

NOTICE OF FILING

Details of Filing

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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



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

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.



Notice of Contention

No. WAD 299 of 2026

Federal Court of Australia
District Registry: Western Australia
Division: General

On appeal from the Federal Court

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721)

Appellant

STATE OF WESTERN AUSTRALIA and others

Respondents

To the Appellant

The First Respondent contends that the judgment of the Federal Court should be affirmed on grounds other than those relied on by the Court.

This notice of contention is subject to, and should be read with, the appeal brought by the First Respondent as the Appellant in WAD 302 of 2026.

GROUND S RELIED ON

1. In relation to **Ground 1**, the First Respondent contends that the trial judge was correct to order under order 3(a) that the compensation payable for economic loss was \$136,757, being a sum determined on the basis that the objective value of exclusive native title rights and interests equates to the objective value of a freehold estate in the land, because:
 - (a) the procedural rights that arise under Part 2, Division 3, **Subdivision P** of the *Native Title Act 1993* (Cth) (**NTA**) are not a native title right or interest;

Filed on behalf of:	State of Western Australia	Date	15 September 2026
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- (b) not all compensable acts attracted the procedural rights contained in Subdivision P and, of those that did:
 - (i) the Appellant did not lose the opportunity to negotiate an agreement with FMG under the NTA, because that opportunity was fully afforded and discharged; and
 - (ii) the effect of the statutory regime in relation to the compensable acts (s.29 NTA; ss.18, 23, 27 and 105A *Mining Act 1978* (WA) (**MA**)) was that there was no opportunity to negotiate with any person other than FMG in any event;
 - (c) the trial judge was correct to find that, in circumstances where native title was not extinguished, s.51A(1) NTA applied to the effect that compensation for economic loss would be less than the amount payable if there were a compulsory acquisition of a fee simple estate in the land (Reasons at [389]), noting further that:
 - (i) that particular finding is not challenged under Ground 1 in the appeal; and
 - (ii) that finding is sufficient in its own right to support the orders made;
 - (d) the trial judge was correct to find that, by s.51(3) NTA, the Court must apply the compensation principles or criteria contained in the MA and that those principles or criteria preclude calculating compensation by reference to the value of minerals (s.123(1) MA) (Reasons at [383]), noting further that:
 - (i) that particular finding is not challenged under Ground 1 in the appeal; and
 - (ii) that finding is sufficient in its own right to support the orders made; and
 - (e) the “comparator agreements” relied upon by the Appellant include compensation for all effects of all compensable acts on native title, including both economic and cultural loss, so that any economic loss award derived from their “exchange value” would involve double compensation where an award for cultural loss is also made.
2. In relation to **Grounds 2 and 2A**, the trial judge’s determination of the value of an unencumbered freehold estate in the land as a proxy for exclusive native title rights and interests (Reasons at [648] and [651]) was correct, including because:
- (a) the Appellant’s contention that the economic value of an unencumbered freehold estate in the land should take account of the value of minerals in the land or assume a highest and best use of the land as “mining” was unsupported by any evidence as to the value of any such interest, noting that such contention was also not pleaded by the Appellant.

Dated: 15 September 2026



FOR: State Solicitor for Western Australia
Solicitor for the First Respondent