

NOTICE OF FILING

Details of Filing

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File Title:	BANJIMA NATIVE TITLE ABORIGINAL CORPORATION RNTBC v STATE OF WESTERN AUSTRALIA
Registry:	VICTORIA 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.



Amended Statement of Claim

Federal Court of Australia
District Registry: Victoria
Division: General

No **VID198** of 2026

Banjima Native Title Aboriginal Corporation RNTBC

Applicant

State of Western Australia

Respondent

A Parties

A.1 The Applicant and the persons on whose behalf the application is made

1. The Applicant:

- (a) is the Banjima Native Title Aboriginal Corporation (**BNTAC**);
- (b) is a registered native title body corporate;
- (c) was, on 11 March 2014, by the **Orders** made on 11 March 2014 in *Banjima People v Western Australia (No 3)* [2014] FCA 201 as varied on appeal in *Banjima People v Western Australia* [2015] FCAFC 84, determined under s 56(2)(b) of the *Native Title Act 1993* (Cth) (**NTA**) to be the native title prescribed body corporate to hold the native title in trust for the common law native title holders in relation to the Determination Area;
- (d) is trustee of native title rights held for the benefit of members of the **Banjima people**.

Particulars

Banjima People v Western Australia (No 3) [2014] FCA 201, order 2.

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2. This proceeding is commenced by the Applicant ~~pursuant to Part IVA of the Federal Court Act 1976 (Cth) on its own behalf~~ as trustee for, ~~and on behalf of the group members who are,~~ persons:

- (a) who are Banjima people; and
- (b) who are common law holders of native title rights as in respect of certain land and waters (**Determination Area**), as were determined to exist by the **Orders** and **Determination** made on 11 March 2014 in accordance with s 225 of the NTA in *Banjima People v Western Australia (No 3)* [2014] FCA 201 and varied on appeal in *Banjima People v Western Australia* [2015] FCAFC 84 (**native title rights**); and
- (c) whose enjoyment or exercise of rights including native title rights has been, or is being and/or will be prevented, impeded or interfered with, in consequence of the continuing presence and continuous spread of crocidolite (**blue asbestos**) from areas known as:
 - (i) the former Wittenoom Mine;
 - (ii) the Eastern Gorge Tailings Dump;
 - (iii) the former Colonial Mine;
 - (iv) the Colonial Upstream Tailings Dump and/or the Colonial Downstream Tailings Dump;
 - (v) the former Yampire Mine;
 - (vi) the Yampire Tailings Dump;
 - (vii) the Wittenoom racecourse (**Wittenoom Racecourse**); ~~and/or~~
 - (viii) the Other State Places as defined in paragraph 94A below; and/or
 - (viii) the former Wittenoom Gorge Airport (**Wittenoom Airport**);
 - (ix) areas within the Determination Area to which blue asbestos has spread from (i) to (viii); and

(d) who have in consequence suffered and/or will suffer loss and/or damage, including distress, vexation, loss of amenity and/or cultural loss; and

(e) who have not in consequence suffered personal injury,

(the **Relevant Beneficiaries Group Members**).

3. In this Statement of Claim:

(a) the former Wittenoom Mine, the former Colonial Mine and the former Yampire Mine are referred to together as the **Mines**;

(b) the Eastern Gorge Tailings Dump, the Colonial Upstream Tailings Dump, the Colonial Downstream Tailings Dump and the Yampire Tailings Dump are referred to together as the **Tailings Dumps**;

(c) the Mines, Tailings Dumps, Wittenoom Racecourse, ~~and~~ Wittenoom Airport **and the Other State Places** are referred to together as the **Asbestos Sources**; and

(d) **Wittenoom Asbestos Waste Hazard** refers to:

(i) the Asbestos Sources;

(ii) all blue asbestos or material containing blue asbestos (such as mine waste or tailings) which has at any time spread into and remains in, and/or which continues to spread into, the Determination Area from the Asbestos Sources;

(iii) the risk to health from the blue asbestos referred to in (ii);

(e) in all cases where particulars are given, further particulars may be given before or at trial.

A.2 The Respondent

4. The Respondent, the **State** of Western Australia:

(a) is the Crown in right of the State of Western Australia;

- (b) may be sued pursuant to ss 76–77 of the *Commonwealth Constitution* and s 39B of the *Judiciary Act 1903* (Cth) ~~s 5 of the *Crown Suits Act 1947* (WA) under the title “the State of Western Australia”~~.

B The Banjima Country that is or will be affected

5. The claim concerns the part of the Determination Area into which blue asbestos or material containing blue asbestos has already spread (**Affected Area**) and the balance of the Determination Area into which it continues to spread and/or in relation to which there is fear it may spread, as set out herein.
6. The Affected Area presently includes:
- (a) the areas of the former Wittenoom Mine;
 - (b) the areas of the Eastern Gorge Tailings Dump;
 - (c) the areas of the former Colonial Mine;
 - (d) the areas of the Colonial Upstream Tailings Dump and the Colonial Downstream Tailings Dump;
 - (e) the Wittenoom Asbestos Management Area; and
 - (f) other areas within the Determination Area to which blue asbestos has spread from the Asbestos Sources.

C Banjima people and their native title

7. At all relevant times, the native title rights existed in relation to the land and waters of the Determination Area.

Particulars

Banjima People v Western Australia (No 3) [2014] FCA 201 and Determination.

8. In relation to that part of the Determination Area referred to in the Determination as the **exclusive area**, the native title rights at all relevant times comprised and comprise the following exclusive rights:

- (a) the right as against the whole world to possess, occupy, use and enjoy the land and waters of the exclusive area;
- (b) a right to make decisions about the use of the land and waters of the exclusive area by persons who are not members of the Banjima people;
- (c) a right to control the access of others to the land and waters of the exclusive area.

Particulars

Banjima People v Western Australia (No 3) [2014] FCA 201, determination clauses 4, 10, Schedule 1 item S1.2, Schedule 3 (area shaded green).

9. In relation to that part of the Determination Area other than the exclusive area, the native title rights at all relevant times comprised and comprise the following non-exclusive rights:

- (a) the right to access and move about the land and waters of the Determination Area, be present on the land and waters, live on the land in camps and shelters, and engage in cultural activities on the land and waters including conducting and participating in ceremonies and meetings;
- (b) the right to hunt and take fauna, gather and take flora, take fish and take stones, timber, ochre and water in the Determination Area; and
- (c) the right to have access to, maintain and protect places and areas of importance on or in the land and waters of the Determination Area, including rock art, engraving sites, stone arrangements and the like.

Particulars

Banjima People v Western Australia (No 3) [2014] FCA 201, Determination clause 3, Schedule 1, Schedule 3 (area shaded yellow).

10. To exercise their native title rights, Relevant Beneficiaries ~~Group Members~~ must enter the Determination Area, including in some cases the Affected Area.

11. The exercise by Relevant Beneficiaries ~~Group Members~~ of their native title rights is an ordinary use of the Determination Area.

D Asbestos mining and the spread of asbestos tailings in Banjima Country

D.1 Wittenoom Mine and Mill and Eastern Gorge Tailings Dump

12. From 1946 to 1958, Australian Blue Asbestos Pty Ltd (now Micalco Pty Ltd) (ABA) operated the Wittenoom Mine pursuant to miner's rights and mineral claims for mining asbestos, granted by or for the State under s 16 of the *Mining Act 1904* (WA) and reg 55(4) of the *Mining Regulations 1925* (WA) in respect of areas of Crown land, and transferred to ABA pursuant to reg 188 of the *Mining Regulations 1925* (WA) (the **Wittenoom Mine Mineral Claims**).

Particulars		
Mining Tenement	Granted	Transferred to ABA
MC4700024	29 December 1941	1 July 1943
MC4700025	29 December 1941	1 July 1943
MC4700044	30 October 1942	1 July 1943
MC4700054	25 May 1943	1 July 1943

The grants are recorded in register extracts.

The Applicant may provide further particulars following discovery.

13. ABA used the areas covered by the Wittenoom Mine Mineral Claims for mining purposes and mined for and produced blue asbestos.
14. ABA extracted ore containing approximately 20,000 tonnes of blue asbestos from Wittenoom Mine between 1946 and 1958.
15. ABA processed the extracted ore from Wittenoom Mine at Wittenoom Mill between 1946 and 1958.

Particulars to paragraphs 13 to 15

Details are reported in:

1. Report by GHD for the Department of the State known as Industry and Resources and the Department of the State known as Local Government and Regional Development entitled “Management of Asbestos Contamination in Wittenoom: Final Report” (November 2006) (**2006 GHD Report**) at 1.
2. Report by GHD for the Department of Lands entitled “Advice on Strategies and Costs for Remediation of Certain Asbestos Contaminated Sites in the Wittenoom Area: Phase 1 Conceptual Report)” (October 2013) (**2013 GHD Report**) at 4.

The Applicant may provide further particulars following discovery.

16. The extraction and/or processing of ore by ABA released blue asbestos into the environment in the areas of and surrounding Wittenoom Mine and Wittenoom Mill.
17. The openings of the Wittenoom Mine have not been appropriately sealed in a manner that prevents movement of blue asbestos.
18. The Wittenoom Mine and Wittenoom Mill were and are on Crown land that forms part of the Determination Area.
19. ABA produced approximately 600,000 tonnes of tailings from the Wittenoom Mine and Wittenoom Mill containing up to 5% residual blue asbestos (**asbestos tailings**).

Particulars

The Applicant repeats the particulars subjoined to paragraphs 13 to 15.

20. From around 1946 to 1958, ABA deposited the asbestos tailings from Wittenoom Mine within an area known as the **Eastern Gorge Tailings Dump**.

Particulars

Details are reported in the 2006 GHD Report at 1, 33, 52–53–54.

The Applicant may provide further particulars following discovery.

21. The deposit of tailings by ABA also released blue asbestos into the environment in the areas of and surrounding the Eastern Gorge Tailings Dump.
22. The asbestos tailings deposited at the Eastern Gorge Tailings Dump were not and have never been covered, contained, sealed or otherwise remediated.
23. The Eastern Gorge Tailings Dump was and is on Crown land that forms part of the Determination Area.
24. On 12 October 1960, ABA was granted a tailings lease (**Tailings Lease 1**), entitled “Eastern Creek Tailings Dump”, by or for the State pursuant to Part V Division 3 of the *Mining Act 1904* (WA) and the *Mining Regulations 1925* (WA) in respect of an area of Crown land that included a part of the Eastern Gorge Tailings Dump.

Particulars

The grant is recorded in the Government Gazette of 14 October 1960 and a register extract.

The Applicant may provide further particulars following discovery.

25. On 15 March 1965, ABA was granted Mineral Claim MC4700314 by or for the State under reg 55(+) of the *Mining Regulations 1925* (WA) in respect of an area of Crown land that included a part of the Eastern Gorge Tailings Dump.

Particulars

The grant is recorded in a register extract.

The Applicant may provide further particulars following discovery.

26. On 22 March 1967, the Wittenoom Mine Mineral Claims, Tailing Lease 1, and Mineral Claim MC4700314 (collectively, the **Wittenoom Mining Tenements**) were transferred from ABA to Hancock Prospecting Pty Ltd (**HPPL**) and Wright Prospecting Pty Ltd (**WPPL**).
27. The Wittenoom Mine Mineral Claims and Mineral Claim MC4700314 either were transitioned to prospecting licences and were held by HPPL under the *Mining Act 1978* (WA) or were transferred to Mount Bruce Mining Pty Ltd (**MBM**) and later surrendered.

Particulars		
Tenement	Transition/Transfer	Surrender
MC4700024	Transitioned to PL47/129 20 January 1984 held by HPPL <u>and WPPL</u>	10 October 1988
MC4700025	Transferred 19 September 1978 to MBM	18 January 1979
MC4700044	Transitioned to PL47/130 20 January 1984 held by HPPL <u>and WPPL</u>	<u>10</u> ~~11~~ October 1988
MC4700054	Transferred 19 September 1978 to MBM	18 January 1979
MC4700314	Transferred 19 September 1978 to MBM	18 January 1979

The dealings are recorded in register extracts.

The Applicant may provide further particulars following discovery.

28. Tailings Lease 1 was forfeited for non-payment of rent on 8 August 1979.
29. After the surrender of MC4700025 and MC4700054, blue asbestos released in the areas of and surrounding Wittenoom Mine and Wittenoom Mill was not removed and was left in situ.
30. From that point, blue asbestos released in the areas of and surrounding Wittenoom Mine and Wittenoom Mill was, and remains, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.
31. After the surrender of Mineral Claim MC4700314 on 18 January 1979 and the forfeiture of Tailings Lease 1 on 8 August 1979, the asbestos tailings in the Eastern Gorge Tailings Dump were not removed and were left in situ.
32. From that point, all asbestos tailings in the Eastern Gorge Tailings Dump were, and they remain, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.

33. On and from 18 July 1979 and 8 February 1980, being respectively six months after the surrender of Mineral Claim MC4700314 and the forfeiture of Tailings Lease 1, the asbestos tailings located on the sites of each of these mining tenements in the Eastern Gorge Tailings Dump became the property of the State by s 111(1) of the *Mining Act 1904* (WA) and they so remain.
34. The State did not, and determined not to, impose any condition or requirement upon the holder (or former holder) of any of the Wittenoom Mining Tenements that prevented the creation of tailings dumps, the continued dumping and accumulation of tailings or the spread of blue asbestos released into the environment by extraction and/or processing of ore or of asbestos tailings, whether as a condition of grant, transfer, or renewal, under the Wittenoom Mining Tenements themselves, or otherwise under the *Mining Act 1904* (WA) or *Mining Act 1978* (WA) or other legislation or powers.
35. No step, or no adequate step, has ever been taken, and the State has repeatedly decided not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment by extraction and/or processing of ore at Wittenoom Mine and Wittenoom Mill or the asbestos tailings deposited at the Eastern Gorge Tailings Dump.

