given considerable weight.

Ground 8: Having found that there was a deep and unfortunate division within the Yindjibarndi community (at [1088]) which has had an effect on the Yindjibarndi people's native title rights and interests (at [1095], [1104]), the primary judge erred in holding that the Yindjibarndi people were not entitled to compensation for the effects of that social division on their native title rights and interests (at [1095]).

<u>Particulars</u>

1. The primary judge erred in law in holding that the process of negotiations anterior to the grant of a future act (however unsettling or confrontational) do not form part of the future act (at [1095], [1108], [1117]), [1124]).

2. The primary judge erred in fact and in law by limiting his consideration of the claim for compensation for social disruption to the negotiation period anterior to the grants of the FMG tenements whereas the case for the Yindjibarndi people was that the social division was the result of the operation as well as the development of the Solomon Hub Project.

3. The primary judge erred in fact and in law in holding that there was not a sufficient causal connection between the conduct of FMG (both before and after the grants of the tenements) in the creation and / or the exacerbation of the social division within the Yindjibarndi community (at [1095], [1126], [1132]).

4. The primary judge erred in rejecting the evidence of social division as irrelevant (at [984], [1045]).

ORDERS SOUGHT

1. The appeal be allowed.

2. Order 3(a) is set aside and in its place:

(a) order that compensation payable for economic loss based upon the negotiation or exchange value of native title rights and interests is $678,000,000; or

(b) the proceeding be remitted to the primary judge for assessment of compensation payable for economic loss to be determined in accordance with the law.

3. Order 3(b) is set aside with compensation payable for cultural loss to be determined by the Full Court or the proceeding be remitted to the primary judge for the assessment of compensation payable for cultural loss to be determined in accordance with the law.

4. If Order 3(a) is set aside then Order 4 is also set aside.

Appellant's address

The Appellant's address for service is:

Place: Blackshield Lawyers, Level 28, AMP Tower, 140 St Georges Terrace, Perth WA 6000.

Email: simon@blackshield.net

The Appellant's address is 38 Roe Street, Roebourne, WA 6718.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 25 August 2026

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Simon Charles Blackshield
Lawyer for the Appellant

Schedule

No: WAD /2026

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Second Respondent	FMG PILBARA PTY LTD
Third Respondent	PILBARA ENERGY (GENERATION) PTY LTD
Fourth Respondent	PILBARA ENERGY COMPANY PTY LTD
Fifth Respondent	THE PILBARA INFRASTRUCTURE PTY LTD
Sixth Respondent	PILBARA GAS PIPELINE PTY LTD
Seventh Respondent	YAMATJI MARLPA ABORIGINAL CORPORATION