Particulars

Details are reported in the 2006 GHD Report at 33, 38, 41, 48, 52–54.

The Applicant may provide further particulars following discovery.

D.2 Colonial Mine and Mill, Colonial Upstream Tailings Dump and Colonial Downstream Tailings Dump

36. From 1953 to 1966, ABA operated the Colonial Mine pursuant to miner's rights and mineral claims for mining asbestos, granted by or for the State under s 16 of the *Mining Act 1904* (WA) and reg 55(+) of the *Mining Regulations 1925* (WA) (the **Colonial Mine Mineral Claims**) in respect of areas of Crown land, and transferred to ABA pursuant to reg 188 of the *Mining Regulations 1925* (WA).

Particulars		
Tenement	Granted	Transferred to ABA
MC4700049	25 May 1943	1 July 1943
MC4700054	25 May 1943	1 July 1943
MC4700013	1 July 1938	26 March 1953
MC4700014	26 September 1938	26 March 1953
MC4700015	26 September 1938	26 March 1953
MC4700016	26 September 1938	26 March 1953
MC4700017	10 February 1939	26 March 1953
MC4700018	9 May 1938	26 March 1953
MC4700045	8 April 1943	26 March 1953
MC4700046	8 April 1943	26 March 1953
MC4700047	8 April 1943	26 March 1953

The grants are recorded in register extracts.

The Applicant may provide further particulars following discovery.

37. ABA used the areas covered by the Colonial Mine Mineral Claims for mining purposes and mined and processed blue asbestos.
38. ABA extracted ore containing approximately 130,000 tonnes of blue asbestos from Colonial Mine between 1953 and 1966.
39. ABA processed the extracted ore from Colonial Mine at Wittenoom Mill and Colonial Mill between 1953 and 1966.

Particulars to paragraphs 37–39

Details are reported in:

1. 1985 Report of OB Hawthorne and Associates at 35.
 2. 2006 GHD Report at 1.
 3. 2013 GHD Report at 4.
40. The extraction and/or processing of ore released blue asbestos into the environment in the areas of and surrounding Colonial Mine and Colonial Mill.

41. The openings of the Colonial Mine have not been appropriately sealed in a manner that prevents movement of blue asbestos.
42. The Colonial Mine and Colonial Mill were and are on Crown land that forms part of the Determination Area.
43. ABA produced approximately 2,600,000 tonnes of asbestos tailings from the Colonial Mine and Colonial Mill containing around 5% residual blue asbestos.

Particulars

The Applicant repeats the particulars subjoined to paragraphs 37 to 39.

44. From around 1953 to 1966, ABA deposited the asbestos tailings from the Colonial Mine within two areas known as:
 - (a) the **Colonial Upstream Tailings Dump**;
 - (b) the **Colonial Downstream Tailings Dump**.

Particulars

Details are reported in the 2006 GHD Report at 1, 35–36, 52–54.

The Applicant may provide further particulars following discovery.

45. The area of the Colonial Upstream Tailing Dump and Colonial Downstream Tailing Dump (**Colonial Tailings Dumps**) were in part covered by Mineral Claims MC4700013, MC4700014, MC4700015, MC4700016 and MC4700049.
46. The deposit of tailings by ABA also released blue asbestos into the environment in the areas of and surrounding the Colonial Tailings Dumps.
47. The asbestos tailings deposited at the Colonial Tailings Dumps were not and have never been covered, contained, sealed or otherwise remediated.
48. The Colonial Tailings Dumps were and are on Crown land that forms part of the Determination Area.
49. On 25 January 1967, ABA applied for a tailings lease, entitled “Colonial Tailings Lease”.

50. On 1 January 1968, ABA was granted a tailings lease (**Tailings Lease 2**) by or for the State pursuant to Part V Division 3 of the *Mining Act 1904* (WA) and the *Mining Regulations 1925* (WA) in respect of an area of Crown land that included part of the Colonial Tailings Dumps.

Particulars

The grant is recorded in Government Gazette 26 January 1968 and a register extract.

The Applicant may provide further particulars following discovery.

51. On 22 March 1967 ~~and 25 March 1967 respectively~~, the Colonial Mine Mineral Claims and Tailings Lease 2 (collectively, the **Colonial Mining Tenements**) were transferred to HPPL and WPPL.
52. The Colonial Mine Mineral Claims were surrendered, in one instance after being transitioned to a prospecting licence held by HPPL under the *Mining Act 1978* (WA) and otherwise after being transferred to MBM.

Particulars

Tenement	Transition/Transfer	Surrender
MC4700049	Transitioned to PL47/131 20 January 1984 held by HPPL <u>and WPPL</u>	~~10~~ ~~11~~ October 1988
MC4700054	Transferred 19 September 1978 to MBM	18 January 1979
MC4700013	Transferred 19 September 1978 to MBM	18 January 1979
MC4700014	~~n/a~~ <u>Transitioned to PL47/128</u> <u>20 January 1984 held by HPPL</u> <u>and WPPL</u>	~~20 January 1984~~ <u>10 October 1988</u>
MC4700015	Transferred 19 September 1978 to MBM	18 January 1979
MC4700016	Transferred 19 September 1978 to MBM	18 January 1979
MC4700017	Transferred 19 September 1978 to MBM	18 January 1979
MC4700018	Transferred 19 September 1978 to MBM	18 January 1979

MC4700045	Transferred 19 September 1978 to MBM	18 January 1979
MC4700046	Transferred 19 September 1978 to MBM	18 January 1979
MC4700047	Transferred 19 September 1978 to MBM	18 January 1979

The dealings are recorded in register extracts.

The Applicant may provide further particulars following discovery.

53. Tailings Lease 2 was forfeited for non-payment of rent on 17 August 1979.
54. After the surrender of Mineral Claims MC4700049 (which was transitioned to a prospecting licence on 20 January 1984 and then surrendered) on 11 October 1988, and MC4700054, MC4700015, MC4700017, MC4700018, MC4700045, MC4700046 and MC4700047 on 18 January 1979, blue asbestos released into the environment in the areas of and surrounding Colonial Mine and Colonial Mill has not been removed and has been left in situ.
55. From January 1979, blue asbestos released into the environment in the areas of and surrounding Colonial Mine and Colonial Mill was, and remains, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.
56. After the surrender of Mineral Claims MC4700013, MC4700015 and MC4700016 on 18 January 1979, Mineral Claim MC4700014 ~~on 20 January 1984~~ and Mineral Claim MC4700049 (~~both of~~ which ~~were was~~ transitioned to a prospecting licence on 20 January 1984 and then surrendered) on ~~10~~ ~~11~~ October 1988, and the forfeiture of Tailings Lease 2 on 8 August 1979, the asbestos tailings in the Colonial Tailings Dumps were not removed and were left in situ.
57. From at latest October 1988, all asbestos tailings in the Colonial Tailings Dumps were, and they remain, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.

58. By s 111(1) of the *Mining Act 1904* (WA) in respect of Mineral Claims MC4700013, MC4700015 and MC4700016 and Tailings Lease 2, and by s 114(7) of the *Mining Act 1978* (WA) in respect of Mineral Claims MC4700014 and MC4700049, the tailings in those areas of the Colonial Tailings Dumps became the property of the State upon the expiry of six months after the surrender or forfeiture of the relevant Mineral Claims and they so remain, respectively as from:
- (a) 18 July 1979 in respect of the tailings in the areas covered by Mineral Claims MC4700013, MC4700015 and MC4700016;
 - (b) 17 February 1980 in respect of the tailings in the area covered by Tailings Lease 2; and
 - ~~(c) 20 July 1984 in respect of the tailings in the areas covered by Mineral Claim MC4700014; and~~
 - (d) 10 ~~11~~ April 1989 in respect of the tailings in the area covered by Mineral Claims MC4700049 and MC4700014.
59. The State did not, and determined not to, impose any condition or requirement upon the holder (or former holder) of any of the Colonial Mining Tenements that prevented the creation of tailings dumps, the continued dumping and accumulation of tailings or the spread of blue asbestos released into the environment by extraction and/or processing of ore or of asbestos tailings, whether as a condition of grant, transfer, or renewal, under the Colonial Mining Tenements themselves, or otherwise under the *Mining Act 1904* (WA) or *Mining Act 1978* (WA) or other legislation or powers.
60. No step, or no adequate step, has ever been taken, and the State has repeatedly decided not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment by extraction and/or processing of ore at Colonial Mine and Colonial Mill, the asbestos tailings deposited at the Colonial Upstream Tailings Dump or the asbestos tailings deposited at the Colonial Downstream Tailings Dump.

Particulars

Details are reported in the 2006 GHD Report at 35, 38, 41, 48, 52–54.

The Applicant may provide further particulars following discovery.

D.3 Yampire Mine and Yampire Tailings Dump

61. From 1943 to 1946, West Australian Blue Asbestos Fibres Co Ltd (**WABAF**), also known as General Construction Company Limited, operated the Yampire Mine pursuant to miner's rights and mineral claims for mining asbestos, granted by or for the State under s 16 of the *Mining Act 1904* (WA) and reg 55(4) of the *Mining Regulations 1925* (WA) (the **Yampire Mining Tenements**) in respect of areas of Crown land, and transferred to WABAF pursuant to reg 188 of the *Mining Regulations 1925* (WA).

Particulars

Tenement	Granted	Transferred to WABAF
MC4700027 (formerly MC4600010)	19 June 1939	5 July 1943
MC4700029	26 October 1939	25 June 1943
MC4700033	26 October 1939	5 July 1943
MC4700035	14 November 1939	5 July 1943
MC4700038	14 November 1939	5 July 1943

The grants are recorded in register extracts.

The Applicant may provide further particulars following discovery.

62. WABAF used the areas covered by the Yampire Mining Tenements for mining purposes and mined and processed blue asbestos.
63. WABAF extracted ore containing approximately 300 tonnes of blue asbestos from Yampire Mine between 1943 and 1946.
64. WABAF processed the extracted ore from Yampire Mine at Yampire Mill between 1943 and 1946.

65. The extraction and/or processing of ore released blue asbestos into the environment in the areas of and surrounding Yampire Mine and Yampire Mill.
66. The openings of the Yampire Mine have not been appropriately sealed in a manner that prevents movement of blue asbestos.
67. The Yampire Mine and Yampire Mill were and are on Crown land that does not form part of, and is proximate to or in the vicinity of, the southern outer boundaries of the Determination Area.
68. WABAF produced approximately 15,000 tonnes of asbestos tailings containing around 5% residual blue asbestos.

Particulars

Details are reported in:

1. 2006 GHD Report at 1.
2. 2013 GHD Report at 4.

The Applicant may provide further particulars following discovery.

69. From around 1943 to 1946, WABAF deposited the asbestos tailings from the Yampire Mine within an area known as the **Yampire Tailings Dump**.

Particulars

Details are reported in the 2006 GHD Report at 1, 52–54.

The Applicant may provide further particulars following discovery.

70. The deposit of tailings by WABAF also released blue asbestos into the environment in the areas of and surrounding the Yampire Tailings Dump.
71. The asbestos tailings deposited at the Yampire Tailings Dump were not and have never been covered, contained, sealed or otherwise remediated by the State.
72. The Yampire Tailings Dump was and is on Crown land that does not form part of, and is proximate to or in the vicinity of the southern outer boundaries of, the Determination Area.

73. The area of the Yampire Tailings Dump was covered by Mineral Claim MC4700027.
74. Each of the Yampire Mining Tenements was transferred:
- (a) on 14 January 1948 to CSR Limited (CSR);
 - (b) on 26 March 1953 to ABA;
 - (c) on 22 March 1967 to HPPL and WPPL;
 - (d) on 19 September 1978 to MBM.
75. On 18 January 1979, each of the Yampire Mining Tenements was surrendered.
76. After the surrender of Mineral Claims MC4700027 and MC4700033 on 18 January 1979, blue asbestos released into the environment in the areas of and surrounding Yampire Mine and Yampire Mill has not been removed and has been left in situ.
77. From January 1979, blue asbestos released into the environment in the areas of and surrounding Yampire Mine and Yampire Mill was, and remains, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.
78. After the surrender of Mineral Claim MC4700027 on 18 January 1979, the tailings in the Yampire Tailings Dump were not removed and were left in situ.
79. From January 1979, all asbestos tailings in the Yampire Tailings Dump were, and they remain, on Crown land that is not subject to any mining tenement or other form of tenure, licence or permit under the *Mining Act 1904* (WA) or the *Mining Act 1978* (WA) relating to asbestos or asbestos tailings.
80. By s 111(1) of the *Mining Act 1904* (WA), the tailings in the Yampire Tailings Dump became the property of the State upon the expiry of six months after the surrender of the relevant Mineral Claims, being 18 July 1979, and they so remain.

81. The State did not, and determined not to, impose any condition or requirement upon the holder (or former holder) of any of the Yampire Mining Tenements that prevented the creation of tailings dumps, the continued dumping and accumulation of tailings or the spread of blue asbestos released into the environment by extraction and/or processing of ore or of asbestos tailings, whether as a condition of grant, transfer, or renewal, under the Yampire Mining Tenements themselves, or otherwise under the *Mining Act 1904* (WA) or *Mining Act 1978* (WA) or other legislation or powers.
82. No step, or no adequate step, has ever been taken, and the State has repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment by extraction and/or processing of ore at Yampire Mine and Mill or the asbestos tailings deposited at the Yampire Tailings Dump.

Particulars

Details are reported in the 2006 GHD Report at 37, 54.

The Applicant may provide further particulars following discovery.

D.4 Wittenoom Racecourse

83. Asbestos tailings from the Mines were used to construct Wittenoom Racecourse.

Particulars

Details are reported in 2006 GHD Report at 1, 4.

84. The deposit of asbestos tailings on Wittenoom Racecourse released, and the asbestos tailings continue to release, blue asbestos into the environment in the areas of and surrounding Wittenoom Racecourse.
85. The asbestos tailings at Wittenoom Racecourse have not been effectively covered, contained, sealed or otherwise remediated.
86. Wittenoom Racecourse is on Crown land that does not form part of, and is surrounded by, the Determination Area.

87. The State did not, and determined not to, impose any condition or requirement upon any person that prevented the spread of blue asbestos released into the environment from Wittenoom Racecourse.
88. No step, or alternatively no adequate step, has ever been taken by the State, and the State has repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment from the asbestos tailings at Wittenoom Racecourse.

D.5 Wittenoom Airport

89. Asbestos tailings from the Mines were used to construct and maintain the runway and immediately abutting land at Wittenoom Airport, from around 1955.

Particulars

The Applicant refers to the following matters:

1. details are reported in 2006 GHD Report at 1, 4;
 2. around 60,000 to 80,000 tons of asbestos tailings from the Mines were used to upgrade the airport during 1959 and 1960.
90. The deposit of asbestos tailings at Wittenoom Airport released, and the asbestos tailings continue to release, blue asbestos into the environment in the areas of and surrounding Wittenoom Airport.
91. The asbestos tailings at Wittenoom Airport have not been covered, contained, sealed or otherwise remediated in a manner that prevents the spread of blue asbestos.
92. Wittenoom Airport is on Crown land, ~~part of which is part of the Determination Area and part of~~ which does not form part of, and is surrounded by, the Determination Area.
93. The State did not, and determined not to, impose any condition or requirement upon any person that prevented the spread of blue asbestos released into the environment from Wittenoom Airport.

94. No step, or alternatively no adequate step, has ever been taken by the State, and the State has repeatedly decided not to take any step to remove, contain or otherwise remediate the blue asbestos released into the environment from the asbestos tailings at Wittenoom Airport.

D5.A Other State Places in and around Wittenoom

94A. The State used asbestos tailings from the Mines to construct and/or maintain, or permitted asbestos tailings to remain on or in:

(a) public roads and paths; and

(b) government and public buildings and areas; and

(c) other places the State owned, occupied or sufficiently controlled,

in and around Wittenoom, other than Wittenoom Racecourse and Wittenoom Airport (Other State Places).

Particulars

The Applicant refers to the following matters:

1. the State acted directly and by its instrumentalities, such as local government, and placed and spread asbestos tailings;
2. asbestos tailings were used by the State for filling, road-works and road verges, and as groundcover (pursuant to a policy of the State in the early development of Wittenoom promoting this use), as recorded in documents including the State's "Wittenoom Position Paper" dated July 1986 (SWA.0009.0002.0056) and the memorandum from Mr M Wallwork, Main Roads Department, and M G V Coles, Public Health Department, entitled "Possible Asbestos Health Hazard at Wittenoom: Sources and Dispersion of Fibre and Suggested Measures for Any Necessary Control" from around March 1978 (SWA.0008.0002.0103);
3. asbestos tailings were used by the State at the school, hospital, caravan park, hotel, swimming pool and other government and public buildings and areas, as recorded in the documents mentioned above;
4. further details are reported in 2006 GHD Report at 1, 4, 52.

94B. The deposit of asbestos tailings at the Other State Places released, and the asbestos tailings continue to release, blue asbestos into the environment in the areas of and surrounding the State Places.

94C. The asbestos tailings at the Other State Places have not been effectively covered, contained, sealed or otherwise remediated.

Particulars

The Applicant refers to the following matters:

1. the State has, since around 1984, demolished buildings and infrastructure in in Wittenoom;
2. in around 2023 and 2024, the State demolished and buried the then remaining buildings and other infrastructure in Wittenoom and installed earth bunds to prevent vehicular access; and
3. the State did not remove or cover all asbestos tailings or otherwise remove, contain, remediate or otherwise make safe the blue asbestos or material containing blue asbestos at the Other State Places.

94D. The Other State Places are on Crown land that does not form part of, and is surrounded by, the Determination Area.

94E. The State did not, and determined not to, impose any condition or requirement upon any person that prevented the spread of blue asbestos released into the environment from the Other State Places.

94F. No adequate step has ever been taken by the State, and the State has repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment from the asbestos tailings at the Other State Places.

D.6 Spread of the blue asbestos from the Asbestos Sources and its permanent and invisible nature

The mechanism of the spread of blue asbestos

95. Blue asbestos from the Asbestos Sources is dispersed, accumulates in areas and spreads into new areas as follows:

- (a) blue asbestos or material containing blue asbestos is continuously disturbed by wind, becomes airborne, is washed away by water, or is disturbed by human activity, animal activity or other movement;
- (b) once disturbed, airborne or washed away, the blue asbestos or material containing blue asbestos:
 - (i) can remain in the air, that is, airborne, or drift from an airborne state to a resting state on the ground or objects from time to time;
 - (ii) is deposited on the ground or an object when water containing it evaporates;
 - (iii) otherwise settles on the ground or an object; and/or
 - (iv) may become airborne (or become airborne again) due to wind, water, human activity (including vehicular activity), animal activity or other movement; and
- (c) the process described in (a)–(b) occurs continuously.

Wittenoom Mine and Eastern Gorge Tailings Dump

- 96. The asbestos tailings deposited at the Eastern Gorge Tailings Dump:
 - (a) have, since they were deposited, been heavily dispersed and spread by wind and water; and
 - (b) are continuously being further dispersed and spread by wind and water.
- 97. By the process set out in paragraph 95, blue asbestos or material containing blue asbestos from the Wittenoom Mine and Mill and from the asbestos tailings deposited at the Eastern Gorge Tailings Dump:
 - (a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area, since 1946, that is, for around 79 years; and

- (b) is continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars to paragraphs 96 to 97

Details are reported in the 2006 GHD Report at 33, 38, 41, 48, 52–54.

Free asbestos fibres have been detected in Joffre Creek and floodplain and in the Fortescue River near its confluence with Joffre Creek.

The Applicant may provide further particulars following discovery.

Colonial Mine, Colonial Upstream Tailings Dump and Colonial Downstream Tailings Dump

- 98. The asbestos tailings deposited at the Colonial Upstream Tailings Dump and the Colonial Downstream Tailings Dump:
 - (a) have, since they were deposited, been heavily dispersed and spread by wind and water; and
 - (b) are continuously being further dispersed and spread by wind and water.
- 99. By the process set out in paragraph 95, blue asbestos or material containing blue asbestos from the Colonial Mine and Mill and from the asbestos tailings deposited at the Colonial Upstream Tailings Dump and the Colonial Downstream Tailings Dump:
 - (a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area, since 1953, that is, for around 72 years; and
 - (b) is continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars to paragraphs 98 to 99

Details are reported in the 2006 GHD Report at 35, 38, 41, 48, 52–54.

The Applicant may provide further particulars following discovery.

Yampire Mine and Yampire Tailings Dump

100. The asbestos tailings deposited at the Yampire Tailings Dump:
- (a) have, since they were deposited, been heavily dispersed and spread by wind and water; and
 - (b) are continuously being dispersed and spread by wind and water.
101. By the process set out in paragraph 95, blue asbestos or material containing blue asbestos from the Yampire Mine and Mill and from the asbestos tailings deposited at the Yampire Tailings Dump:
- (a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area, since 1943, that is, for around 82 years; and
 - (b) is likely to be continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars to paragraphs 100 to 101

- 1. The 2006 GHD Report;
- 2. the Yampire Tailings Dump still contains a significant amount of blue asbestos and remains a potential source of asbestos.

The Applicant may provide further particulars following discovery.

Wittenoom Racecourse

102. The asbestos tailings deposited at Wittenoom Racecourse:
- (a) have, since they were deposited, been dispersed and spread into the environment by wind and water; and
 - (b) are continuously being dispersed and spread by wind and water.
103. By the process set out in paragraph 95, blue asbestos or material containing blue asbestos from the asbestos tailings deposited at Wittenoom Racecourse:

- (a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area; and
- (b) is continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars

This is to be inferred from the nature of asbestos tailings and the observed spread of blue asbestos from the Wittenoom Mine and Eastern Gorge Tailings Dump and the Colonial Mine, Colonial Upstream Tailings Dump and Colonial Downstream Tailings Dump set out in paragraphs 96 to 99.

The Applicant may provide further particulars following discovery.

Wittenoom Airport

104. The asbestos tailings deposited at Wittenoom Airport:

- (a) have, since they were deposited, been dispersed and spread by wind and water; and
- (b) are continuously being dispersed and spread by wind and water.

105. By the process of set out in paragraph 95, blue asbestos or material containing blue asbestos from the asbestos tailings deposited at Wittenoom Airport:

- (a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area, since around 1955, that is, around 70 years; and
- (b) is continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars

This is to be inferred from the nature of asbestos tailings and the observed spread of blue asbestos from the Wittenoom Mine and Eastern Gorge Tailings Dump and the Colonial Mine, Colonial

Upstream Tailings Dump and Colonial Downstream Tailings Dump set out in paragraphs 96 to 99.

Other State Places

105A. The asbestos tailings deposited at the Other State Places:

(a) have, since they were deposited, been dispersed and spread into the environment by wind and water; and

(b) are continuously being dispersed and spread by wind and water.

105B. By the process set out in paragraph 95, blue asbestos or material containing blue asbestos from the asbestos tailings deposited at the Other State Places:

(a) has been dispersed and spread into, accumulated in and been released into the environment in the Affected Area; and

(b) is continuously being dispersed and spreading into, accumulating in and being released into the environment in further areas within the Determination Area.

Particulars

This is to be inferred from the nature of asbestos tailings and the observed spread of blue asbestos from the Wittenoom Mine and Eastern Gorge Tailings Dump and the Colonial Mine, Colonial Upstream Tailings Dump and Colonial Downstream Tailings Dump set out in paragraphs 96 to 99.

D.7 The nature of blue asbestos

The permanence and invisibility of the contamination from blue asbestos

106. Blue asbestos is a mineral fibre and does not naturally decompose over time.
107. Depending on particulate size, blue asbestos or material containing blue asbestos may not be visible to the human eye.
108. Blue asbestos of particulate size most dangerous to human health is not visible to the human eye.

109. In the premises of paragraphs 106 to 108, blue asbestos or material containing blue asbestos that has spread into, accumulated in and has been released into the environment in the Affected Area, and which spreads into, accumulates in and is released into the environment in further areas within the Determination Area, as set out in paragraphs 95 to 105B:

- (a) will remain and further accumulate (without decomposing) for at least hundreds of years, unless removed, contained or otherwise remediated;
- (b) may not be visible to the human eye; and
- (c) in its most dangerous form to human health, is not visible to the human eye.

Inhalation/disbursal of asbestos in the Affected Area and other parts of the Determination Area

110. Humans (without protective equipment) in the Affected Area to which blue asbestos or material containing it has spread, and in the further areas within the Determination Area to which blue asbestos or material containing blue asbestos spreads, as set out in paragraphs 95 to 105B, will or are likely to inhale and ingest the blue asbestos or the material containing it.

Particulars

Details are reported in the 2006 GHD Report at 33, 38, 41, 48, 52–54.

Free asbestos fibres have been detected in Joffre Creek and floodplain and in the Fortescue River near its confluence with Joffre Creek.

The Applicant may provide further particulars following discovery.

E The State

E.1 The State's knowledge of the nuisance

111. At all material times, the State knew or ought to have known of the creation, existence and use of each of the Mines and each of the Tailing Dumps, including the depositing, presence and aggregation of asbestos tailings at the Tailings Dumps.

Particulars

The Applicant refers to the following:

1. the Wittenoom Mining Tenements, the Colonial Mining Tenements and the Yampire Mining Tenements (the **Mining Tenements**) were granted by or on behalf of the State upon application, transfers of them were approved or registered by the State, and the State accepted their surrender or effected their forfeiture;
2. the State had a Department known as the Department of Mines (**Department of Mines**), which was a sophisticated mining regulator, and employed experienced Mines Inspectors;
3. Mines Inspectors, as officers of the State, regularly attended and inspected the Mines;
4. other officers of the State, including from the State Department of Public Health (**Department of Public Health**), regularly attended and inspected (at least) Wittenoom Mine and Wittenoom Mill;
5. drilling, cutting, crushing, milling and otherwise breaking rock, and the carting away of and deposit of tailings in tailings dumps (all of which released blue asbestos into the environment), were at all material times activities usually involved in mining for blue asbestos, specifically in extracting ore containing blue asbestos and processing the ore into marketable products;
6. the activities in 5 occurred at the Mining Tenements at all material times;
7. the activities in 5, and the existence of the Tailings Dumps, was at all material times apparent to those who attended the Mines.

The Applicant may provide further particulars following discovery.

112. At all material times, the State knew or ought to have known that the mining and other activities at the Mines released blue asbestos or material containing blue asbestos (including of respirable particulate size) into the environment.

Particulars

The Applicant refers to and repeats the particulars subjoined to paragraph 111 and to the following:

1. it was and is obvious, particularly to those experienced in mining and its regulation, that drilling, cutting, crushing, milling and otherwise breaking rock, and the carting away of and deposit of tailings in tailings dumps to produce blue asbestos, produces dust containing blue asbestos;
2. it was and is obvious, particularly to those experienced in mining and its regulation, that some of this dust remains on tailings when they are deposited in tailings dumps;
3. it was and is obvious, particularly to those experienced in mining and its regulation, that some blue asbestos remains in asbestos tailings after the extraction process is complete;

3A. Western Australian Mines Inspector Adams in June 1944 reported to the State Mining Engineer that ABA's designers of the Wittenoom Mine and Mill were inexperienced and had taken inadequate measures to control blue asbestos dust released by mining and milling operations;

4. Western Australian Mines Inspector Adams in October 1945 1944 referred in a report to the State Mining Engineer to the "dust menace" at Wittenoom, which was a reference to the need to reduce dust levels in and around the Yampire Wittenoom Mine and Mill, and recorded CSR's attitude as being that, if present arrangements did not work, they would simply shut down;

5. the Western Australian Assistant State Mining Engineer in July 1945 1944 referred in a report to the dangers and extent of the dust being generated at Yampire Wittenoom Mine;

6. Western Australian Mines Inspector Adams reported to the State Mining Engineer in September 1946 that a chief fault of the Yampire Mill was that insufficient attention had been given to the eradication of blue asbestos dust and that this had been treated as an afterthought rather than a major principle of design;

7. the Department of Public Health has written records showing that it was concerned about the blue asbestos dust at the Mines dating from at least 1948, as recorded in the booklet published by the Department of Public Health in December 1978 entitled "The Health Hazard of Wittenoom" (1978 Health Hazard Booklet);

8. around November 1948, Western Australian Mines Inspectors Lloyd, Adams and Hunter conducted an inspection at Wittenoom Mine and Mill, took readings of dust samples which indicated they were above 1000 particles per cubic centimetre (ppcc) (the measuring capacity of their machines), drew ABA's Manager's attention to the unsatisfactory set-up of the dust exhausting system and health dangers, were told by the Manager that ABA intended to discard and replace the present plant in the near future, and reported these matters to the State Mining Engineer in November 1948;
9. in or around 1949, the Minister for Mines communicated (incorrectly) to the Minister for Health that Dr Saint was misinformed about the precautions taken at Wittenoom Mine and stated that the *Mines Regulation Act 1946 (WA)* was strictly enforced;
10. in or around 1950:
 - (A) Western Australian Mine Inspector Lloyd made a request to the Manager of ABA pursuant to s 22 of the *Mines Regulation Act 1946 (WA)* that there be total enclosure of Wittenoom Mill and that extractors to remove all dust be installed;
 - (B) in response, the Acting Manager of ABA, Keith Osborne Brown, asked the Department of Mines not to insist on such requirements;
 - (C) the State's Mining Engineer then stated that an instruction rather than a request was required and the State did not give any instruction to the effect above;
11. in around October 1951, the Commissioner of Public Health informed the Under Secretary for Mines of a generally recognised upper permissible limit of exposure to blue asbestos of 176 ppcc, observed that levels of blue asbestos dust in Wittenoom Mine and Mill exceeded this, and stated that the Department for Mines must press for immediate improvement of supervision and working conditions at Wittenoom Mine and Mill;
12. in around November 1951, average concentrations of blue asbestos dust in the Wittenoom Mine and Mill were 307 ppcc, as Assistant Ventilation Inspector Faichney informed the State Mining Engineer around that time;

13. on or around June 1955:

- (A) Western Australian District Inspector of Mines Allan Ibbotson reported to the State Mining Engineer that the working conditions at Wittenoom Mill were unsatisfactory and disgraceful, because there had been no effective measures taken for the removal of blue asbestos dust since a previous inspection, and that he may be compelled to order the closure of the milling section;
- (B) in response, ABA informed Inspector Ibbotson that certain improvements had been made and that the ABA may be able to eliminate dust by wet milling if a tariff enquiry proved favourable;
- (C) the State did not require ABA to use a wet milling circuit, because certain of ABA's customers overseas did not want wet treated asbestos fibre and that it was essential to fill all overseas orders to ensure the future of the State's asbestos industry, or otherwise require ABA effectively to control the blue asbestos released into the environment at Wittenoom Mine and Mill.

The Applicant may provide further particulars following discovery.

113. At all material times, the State knew or ought to have known of the presence of asbestos tailings and blue asbestos at Wittenoom Racecourse.

Particulars

The Applicant refers to the particulars subjoined to paragraphs 111 and 112 and to the following:

- 1. officers or employees of the State, including Mines Inspectors, generally travelled to Wittenoom when attending the Mines;
- 2. Wittenoom Racecourse formed part of the town of Wittenoom and was enclosed within King Street, Second Avenue and Forrest Street; and
- 3. the asbestos tailings at Wittenoom Racecourse were visible to those who attended it or who travelled by it.

114. At all material times, the State knew or ought to have known of the presence of asbestos tailings and blue asbestos at Wittenoom Airport.

Particulars

The Applicant refers to the particulars subjoined to paragraphs 111 and 112 and to the following:

1. officers or employees of the State travelled to Wittenoom Airport by aircraft; and
2. the asbestos tailings at Wittenoom Airport were visible to those who attended it.

114A. At all material times, the State knew or ought to have known of the presence of asbestos tailings and blue asbestos at the Other State Places.

Particulars

The Applicant refers to the particulars subjoined to paragraphs 111 and 112 and to the following:

1. the State itself (including by its instrumentalities) purchased, placed and used or suffered the use and placement of the asbestos tailings at the Other State Places;
2. officers or employees of the State, including Mines Inspectors, generally travelled to Wittenoom when attending the Mines; and
3. the asbestos tailings at the Other State Places were often visible to those who attended them or who travelled by them.

115. At all material times, the State knew, or ought to have known, that blue asbestos or material containing blue asbestos was and is continuously being released into the environment and spreading from the Asbestos Sources and from further areas to which the blue asbestos has spread or spreads.

Particulars

The Applicant refers to the particulars subjoined to paragraphs 111 to 114A and to the following:

1. it was and is obvious, particularly to those experienced in mining and its regulation, that blue asbestos released into the environment or asbestos tailings would be spread by wind and water, human or animal activity or other movement;
2. in August 1953, a Mines Inspector reported that the installation of dust collectors in the Wittenoom Mill should prevent “*much*

of the dust which is exhausted to atmosphere and drifts down and back into the [Wittenoom] mill” and that “the worst feature of the mill is the cloud of dust which arises from the mill and then either drifts down to the ground or blows down the gorge”;

2A. from at latest September 1961, Dr J McNulty (of the Department of Public Health) identified to, advised or directed other senior State officials and persons including at least Dr H M Rennie (consulting physician to CSR), Mr D Letham (also of the Department of Public Health), Dr W Davidson (the State Commissioner of Public Health), Mr J Boyland (a Senior Mines Inspector of the State), Inspector Ibbotson and Mr E Brisbane (the State Mining Engineer) that asbestos tailings should not be used for roads or paths or otherwise on public health grounds, because they resulted in persons being exposed to blue asbestos;

2B. in around October 1965, the State Commissioner of Public Health, Dr Davidson, wrote to Mr W P Sheehan of the Shire of Tableland and stated, as was the fact, that:

(A) in his opinion, the use of asbestos tailings posed a hazard to health, stated that Wittenoom should not be further developed as a residential area unless all the tailings were removed, sealed in bitumen or satisfactorily covered with several inches of soil, and directed that “asbestos tailings must be left where they belong — in the mine”; and

(B) regarding tailings, over the past years, “our attitude has been made perfectly clear to the Mines Department and to the management of the mine on the use of tailings, by the Minister for Health, myself and my officers”;

3. on or about 10 November 2025, the State, through the Premier, the Hon Roger Cook, stated:

“We know the contamination is not contained and we know that ultimately we are going to have to act to actually address some of that contamination ... We have closed the town down, so many people are out of harm’s way, but the evidence seems to suggest the dust is continuing to spread ... There are some areas which are highly toxic, other areas where there are just fibres in general. They all represent a health risk.”

4. further details of the continuing spread of blue asbestos from the Asbestos Sources are reported in the 2006 GHD Report and the 2013 GHD Report.

The Applicant may provide further particulars following discovery.

116. At all material times, the State knew or ought to have known that the inhalation and/or ingestion of blue asbestos or material containing blue asbestos, even in very small amounts, is a danger to human health.

Particulars

The Applicant refers to the particulars subjoined to paragraphs 111 to 115 and to the following:

1. in 1930, the Government of the United Kingdom published a report by Merewether and Price, which detailed the lethal risk of exposure to asbestos dust. Price provided detailed recommendations for dust suppression. The report specified that asbestos dust was a hazard, that asbestos disease could be fatal and that the dustiest and therefore most hazardous aspects of handling included the shovelling of asbestos;
 - 1A. the report by Merewether and Price was in the years following its publication in the possession of the State;
 - 1B. the report by Merewether and Price and dangers of exposure to blue asbestos were considered by the State, and attention was drawn to them, including by:
 - (A) the Inspector of Factories and Shops in a memorandum to the Chief Inspector of Factories and Shops in around March 1935, which considered manufacturing process for asbestos;
 - (B) the Chief Inspector of Factories and Shops to the Commissioner of Public Health in around April 1935; and
 - (C) subsequent discussion between those senior officials in relation respiratory disorders of James Hardie workers;
 - 1C. the State's Department of Health was aware since the 1930s of the scientific and medical recognition that asbestos dust could cause asbestosis and lung cancer, as referred to in the 1978 Health Hazard Booklet;
2. in 1944, Dr Douglas Shiels of the Victorian Department of Industrial Hygiene introduced amendments to the Victorian Parliament to the *Harmful Gases, Mists, Smoke, Vapours, Fumes*

and Dusts Regulations, which declared asbestos to be a dangerous dust and regulated permissible exposures to it;

3. in or about March and June 1948, Professor Eric Saint, a doctor with the Royal Flying Doctors and Medical Officer with the Public Health Department, warned Dr Eric Cook of the Department of Public Health that the mining operations at Wittenoom were very dangerous due to blue asbestos dust and were likely to give rise to the richest crop of asbestosis disease known to the world's medical literature;
- 3A. in or about April 1948, the Secretary of the Australian Workers' Union informed the State Mining Engineer that no adequate provision had been made to control blue asbestos dust in the treatment plant at Wittenoom Mine and Mill, that the whole atmosphere in that vicinity was laden with dust, and that employees were exposed to serious health dangers;
- 3B. in or around June 1948, the State Commissioner of Public Health informed Dr Saint that he was considering Dr Saint's suggestions, including chest x-rays, regarded his remarks on asbestos as of the highest importance and would draw them to the attention of other senior officials, and recognised that workers at Wittenoom Mine and Mill and Yampire Mine and Mill incurred greater hazard than gold mine workers;
4. in 1950, the Western Australian Commissioner for Public Health reported to his Minister that asbestos dust, if inhaled, constitutes a very grave risk;
5. in 1951, the Western Australian Commissioner for Public Health wrote to the Under Secretary for Mines that the hazard from asbestos was considerably greater than that from silica and that attention to this aspect of mining operations at Wittenoom had been inadequate;
6. in 1959, the Annual Report of the Department of Public Health, in comments by Dr J McNulty, expressed concern about numbers of Wittenoom men affected by asbestosis;
7. in 1960, the Annual Report of the Western Australian Commissioner for Public Health stated that working at Wittenoom was thirty times more dangerous than other mining;

- 7A. in 1960 and 1961, Dr J C Wagner, a South African pathologist, published (with co-authors) research papers confirming the link between exposure to blue asbestos and mesothelioma;
- 7B. in April 1960, an article entitled “Complications of Asbestosis” was published in the *British Medical Journal (BMJ)* and identified that a hazard of asbestos exposure was mesothelioma and that “asbestos dust is most toxic, and the amount needed to cause asbestosis is not known, so constant vigilance and new preventive methods are needed if this disease is to be abolished”;
- 7C. medical and scientific literature continued to identify that even minimal asbestos exposure was dangerous;
- 7D. from at latest September 1961, Dr McNulty identified to or advised other senior State officials and persons including at least Dr Rennie, Mr Letham, Dr Davidson, Mr Boyland, Inspector Ibbotson and Mr Brisbane, and stated in published work (including in the *Medical Journal of Australia* in 1962), that even minimal asbestos exposure, such as from road and path surfacing, may be dangerous;
- 7E. in January 1966, the State was informed (via Dr McNulty) by Dr T Mancuso (Department of Occupational Health, Graduate School of Public Health, University of Pittsburgh) that he believed “that the use of asbestos tailings on the surfacing of roads and on the surface of playgrounds amounts to a deliberate seeding of the ground with a cancer producing substance and therefore is contrary to every principle of prevention of disease and contrary to all purposes of public health. One should avoid the mistake of not recognizing the inevitability of serious disease, just because an immediate effect is not apparent”;
8. in 1988, in the Heys/Barrow proceedings against CSR and Midalco (ABA) in the Supreme Court of Western Australia, Keith Osborne Browne, who was a CSR director in 1943, admitted that he knew asbestos could cause lung cancer in 1943;
9. at various times, the *West~~ern~~ Australian* expressed concern about the use of asbestos tailings in Wittenoom due to the possible health consequences;
- 9A. following its meeting on 11 February 1991, the Interdepartmental Committee on Wittenoom (**Interdepartmental Committee**) recommended that no environmental exposure limit for blue asbestos be set because no

exposure could be excluded as carcinogenic and dangerous, as recorded in a briefing paper entitled “Government Policy towards Wittenoom” transmitted by Mr Robin Crane, Acting Director Regional Services Branch, Department of State Development, to the Office of the Premier on 20 March 1991 (February/March 1991 IDC Recommendations);

10. from 2003, the Commonwealth government banned the importation and use of asbestos;
11. the 2006 GHD Report contained multiple warnings of the serious and growing dangers to health of the Banjima people (including the Relevant Beneficiaries) ~~Group Members~~ posed by blue asbestos.

The Applicant may provide further particulars following discovery.

E.2 No removal, containment or other remediation by the State

117. As set out in paragraphs 34 to 35, 59 to 60, 81 to 82, 87 to 88, and 93 to 94 and 94E to 94F, the State has taken no or no adequate steps, and has decided to take no steps, to remove, contain or otherwise remediate:
 - (a) blue asbestos or material containing blue asbestos at the Asbestos Sources; and
 - (b) blue asbestos or material containing blue asbestos that has spread from the Asbestos Sources to the Affected Area and which may spread to other parts of the Determination Area.

Particulars

The Applicant refers to the following:

A1. in 2011, State officials and GHD representatives amongst others held a technical workshop, at which the remediation of asbestos source material in the Determination Area was considered;

1. the 2013 GHD Report identified three alternative strategies for the remediation of asbestos source material in the Determination Area:

- (A) Tailings Storage Facility — relocating all tailings to a storage location facility which would be capped and protected with excavated materials;
 - (B) Encapsulation — excavating into the Wittenoom Gorge walls to form encapsulation structures, placing tailings within the excavations and capping;
 - (C) Levee — consolidating all tailings at the Tailings Dumps and capping and protecting in situ;
2. in 2015, GHD was engaged by the Wittenoom Steering Committee to undertake investigations in relation to the feasibility and cost of the encapsulation strategy;
 3. in October 2015, GHD produced a report for the Department of Lands entitled “Wittenoom Remediation Strategy: Tailings Remediation Geotechnical Investigation Report” (**October 2015 GHD Report**);
 4. on 6 November 2015, GHD wrote to Jonathan Cramer, Manager Contaminated Sites, Department of Lands, to advise that, based on the October 2015 GHD Report, the encapsulation strategy was feasible, and to recommend further development of the encapsulation options and on 12 November 2015 Mr Cramer, on behalf of the State, wrote to GHD, endorsed and agreed with GHD’s advice and requested that Phase 2 of the scope of works to provide a conceptual design for the encapsulation strategy commence (November 2015 GHD Letters);
 5. in December 2015, GHD produced a report for the Department of Lands entitled “Advice on Strategies and Costs for Remediation of Certain Asbestos Contaminated Sites in the Wittenoom Area: Phase 2 – Planning and Conceptual Design” (**December 2015 GHD Report**). This refined the encapsulation strategy and developed a conceptual design for the strategy;
 6. the State has to date not implemented the encapsulation strategy or any other strategy for the remediation of the Asbestos Sources and the blue asbestos that has spread and continues to spread from them into the Affected Area and the rest of the Determination Area;
 7. in December 2025, GHD produced a report for the Department of Planning, Lands and Heritage entitled “Wittenoom and Yampire Asbestos Management Areas — Decision Making

Framework for Remediation Option Selection” (2025 GHD Report), which states at 34 that, after 2015, “progress practically stalled” on implementation of the encapsulation strategy.

118. The continued presence of blue asbestos or material containing blue asbestos at each of the Asbestos Sources, and which has spread from the Asbestos Sources to the Affected Area, is the direct consequence of and/or was caused by the failure and decisions referred to in paragraph 117 and/or by the other acts and/or activities of the State set out in **Schedule A** (in the form of a chronology) and Schedule B (in the form of a narrative statement).

E.3 The State’s receipt of revenue from mining including on Banjima Country

119. The State has derived, and continues to derive, vast royalties, rent and fee revenues from mining, including in the Determination Area.

Particulars

The Applicant refers to the following:

1. between 2016 and 2024, the State has derived the following royalties from mining activities within the State:

Year	Amount (AUD)
2016	4,739,790,000
2017	6,059,470,000
2018	6,054,390,000
2019	8,519,320,000
2020	9,115,330,000
2021	13,984,210,000
2022	11,423,860,000
2023	12,352,120,000
2024	11,971,750,000

2. from 2022 to 2024, 86% of the cumulative royalties received by the State have been attributable to the Pilbara region.

F Effects of blue asbestos and asbestos tailings at the Asbestos Sources

F.1 The toxic and dangerous nature of blue asbestos

120. Blue asbestos or material containing blue asbestos of certain particulate sizes is respirable by humans.
121. The inhalation and/or ingestion of blue asbestos or material containing blue asbestos of certain particulate sizes by humans, even in very small amounts, is a risk and danger to human health, including because it is carcinogenic and causes diseases such as:
- (a) asbestosis;
 - (b) mesothelioma; and
 - (c) lung cancer.

F.2 The Applicant's and Relevant Beneficiaries' ~~Group Members'~~ fear of harm from blue asbestos

122. The Applicant and Relevant Beneficiaries ~~Group Members~~ are aware of:
- (a) the existence of the Asbestos Sources, including the blue asbestos in the asbestos tailings;
 - (b) the process of spread of blue asbestos or material containing blue asbestos set out in paragraphs 95 to 105B;
 - (c) the dangerous and deadly nature of blue asbestos or material containing blue asbestos which is not visible to the naked eye set out in paragraph 108;
 - (d) the increasing risks to health of blue asbestos over time due to the process of spread set out in paragraph 95 to 105B; and
 - (e) the high incidence of mesothelioma that exists amongst Banjima people.
123. In consequence, the Applicant and Relevant Beneficiaries ~~Group Members~~ have held and continue to hold a reasonable fear and/or apprehension of harm to the

health and wellbeing of Relevant Beneficiaries ~~Group Members~~ if they enter the Affected Area and other areas of the Determination Area.

124. In the absence of removal, containment or other remediation of the blue asbestos and asbestos tailings at the Asbestos Sources ~~Sites~~:
- (a) each Asbestos Source ~~Site~~ will continue to be a source of the spread of blue asbestos as set out in paragraph 95 to 105B and will continue to cause the fear and/or apprehension of harm to the health and wellbeing set out in paragraph 123; and
 - (b) this will continue and increase for at least hundreds of years.

F.3 Harm to and interference with the exercise of Banjima native title rights

125. In the premises of paragraphs 122 to 124:
- (a) the Applicant and Relevant Beneficiaries ~~Group Members~~ are unable or substantially unable to enjoy or exercise their native title rights:
 - (i) in the areas of the Asbestos Sources (insofar as they form part of the Determination Area);
 - (ii) otherwise within the Affected Area; and
 - (iii) otherwise within parts of the Determination Area that the Relevant Beneficiaries ~~Group Members~~ are reasonably afraid to enter due to fear of harm to their health and wellbeing from blue asbestos;
 - (b) the Applicant and Relevant Beneficiaries ~~Group Members~~ will become unable or substantially unable to enjoy or exercise their native title rights:
 - (i) within further parts of the Determination Area to which blue asbestos or material containing blue asbestos spreads; and
 - (ii) within further parts of the Determination Area that the Relevant Beneficiaries ~~Group Members~~ become reasonably afraid to enter due to fear of harm to their health and wellbeing from blue asbestos;

- (c) the Relevant Beneficiaries Group Members are, and will further become, unable to fulfil their responsibilities under their traditional law and customs to care for those parts of the Determination Area; and
- (d) the connection that the Relevant Beneficiaries Group Members as Banjima people have with that Country under their traditional laws and customs, which is primarily a religious and spiritual relationship, has been and will be further damaged for past, current and future generations of Banjima people.

Particulars to paragraphs 125(c) to 125(d)

The Applicant refers to the traditional law and customs, and connection to country, identified in *Banjima People v Western Australia (No 3)* [2014] FCA 201 and *Banjima People v Western Australia* [2015] FCAFC 84.

- 126. The matters at paragraph 125 will remain for at least hundreds of years into the future, unless the blue asbestos is removed, contained or otherwise remediated.

G The State's liability in nuisance

G.1 Private nuisance

- 127. In the premises of paragraphs 18, 23, 42, 48, 57, 67, 72, 79, 86 and 92, the Asbestos Sources are on Crown land.
- 128. The State at all material times has managed or administered Crown Land within the State and, through the Minister for Lands acting as an agent for the State pursuant to ss 7(4) and 10(1) of the *Land Administration Act 1997* (WA) (the *LAA*), may:
 - (a) exercise power and perform duties in relation to the Asbestos Sources and the Affected Area (and the Determination Area otherwise); and
 - (b) do all things necessary or convenient to be done for or in connection with the administration and management of the Asbestos Sources and the Affected Area (and the Determination Area otherwise).

129. In the premises, the State has a sufficient title in each of the Asbestos Sources and relevantly has the power to manage and control the Asbestos Sources and the Affected Area (and the Determination Area otherwise).
130. Further or alternatively, in the premises of paragraphs 33, 58 and 80, the State owns absolutely the asbestos tailings that were in each of the Tailings Dumps as at the surrender or forfeiture of the relevant mining tenements, including insofar as subsequently spread in the Determination Area.
131. Further, the State has and has had the knowledge set out paragraphs 111 to 116.
132. In the premises, the State authorised or acquiesced in activities that caused the release of blue asbestos and/or deposit of asbestos tailings at each Asbestos Source.
133. Further or alternatively, in the premises, with the knowledge set out at paragraphs 111 to 116, as set out in paragraph 117 the State has not taken (and has decided not to take) any step to remove, contain or otherwise remediate, adequately or at all:
- (a) the blue asbestos or material containing blue asbestos at the Asbestos Sources; or
 - (b) the blue asbestos or material containing blue asbestos that has and continues to spread from the Asbestos Sources to the Affected Area and other parts of the Determination Area.
134. In the premises of paragraphs 125 to 126 and 127 to 133 the State has substantially interfered (alternatively has done so unreasonably, other than by a common and ordinary use of land, and/or not conveniently), and continues substantially to interfere (alternatively continues to do so unreasonably, other than by a common and ordinary use of land, and/or not conveniently), with the Applicant's and Relevant Beneficiaries' ~~Group Members'~~ enjoyment and/or exercise of their native title rights so as to constitute a continuing nuisance and is liable accordingly.

G.2 Public nuisance

135. Further or alternatively, by reason of the matters at paragraphs s 125 to 126 and 127 to 133:

- (a) the presence and spread of blue asbestos or material containing blue asbestos at and from the Asbestos Sources, including in the Determination Area, is a common injury to the public generally;
- (b) the State knew or ought to have known of this injury to the public;
- (c) the State is able, including by virtue of its title to, and has power to manage and control, the Asbestos Sources and the Determination Area (including the Affected Area) insofar as each is Crown land, and/or as the owner of the asbestos tailings from the Tailings Dumps, to abate the injury; and
- (d) the State has failed to take (and has decided not to take) any or any adequate step to abate the injury.

136. In the premises of paragraph 135, the State has committed a continuing public nuisance and is liable accordingly.

137. In the premises of paragraphs 1, 7 to 9 and 125 to 126, the Applicant and Relevant Beneficiaries ~~Group Members~~ have suffered special damage beyond that suffered in common by all other members of the public affected by the nuisance, as respectively the trustee of and the common law holders of the native title rights.

G.3 Nuisance on the case

138. Further or alternatively, in the premises of paragraphs 125 to 126 and 127 to 133, the State has caused permanent damage to the Applicant's and Relevant Beneficiaries' ~~Group Members'~~ native title rights and is liable in nuisance on the case accordingly.

G.4 Loss and damage

139. The Applicant and Relevant Beneficiaries ~~Group Members~~ have suffered loss and damage as a result of the continuing nuisances for which the State is liable referred to at paragraphs 134 and 137 and for the nuisance on the case for which the State is liable referred to at paragraph 138.

Particulars

The Applicant refers to:

1. paragraphs 125 to 126;
2. the ethnographic survey by Hanson and Associates entitled “Ngampikunha — An Ethnographic and Archaeological Study of Aboriginal Sites in the Wittenoom Locale”, commissioned by the State’s Department of Regional Development and Lands (November 2010) (see item B.40 of Schedule B to the Defence), including its findings and recommendations as to the effect of the spread of blue asbestos upon the ability of the Banjima people to access Country, including the frustration this has caused, as to future access and management of the land, and as to reparation.

Separate particulars of loss and damage, including economic and cultural loss, will be provided prior to or at trial.

G.5 Damages inadequate

140. In the premises, damages are not an adequate remedy for the Applicant and the Relevant Beneficiaries ~~Group Members~~.

H Relief

141. The Applicant claims the following relief on its own behalf as trustee for ~~and on behalf of~~ the Relevant Beneficiaries ~~Group Members~~:
- (a) a declaration that the State has committed and continues to commit private nuisance and/or public nuisance and/or nuisance on the case against the Applicant and/or the Relevant Beneficiaries ~~Group Members~~;

- (b) an order and/or mandatory injunction requiring the State to abate the nuisance;

Particulars

The required abatement of the nuisance includes:

1. removing or containing the blue asbestos or material containing blue asbestos from, or otherwise making safe, the Mines and Tailings Dumps;
2. removing or containing the blue asbestos or material containing blue asbestos from, or otherwise making safe, Wittenoom Racecourse, ~~and~~ Wittenoom Airport and the Other State Places;
3. without limitation and in particular, removing or containing the blue asbestos or material containing blue asbestos from, or otherwise making safe, the cultural heritage areas within the Wittenoom floodplain, including the gorges, rivers and creeks within the floodplain; and
4. removing or containing the blue asbestos or material containing blue asbestos from, or otherwise making safe, the other parts of the Affected Area (to which blue asbestos or material containing blue asbestos has spread from the Asbestos Sources) or of the Determination Area to which it spreads.

The Applicant may provide further particulars prior to trial.

- (c) damages, including damages for loss of amenity;

Particulars

The Applicant claims on its own behalf as trustee for ~~and on behalf of~~ the Relevant Beneficiaries ~~Group Members~~ damages at common law for the past interference with their rights as described and particularised herein and their fear and apprehension of themselves and their families and friends contracting mesothelioma.

The Applicant may provide further particulars prior to trial.

- (d) equitable damages in lieu of an injunction and/or an order to abate the nuisance;

Particulars

The Applicant claims on its own behalf ~~as trustee for and on behalf of~~ the ~~Relevant Beneficiaries Group Members~~ equitable damages in lieu of an injunction for future loss, if and insofar as an injunction is granted that does not fully remediate the Asbestos Sources and/or blue asbestos that has spread from them, or no injunction is granted.

The Applicant may provide further particulars prior to trial.

- (e) aggravated damages and exemplary damages;

Particulars

The Applicant refers to the following matters:

1. the Banjima people, including the ~~Relevant Beneficiaries group members~~, have at all material times been and are vulnerable to the State's decisions and actions, including due to the historical mistreatment of the Banjima people (and other Indigenous peoples) by the State and large mining interests especially since the advent of large scale mining in the Pilbara region in the 1940s, extending to forced removal from or dispossession of land, forced labour or oppressive labour conditions, and ingrained racism;
2. the State had the knowledge set out in paragraphs 111 to 116;
3. as set out at paragraph 117, the State has taken no steps, and has decided to take no steps, to remove, contain or otherwise remediate the blue asbestos or material containing blue asbestos at the Asbestos Sources and blue asbestos or material containing blue asbestos that has spread from there, or otherwise to abate the Wittenoom Asbestos Waste Hazard;

3A. as set out in paragraph 118, and Schedule A and Schedule B, the State engaged in acts and/or undertook activities that caused, or whose direct consequences are the cause of, the continued presence of blue asbestos at and its continuing spread from the Asbestos Sources and the continued and continuing interference with the Banjima people's ability to access the Affected Area, including in particular:

(A) the State's procuring and facilitation of the establishment and continuation of Wittenoom Mines as set out at Schedule B paragraphs B.3–B.25;

- (B) the State's own use and placing of blue asbestos at the Other State Places as set out in paragraph 94A and Schedule B paragraph B.26;
 - (C) the State's failure to take any or adequate steps to control blue asbestos released into the environment following inspections of the Mines and the Tailings Dumps and recommendations by officers of the State set out in Schedule B paragraphs B.27–B.37;
 - (D) the State's policy of phasing down Wittenoom as a town while not remediating the Asbestos Sources and, instead, discouraging and removing persons from in and around Wittenoom, set out at Schedule B paragraphs B.46–B.55;
 - (E) the State's failure from around 2016 to act on viable options for remediation of the Asbestos Sources that the State had identified, and to consult with the Banjima people in relation to this, set out at Schedule B paragraph B.56; and
 - (F) the State's policy from around 1983 of not remediating the Asbestos Sources, or requiring CSR or ABA to do so, to avoid or minimise liability in respect of claims for exposure to asbestos at Wittenoom and thereby to further its financial interests set out at Schedule B paragraphs B.57–B.59;
4. as at 1994 at the latest, the State had known for some or many years that:
- (A) for at least the last 50,000 years, the Banjima people had cared for and developed a strong, spiritual connection to the Determination Area;
 - (B) Wittenoom had given rise to the richest crop of asbestosis cases in the world's literature, as the State had been warned would occur by Dr Eric Saint in 1948;
 - (C) Indigenous people had reported that some of their people had suffered and died from diseases that were caused by exposure to blue asbestos from Wittenoom;
 - (D) the clean-up of asbestos tailings at the Asbestos Sources Sites had been recommended, for example by the Committee of Inquiry that produced a report entitled

“Inquiry into Asbestos Issues at Wittenoom” to the Premier (the Hon Carmen Lawrence) in August 1992, and options including removal of the Tailings Dumps had been repeatedly analysed and costed, as set out in Schedule B paragraphs B.54–B.55;

(E) the State had, from 1979 to 1989, become the absolute owner of the asbestos tailings that had been left on the mining tenements covering the Mines and the Tailings Dumps, as set out in paragraphs 33, 58 and 80, and was accordingly responsible for them;

(F) the Asbestos Sources Sites were on Crown land, which the State controlled and managed, as set out in paragraphs 127 to 129, and the State was for this reason also responsible for them;

(G) the Banjima people could not go elsewhere, and not enter the Affected Area, while maintaining their connection to Country, practicing their traditions and culture and discharging their responsibilities to Country, as came to be reflected in the native title rights in the Determination;

5. as a consequence of the matters in 1 to 4, it was by at latest 1994 obvious to the State that it ought to take steps to protect the Banjima people from the Wittenoom Asbestos Waste Hazard;

6. in November 2006, the State received and published the 2006 GHD Report, which stated, as was the fact, that:

(A) hundreds of Banjima people faced a high or extreme risk of asbestos exposure;

(B) the spread of asbestos was increasing to areas far from the Tailings Dumps and, if not remediated, would continue to do so for hundreds of years;

6A. in 2010, the State received the ethnographic survey by Hanson and Associates, referred to in the particulars to paragraph 139;

7. in August 2016, an article by amongst others Peter Franklin, then Senior Scientific Officer in the State Department of Health, entitled “Incidence of malignant mesothelioma in Aboriginal people in Western Australia” (**Franklin Report**) identified that, as a result of the Wittenoom Asbestos Waste Hazard, Indigenous

people, principally the Banjima people, had the highest per capita incidence of mesothelioma in the world;

8. since receiving the Franklin Report and as set out in paragraph 119, the State has received over \$84 billion from royalties from mining, and will continue until at least 2045 to receive such royalties of over \$10 billion per year, totalling over \$250 billion. Over 80% of such royalties relate (or will relate) to mining in the Pilbara, but the State has made no meaningful expenditure on remediation of the Asbestos Sources and the Affected Area;
 9. notwithstanding the failure and decisions in 3, the State has failed to take other measures to inform the Banjima people, including Relevant Beneficiaries ~~Group Members~~, of the risks presented by blue asbestos from the Asbestos Sources (including in combination with other risk factors), ~~and~~ to assist them to minimise such risks and to minimise the interference with the Banjima people's access to the Determination Area and ability to exercise their native title rights caused by the continuing nuisance;
 10. in the circumstances, the State's conduct, including the failure and decisions in 3, and/or the acts and activities in 3A, constitute a conscious, contumelious, contemptuous and/or outrageous disregard for the rights of the Banjima people, including the Relevant Beneficiaries ~~group members~~, and the Applicant and Relevant Beneficiaries ~~Group Members~~ are entitled to damages to assuage Relevant Beneficiaries' Group Members' feelings of outrage and hurt arising out of the matters described.
- (f) such further or other relief as the Court considers just.

This statement of claim was prepared by:

Raymond Finklestein AO KC

B F Quinn

John Gordon

David Heaton

Beatrice Paull

Counsel for the Applicant

DATE: 1 October ~~24th February~~ 2026

A handwritten signature in blue ink that reads "Gordon Legal".

.....
Gordon Legal
Solicitors for the Applicant

Schedule A: Acts and activities of the State — Chronology

The Applicant relies upon the following acts and activities of the State, which occurred on or about the dates set out below:

Item	Date	Act or activity
A.1	9 May 1938	State considers application for and grants MC4700018.
A.2	1 July 1938	State considers application for and grants MC4700013.
A.3	26 September 1938	State considers applications for and grants MC4700014, MC4700015 and MC4700016.
A.4	10 February 1939	State considers application for and grants MC4700017.
A.5	19 June 1939	State considers application for and grants MC4700027 (formerly MC4600010).
A.6	26 October 1939	State considers applications for and grants MC4700029 and MC4700033.
A.7	14 November 1939	State considers applications for and grants MC4700035 and MC4700038.
A.8	29 December 1941	State considers applications for and grants MC4700024 and MC4700025.
A.9	30 October 1942	State considers application for and grants MC4700044.
A.10	8 April 1943	State considers applications for and grants MC4700045, MC4700046 and MC4700047.
A.11	25 May 1943	State considers application for and grants MC4700049 and MC4700054.
A.12	1 July 1943	State considers and approves transfers of MC4700024, MC4700025, MC4700044, MC4700049 and MC4700054.
A.13	5 July 1943	State considers and approves transfer of MC4700027 (formerly MC4600010), MC4700029, MC4700033, MC4700035, and MC4700038.
A.14	~~1945~~ 1944	State Mines Inspector Adam inspects Wittenoom Mine and Mill and produces a report. The report refers to the “dust menace” at Wittenoom, which was reference to the need to reduce dust levels in and around the ~~Yampire Wittenoom~~ Mine and Mill.

Item	Date	Act or activity
A.15	~~July 1945~~ 1944	Assistant State Mining Engineer reports on dust levels at Wittenoom.
A.16	14 January 1948	State considers and approves transfer of Yampire Mining Tenements.
A.17	6 June 1948	Dr Eric Cook, Department of Public Health, receives a letter from Professor Eric Saint, a doctor with the Royal Flying Doctors <u>and Medical Officer with the Public Health Department</u> , warning that improper management of dust at Wittenoom will lead to “the richest and most lethal crop of cases of asbestosis in the world’s literature”.
A.18	1951	Department of Mines officers conduct occupational air monitoring to determine the level of airborne asbestos fibres at Wittenoom Mine and Colonial Mine.
A.19	26 March 1953	State considers and approves transfers of MC4700013, MC4700014, MC4700015, MC4700016, MC4700017, MC4700018, MC4700045, MC4700046 and MC4700047.
A.20	26 March 1953	State considers and approves transfer of Yampire Mining Tenements to ABA.
A.21	19 August 1953	State Mines Inspector inspects Wittenoom Mine and reports on the spread of dust in the mining site and from there into Wittenoom Gorge.
A.22	December 1953 to 1954	State Mines Inspectors visit Wittenoom and produce a series of reports identifying excessive dust in Wittenoom Mill.
A.23	25 March 1958	State Assistant Mines Inspector conducts unannounced visit to investigate dust at Wittenoom Mill.
A.24	1959	State produces <i>Report of the Commissioner of Public Health for the Year 1959</i>, which contains a report from Dr J McNulty, Department of Public Health, on industrial chest disease at Wittenoom. Report identifies the “puzzling and disquieting features” of the cases of asbestos at Wittenoom, which include the presence of the disease in non-asbestos mill workers. Report attributes asbestosis to lack of proper ventilation.

Item	Date	Act or activity
A.25	14 July 1960	Department of Mines receives a reply from the South African Acting Government Mining Engineer regarding asbestosis in South African miners and informing the Department of methods of airborne dust measurement and dust control.
A.26	1 October 1960	State considers application for and grants Tailings Lease 1.
A.27	26 October 1960	Dr J McNulty in Department of Public Health produces report regarding chest x-rays of Wittenoom workers taken in September 1960. Department of Mines receives a copy of the report. The report states that, out of 199 workers, 25 to have early stages of asbestosis or silicosis and 19 show advanced development of the diseases.
A.28	1961	Department of Public Health advises CSR Medical Officer on dangers of blue asbestos and regarding use of asbestos tailings for roads, driveways and children's playgrounds.
A.29	2 October 1961	Department of Public Health (including Dr J McNulty), Department of Mines and ABA meet to discuss asbestosis and dust levels.
A.30	1964	Department of Public Health engages expert to measure and report on dust concentrations in Colonial Mine and Mill.
A.31	1966	On behalf of Department of Public Health, air sampling program commences at Colonial Mine and Mill.
A.32	15 March 1965	State considers application for and grants MC4700314.
A.33	25 July 1965	Mines Inspector report indicates dusty conditions in Colonial Mine and Mill.
A.34	22 March 1967	State considers and approves transfers of Wittenoom Mining Tenements and Tailings Lease 1 and to HPPL and WPPL.
A.35	22 March 1967	State considers application for and grants Tailings Lease 2.
A.36	22 March 1967	State considers and approves transfer of Yampire Mining Tenements to HPPL and WPPL.

Item	Date	Act or activity
A.37	27 October 1973	Department of Public Health Inspector reports that asbestos tailings from Wittenoom are being sold for use in making concrete.
A.38	October 1973	Mr Moyle, of the Department of Public Health, takes air samples in and around Wittenoom township.
A.39	1975	Air samples taken in October 1973 are examined for or on behalf of the Department of Public Health.
A.40	July 1977	Dr A G Cumpston and D Sykes, of Department of Public Health, visit Wittenoom township and take air samples.
A.41	July 1977	Department of Public Health produces report on air samples taken in Wittenoom township 1973 and analyses carried out in 1975, including from personal samplers worn by town residents.
A.42	November 1977	State Mines Inspector wears personal air sampler outside school and hotel in Wittenoom township, which registers blue asbestos at UK occupational health limit. State decided to embark on a more detailed sampling programme.
A.43	September 1978	Department of Public Health conducts survey of airborne blue asbestos levels using 127 samples from personal samplers worn by town residents and local workers.
A.44	19 September 1978	State considers and approves transfers of MC4700025, MC4700054 and MC4700314.
A.45	19 September 1978	State considers and approves transfers of MC4700054, MC4700013, MC4700015, MC4700016, MC4700017, MC4700018, MC4700045, MC4700046 and MC4700047.
A.46	19 September 1978	State considers and approves transfer of Yampire Mining Tenements.
A.47	29 November 1978	State announces decision to phase out Wittenoom following release of Department of Public Health booklet “The Health Hazard of Wittenoom”.

Item	Date	Act or activity
A.48	18 July 1979	Asbestos tailings located on the site of Mineral Claim MC4700314 in the Eastern Gorge Tailings Dump become the property of the State. Asbestos tailings located on the site of Mineral Claims MC4700013, MC4700015 and MC4700016 in the Colonial Tailings Dumps become the property of the State. Asbestos tailings located on the site of Mineral Claim MC4700027 in the Yampire Tailings Dump become the property of the State.
A.49	August 1979	State forms Wittenoom Works and Health Committee to monitor health risk at Wittenoom.
A.50	8 February 1980	Asbestos tailings located on the site of Tailings Lease 1 in the Eastern Gorge Tailings Dump become the property of the State. Asbestos tailings located on the site of Tailings Lease 2 in the Colonial Tailings Dumps become the property of the State.
A.51	October 1980	Department of Public Health conducts survey of airborne asbestos at school in Wittenoom township.
A.52	December 1980	State bans connection of power and water to houses of new residents arriving in Wittenoom.
A.53	1981	State reaffirms phasing out of Wittenoom township.
A.54	20 January 1984	State considers and approves transition of MC4700314 to PL47/129 and MC4700044 to PL47/130.
A.55	20 January 1984	State considers and approves transition of MC4700049 to PL47/131 <u>and MC4700014 to PL47/128.</u>
A.56	2 April 1984	Department of Public Health conducts air monitoring.
~~A.57~~	~~20 July 1984~~	~~Asbestos tailings located on the site of Mineral Claim MC4700014 in the Colonial Tailings Dumps become the property of the State.~~

Item	Date	Act or activity
A.58	October 1984	State adopts policy of offering to purchase Wittenoom residents' homes and proposes that existing residents relocate. Businesses which were purchased by the State are kept in operation until an alternative service in another town becomes available as a replacement.
A.59	26 March 1985	Wittenoom Health and Works Committee commissions the Geraldton Building Company to undertake the Wittenoom Environmental Engineering Study on asbestos contamination.
A.60	July 1985	Department of Mines commissions OB Hawthorne & Associates Pty Ltd to produce "Preliminary Report on Methods of Reducing the Hazards Associated with The Presence on the Surface of Asbestos Bearing Wastes at Wittenoom Gorge WA".
A.61	18 December 1985	State closes Wittenoom Primary School.
A.62	March 1986	State Department of Conservation and Environment conducts survey of contamination including at Wittenoom township.
A.63	~~10~~ April 1989	Asbestos tailings located on the site of Mineral Claims MC4700049 <u>and MC4700014</u> in the Colonial Tailings Dumps become the property of the State.
A.64	16 December 1989	State closes Wittenoom Police Station.
A.65	1989	State Commissioner for Occupational Health, Safety and Welfare writes to Commonwealth and State Government departments and agencies whose employees worked at or visited Wittenoom regarding the employer's legal obligation to provide a safe working environment.
A.66	July 1990	Department of Mines officers visit Yampire Mine and produce a report of recommendations, including for the sealing of the two main openings to the underground mine.
A.67	May 1992	Committee of inquiry appointed by State Cabinet, assisted by National Institute of Occupational Health Laboratories (Sydney), takes personal and static air samples at Wittenoom township to identify exposure to residents and workers and exposure to tourists over tailings areas.

Item	Date	Act or activity
A.68	August 1992	Committee of inquiry comprising Mark Nevill MLC and Alan Rogers produce report to Premier (the Hon Carmen Lawrence) entitled “Inquiry into Asbestos Issues at Wittenoom”. Report states with reference to amongst other areas the Eastern Gorge Tailings Dump and the Colonial Tailings Dumps: “Dispersal of tailings over the next century or two will increase that risk [health risk to visitors].” Report recommends the clean-up of asbestos tailings at the Asbestos Sources Sites.
A.69	4 November 1992	North West Minister Ernie Bridge announces that all Government-owned buildings in Wittenoom will be demolished.
A.70	February 2001	State engages McMahon Services to remove and dispose of all plant, equipment, building, improvements and rubbishes from General Purposes Leases 47/4M and 47/6 near the Colonial Mine and 47/5 near the Wittenoom Mine. Scope of work includes installing a gate on Mine Site side of Cathedral Pool (near Wittenoom Mine), installing earth mounds to restrict four-wheel drive access on road, and installation of signs warning of the hazard posed by blue asbestos. No activities to remediate blue asbestos are undertaken.
A.71	25 June 2006	Kimberley, Pilbara and Gascoyne Minister Jon Ford announces relocation program for individuals living in Wittenoom.
A.72	November 2006	State engages engineering consultancy GHD to produce a report on remediation of the Asbestos Sources. GHD produces report entitled “Management of Asbestos Contamination in Wittenoom” for State Department of Industry and Resources and Department of Local Government and Regional Development.
A.73	June 2007	State de-gazettes Wittenoom township. Township’s name is removed from official maps and road signs.

Item	Date	Act or activity
A.74	29 November 2007	Department of Local Government and Regional Development commissions EarthTech to conduct a site audit of the former township of Wittenoom and the Mines and Tailings Dumps. Audit commences on 29 November 2007. Auditor recommends site be Classified as “Contaminated — Remediation Required” under the <i>Contaminated Sites Act 2003</i> (WA).
A.75	28 January 2008	CEO of the Department of Water and Environmental Regulation defines and classifies Wittenoom Asbestos Management Area as “Contaminated — Remediation Required” under the <i>Contaminated Sites Act 2003</i> (WA).
A.76	October 2013	GHD produces “Advice on Strategies and Costs for Remediation of Certain Asbestos Contaminated Sites in the Wittenoom Area- Phase 1 Conceptual Report” for State Department of Lands.
A.77	October 2015	GHD produces “Wittenoom Remediation Strategy Tailings Remediation Geotechnical Investigation Report” for State Department of Lands.
A.78	December 2015	GHD produces “Advice on Strategies and Costs for Remediation of Certain Asbestos Contaminated Sites in the Wittenoom Area - Phase 2 Planning and Conceptual Design” for State Department of Lands.
A.79	December 2016	GHD produces “Koodaideri Iron Ore Mine and Infrastructure Project — Mandatory Audit Report” for Pilbara Iron Company (Services) Pty Ltd. Report produced pursuant to conditional approval by the Minister for Environment and Heritage for the construction of the Western Rail Corridor Development which intersects with the Wittenoom Asbestos Management Area. Report provided to the CEO of the Department of Public Service pursuant to Ministerial Statement No 999. Report was endorsed by relevant regulatory agencies including Department of Water and Environmental Regulation, Department of Health and the Office of the Environmental Protection Agency.

Item	Date	Act or activity
A.80	June 2021	Rio Tinto submits Asbestos Environmental Management Plan (AEMP) to Environmental Protection Agency pursuant to Ministerial Statement No 999 for the Gudai-Darri 1 Iron Ore Mine and Infrastructure Project.
A.81	28 July 2021	GHD produces on behalf of Rio Tinto the “Gudai-Darri Iron Ore Mine and Infrastructure Project — Addendum Mandatory Auditor’s Report”. Report provided to the CEO of Department of Public Service pursuant to Ministerial Statement No 999.
A.82	29 April 2022	Rio Tinto provides the Department of Water and Environmental Regulation with “ <i>Environmental Protection Act</i> 1986 (WA) Part IV Ministerial Statement Annual Compliance Assessment Report”, including ‘Western Rail Corridor Asbestos Management Plan’ pursuant to Ministerial Statement No 999.
A.83	All material times	The State does not impose any conditions to prevent dumping, accumulation or spread of tailings when considering or approving the grant of any mining tenement (or other permit) or transfer set out in this Schedule A under the <i>Mining Act 1904</i> (WA) or the <i>Mining Act 1978</i> (WA) or otherwise.
A.84	All material times	Despite each report and other matter set out in this Schedule A, State decides not to take any step to remove, contain or otherwise remediate blue asbestos or material containing blue asbestos at the Asbestos Sources and blue asbestos or material containing blue asbestos that has spread from the Asbestos Sources to the Affected Area and which may spread to other parts of the Determination Area.

Schedule B: Acts and activities of the State — Narrative statement

- B.1 This Schedule B sets out in narrative form the State’s course of conduct comprising:
- B.1.1 the acts of and/or activities undertaken by the State that caused, or whose direct consequences caused, the damage, injury or loss of the Applicant and the Relevant Beneficiaries from the continued presence of blue asbestos or material containing blue asbestos at each of the Asbestos Sources and its emanation to the Affected Area (see paragraph 118 above); and
 - B.1.2 the State’s authorisation and adoption of, facilitation of or acquiescence in activities that caused the release of blue asbestos and/or deposit of asbestos tailings at each Asbestos Source (see paragraph 132 above).
- B.2 The State engaged in the conduct as set out in this Schedule B with the knowledge pleaded in paragraphs 111–116 above.
- I** **Period 1: 1937 to 1966 — The State’s promotion, procuring and facilitation of asbestos mining at the Wittenoom Mine, Colonial Mine and Yampire Mine**
- (1)* **Investigation, assessment and public promotion**
- B.3 From at latest around 1937, the State investigated, assessed and publicly promoted the commercial exploitation of deposits of blue asbestos in the Hamersley Range (which includes the Mines and Tailings Dumps).
- B.4 The State Mining Engineer and his staff, and the State’s Geological Survey:
- B.4.1 carried out surveys, assessments and geological investigations in the Hamersley Ranges; and
 - B.4.2 disseminated the results to the Commonwealth, businesses and industry, and the public.

Particulars to paragraphs B.3–B.4

The Applicant refers to the following matters:

1. the reports and assessments of Mr J S Foxall, Assistant State Mining Engineer from 1937 and State Mining Engineer from 1945, including:
 - (A) his report on his visit to the Hamersley Range of 19 July 1938;
 - (B) his report entitled “The Blue Asbestos Deposits of the Hamersley Ranges and Their Economic Importance” published in *Geological Survey of Western Australia*, Bulletin No 100, Part II (1942); and
 - (C) his advice to the Under-Secretary for Mines dated 5 September 1946; and
 2. promotional publications by the State, including:
 - (A) an article published in the *West Australian* on 17 April 1945 about the potential of the asbestos industry in the North West suggesting that its value could be “incalculable”, which had been prepared by a State Mining Engineer and was provided to the Under Secretary for Mines with a cover note dated 7 March 1945 stating that the State Mining Engineer had “introduced a little propaganda into the last paragraph”;
 - (B) *Western Australia: Industrial Opportunities and Facts* (1947).
- (2) ***Grants and approvals of transfers of mining tenements and other permits for asbestos mining and failures and determinations not to impose conditions requiring removal, containment or other remediation of blue asbestos***
- B.5 The Applicant repeats its pleas as to the State’s grants, registrations of transfers, transitioning to prospecting licences, and acceptances of surrenders or the forfeitures of:
- B.5.1 the Wittenoom Mining Tenements in paragraphs 12 and 24–28 above;

B.5.2 the Colonial Mining Tenements in paragraphs 36 and 50–53 above;
and

B.5.3 the Yampire Mining Tenements in paragraphs 61 and 74–75 above.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to those paragraphs above; and
2. the substantial admissions of those matters in Defence paragraphs 12, 24–28, 36, 50–53, 61 and 74–75.

B.6 Further, the State granted Tailings Lease 1 in October 1960 and MC4700314 in March 1965 in respect of areas of Crown land that covered the Eastern Gorge Tailings Dump (as set out in paragraphs 24–25 above) in circumstances where:

B.6.1 ABA did not from 1946 to 1958 hold a tenure, licence or permit under the *Mining Act 1904* (WA) to deposit tailings at the Eastern Gorge Tailings Dump;

B.6.2 Tailings Lease 1 and MC4700314 were granted after ABA had already deposited tailings at the Eastern Gorge Tailings Dump; and

B.6.3 the State does not know, and it is to be inferred that it never knew, whether Eastern Gorge Tailings Dump was wholly covered by Tailings Lease 1.

Particulars

The Applicant refers to the admissions substantially to this effect, or which give rise to the inference alleged, in paragraph 31(a)–(c) of the Defence.

B.7 Further, the State granted Tailings Lease 2 in January 1968 in respect of areas of Crown land that covered part of the Colonial Tailings Dumps (as set out in paragraph 50 above) in circumstances where:

- B.7.1 ABA did not from 1953 to 1966 hold a tenure, licence or permit under the *Mining Act 1904* (WA) to deposit tailings at the Colonial Tailings Dumps;
- B.7.2 Tailings Lease 2 was granted after ABA had already deposited tailings at the Colonial Tailings Dumps; and
- B.7.3 the State does not know, and it is to be inferred that it never knew, whether Colonial Downstream Tailings Dump was wholly covered by Tailings Lease 2.

Particulars

The Applicant refers to the admissions substantially to this effect, or which give rise to the inference alleged, in paragraph 56(a)–(c) of the Defence.

- B.8 The Applicant repeats its pleas as to the State’s failures to, and determinations not to, impose any condition or requirement upon the holder (or former holder) of a mining tenement that prevented the creation of tailings dumps, the continued dumping and accumulation of tailings or the spread of blue asbestos released into the environment by extraction and/or processing of ore or of asbestos tailings:
- B.8.1 in paragraph 34 above in relation to the Wittenoom Mining Tenements;
- B.8.2 in paragraph 59 above in relation to the Colonial Mining Tenements;
- B.8.3 in paragraph 81 above in relation to the Yampire Mining Tenements.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to those paragraphs above; and
2. the admissions of the absence of imposition of those conditions in Defence paragraphs 34(c), (f), (j) and (n), 59(c), (f), (j) and (n) and 81(c) and (f).

- (3) Procuring of CSR to mine and mill blue asbestos, establishing Wittenoom as a town and providing extensive support, including financial benefits, infrastructure and other incentives
- B.9 Between 1943 and 1947, the State negotiated with the Commonwealth and CSR (then known as Colonial Sugar Refining Company Limited) to procure CSR to mine and mill blue asbestos at and around what became Wittenoom.
- B.10 Between 1946 and 1947:
- B.10.1 CSR (and/or its wholly owned subsidiary ABA) indicated to the State that, without support and assistance of the State, they would or may not be able to produce blue asbestos at or around what became Wittenoom at all; and
- B.10.2 the State agreed relevantly with CSR and/or ABA that CSR and/or ABA would mine and mill blue asbestos at or around what became Wittenoom and that the State would, in exchange, provide support and assistance to CSR and/or ABA to enable them to commence and carry out blue asbestos mining activities, including financial assistance, the provision of infrastructure and other support.
- B.11 The support and assistance included the following, to enable mine workers and their families, and associated businesses and their employees, to reside near to Wittenoom Mine:
- B.11.1 surveying for and establishing the town of Wittenoom;
- B.11.2 procuring the water supply and the electricity supply for Wittenoom;
- B.11.3 constructing a police station and deploying a permanent State police presence in Wittenoom;
- B.11.4 constructing a school in Wittenoom and deploying teachers and other staff to the school;
- B.11.5 constructing a hospital in Wittenoom and deploying doctors, administrators and other staff to the hospital;

- B.11.6 constructing workers' housing at Wittenoom under the Commonwealth–State Housing Agreement, resulting in:
- (a) the construction of 152 houses by 1953; and
 - (b) the construction of a further approximately 30 houses in the second half of the 1950s;
- B.11.7 improving the road from Wittenoom to the coast at a cost of approximately £45,000;
- B.11.8 providing storage and handling facilities at the port at Point Samson (Port), being the nearest port to Wittenoom, to which blue asbestos from the Mines was transported and from which it was shipped to other places, at a cost of approximately £8,000; and
- B.11.9 constructing, jointly with the Commonwealth, a bulk oil terminal at the Port at a cost of approximately £10,000, to enable the refuelling of vehicles carrying blue asbestos and other goods between Wittenoom and the Port.
- B.12 Further, the support and assistance provided included the following subsidies, incentives and/or financial benefits, to make viable and/or encourage the commercial production of blue asbestos at the Mines and its transportation from Wittenoom as well as the provision of goods to Wittenoom:
- B.12.1 the provision of a concessional rate by the State Shipping Service of Western Australia (State Shipping Service) for the storage of processed blue asbestos at the Port;
 - B.12.2 the offering and payment of a road-transport subsidy of £10 per ton on goods carried to Wittenoom from the railhead at Meekatharra, being a subsidy of approximately 50 per cent;
 - B.12.3 the offering and payment of a shipping subsidy of 10 shillings per ton of processed blue asbestos carried from the Port to Fremantle [by the State Shipping Service], being a subsidy of approximately 33 per cent of the charge of the State Shipping Service for such transportation;

- B.12.4 the offering and payment of a road-transport subsidy of £1-7-0 per ton of processed blue asbestos carried from Wittenoom to the Port, being a subsidy of approximately 33 per cent [of what], and per ton of goods carried from the Port to Wittenoom;
- B.12.5 the offering and payment, in the 1960s, of a drilling subsidy totalling almost \$250,000 over five years to incentivise the identification of new bodies of blue asbestos ore; and
- B.12.6 from 1960 until 1966, the annual deferral of increases in the rates for freight transportation on the State Shipping Service for processed blue asbestos, the effect of which was that ABA continued to be charged the same rate (from 1966, \$7.25 per ton), a rate unchanged in value since 1957, representing by 1966 a subsidy (discount) of \$11.25 per ton, which together with freight concessions to eastern State ports cost the State almost \$400,000.
- B.13 Further, the support and assistance included, to ensure that CSR (and ABA) could operate Wittenoom Mine profitably, the following:
- B.13.1 CSR (and/or ABA) requested to be granted a monopoly of production on blue asbestos and protection against imports of asbestos, including by an amendment of the *Mining Act 1904* (WA); and
- B.13.2 the State did not amend the *Mining Act 1904* (WA) but did not grant further mining tenements for blue asbestos to other parties and later registered transfers of the Yampire Mining Tenements to ABA as set out in paragraph 74(b) above.
- B.14 The support and assistance that the State provided, as set out above, was in part reflected in undertakings between the State and CSR (and/or ABA) proposed to the State by CSR (and/or ABA) around August 1946.
- B.15 The State agreed with CSR (and/or ABA) around 1965 to 1966 to pay CSR (and/or ABA) a further subsidy to make viable and/or encourage CSR's (and/or ABA's) continued asbestos mining activity.

Particulars to paragraphs B.9–B.15

The Applicant refers to the following matters:

1. the State’s Department of Mines files 413/43, 352/45, 789/45 (which includes the proposed undertakings mentioned above and the State’s response to them), 374/46, and 320/48, held in the State Records Office of Western Australia; and
2. the State’s Department of the North West files 35/59, 21/62, 59/66, A21, and “Wittenoom General”, held in the State Records Office of Western Australia.

(4) **Granting exemptions from labour requirements to facilitate ABA’s operations**

B.16 The State, to enable ABA to continue to produce blue asbestos without the labour that would otherwise have been required under its mining tenements, regularly:

B.16.1 considered requests from ABA for exemptions from labour requirements on certain of its mining tenements; and

B.16.2 granted such requests.

Particulars

The Applicant refers to the following matters:

1. the State generally acted by its Minister for Mines, on the recommendations of senior officials of the Department of Mines;
2. examples of such exemptions include:
 - (A) Exemption No 43/60 granted on 1 December 1960,
 - (B) Exemption No 33/61 granted on 26 May 1961,
 - (C) Exemption No 68/61 granted on 27 November 1961,
 - (D) Exemption No 25/62 granted on 11 July 1962; and
 - (E) Exemption No 42/62 granted on 4 February 1963.

(5) ***Establishment and maintenance of Wittenoom Racecourse as a recreational facility***

- B.17 In or around 1951, the State suffered or tolerated the construction by ABA on Crown land of Wittenoom Racecourse using asbestos tailings from the Mines.
- B.18 On 8 January 1954, the State set aside as Reserve 23864 for the purpose of “Sports Ground and Racecourse” an area that included Wittenoom Racecourse.
- B.19 The State subsequently vested Reserve 23864:
- B.19.1 on 8 January 1954 in the Tableland Road Board;
- B.19.2 on 16 December 1960 in the Tableland Shire; and
- B.19.3 on 11 July 1975 in the Shire of West Pilbara.
- B.20 On 9 November 1995, Reserve 23864 was cancelled.

Particulars to paragraphs B.17–B.20

The Applicant refers to Defence paragraphs 8 and 86, which substantially admit these matters.

- B.21 By the conduct set out in paragraphs B.17–B.19 above, the State permitted and facilitated the establishment and maintenance of the Wittenoom Racecourse using blue asbestos, as a recreational facility for mine workers and other people in Wittenoom.

(6) ***Establishment of Wittenoom Airport to enable air transport to and from Wittenoom***

- B.22 On 13 July 1951, the State set aside Reserve 23278, being Location 4 Windell, Plan 97/300, for the purpose of “Aerial Landing Ground”, over an area that was or had been Crown land.
- B.23 The State suffered or tolerated the use of asbestos tailings from the Mines to construct Wittenoom Airport from around 1955.

- B.24 On 2 September 1966, the State expanded the boundaries of Reserve 23278 to include Windell Location 8.

Particulars

The Applicant refers to Defence paragraphs 89 and 92, which substantially admit these matters.

- B.25 By the conduct set out in paragraphs B.22–B.24 above, the State permitted and facilitated the establishment and maintenance of Wittenoom Airport, which enabled air travel to and from Wittenoom.

(7) ***Use and retention of asbestos tailings by the State in the Other State Places***

- B.26 The State used asbestos tailings to construct and/or maintain, or permitted asbestos tailings to remain on or in, the Other State Places, as set out in paragraph 94A above.

Particulars

The Applicant repeats the particulars subjoined to paragraph 94A above.

(8) ***Failure to take steps to control blue asbestos released into the environment following inspections of the Mines and the Tailings Dumps and recommendations by officers of the State***

- B.27 At all material times during the operation of each of the Mines, officers of the State conducted regular inspections of each of the Mines and each of the Tailings Dumps.

Particulars

The Applicant repeats the particulars subjoined to paragraph 111 above.

- B.28 The State on occasion failed to ensure that such inspections enabled Mines Inspects and other officers of the State to see and report upon the true conditions in and around the Mines and the Tailings Dumps.

Particulars

The Applicant refers to the following matters:

1. the operators of the Mines and the Tailings Dumps including ABA often had notice that officers of the State would attend the Mines and the Tailings Dumps, including because they were provided with the names of passengers flying to Wittenoom;
2. on occasion when they anticipated inspections by officers of the State, the operators of the Mines and the Tailings Dumps reduced the extent of mining or milling operations, or used greater amounts of water, to create the appearance that their operations released less blue asbestos into the environment than was in fact the case;
3. on or around 25 March 1958 District Inspector of Mines Ibbotson booked a flight to Wittenoom using an assumed name to avoid the conduct in 2, for which the State reprimanded him;
4. the inspections were spasmodic and ABA as operator endeavoured to deflect criticism and defer action proposed by the Department of Mines Inspectors by advising prematurely that procedures and proposals would be adopted.

B.29 From at least 1935, the State received and considered specific advice and warnings from senior officers of the State's Department of Health with respect to Wittenoom and the Mines (from the time when each operated) that:

B.29.1 blue asbestos posed a danger to health, even for small exposures; and

B.29.2 asbestos tailings were being used but should not be used for roads, paths and other purposes.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to paragraphs 111–116 above;
2. the Department of Health repeatedly warned CSR and/or ABA, and the Tableland Shire, against the use of tailings in Wittenoom and made unsuccessful efforts to ban their use, as referred to in the 1978 Health Hazard Booklet;
3. around 1959, Dr McNulty, in his role as Mines Medical Officer:
 - (A) visited Wittenoom and noticed clumps of blue asbestos everywhere, including tailings on all roads, around the

hospital, around the school (that is, in and on Other State Places), on driveways, around every home, on the golf course and at the Wittenoom Racecourse; and

(B) communicated to ABA that using asbestos tailings for road and ground covering was undesirable and that asbestos posed a health hazard;

4. around 1961, the Commissioner and Assistant Commissioner of Public Health described Wittenoom as a “festering sore”, which was a reference to the persistent exposure of workers and others to blue asbestos and the failure to remedy this over many years;

5. on or around 30 November 1964, Dr McNulty wrote to Inspector Ibbotson to say that the practice of using asbestos mine tailings as road surfacing “must cease” and “cannot be permitted”;

6. around 1965, Dr Maguire, a Medical Officer in the Department of Mines, stated to Gordon Oser, a doctor at Wittenoom, that he objected to the use of asbestos tailings for road surfacing because workers from the Mines should not be exposed to harmful dust during leisure hours after exposure to heavy dust concentrations at work and, further, that casual exposure of the townspeople and thousands of visitors was undesirable;

7. on or around 13 January 1965, Dr McNulty wrote to the Commissioner of Public Health, Dr Davidson, and advised that the association between asbestos exposure and malignancy in workers was well established and that the “Shires of Port Hedland, Marble Bar and Tableland should be advised that the use of asbestos mine tailings are harmful to health and should not be used for road surfacing”; and

8. on 29 November 1979, Dr McNulty wrote to the then Western Australian Minister for Health, Mr Ray Young, and communicated that there was a “health hazard” in living in Wittenoom and it was an “unacceptable hazard” for children.

B.30 From at least 1945 to around 1966, the State did not take any or any adequate step, and decided not to take any step, in relation to the Asbestos Sources to prevent:

B.30.1 the exposure of mine workers and other persons to blue asbestos and material containing blue asbestos; or

B.30.2 the removal of asbestos tailings from the Tailings Dumps and their use for roads, paths, gardens and residential premises and other purposes in Wittenoom.

B.31 From at least 1945 to around 1966, the State:

B.31.1 accepted assurances from the operators of the Mines that steps would be taken to reduce the release of blue asbestos in the Mines;

B.31.2 did not:

(a) require the operators of the Mines to adhere to the assurances;
or

(b) take any step properly to measure the concentration of blue asbestos in the air in and around the Mines and in Wittenoom;

(c) impose or enforce any standard (formal or informal) for exposure to blue asbestos in the Mines or otherwise; and

B.31.3 engaged in the conduct set out in the forgoing sub-paragraphs notwithstanding the absence of evidence that the operators of the Mines had reduced the release of asbestos.

Particulars to paragraphs B.30–B.31

The Applicant refers to the particulars subjoined to paragraphs B.28–B.29 above.

B.32 Regulation 222 of the *Mining Regulations 1925* (WA), made it an offence for the holder of any mining tenement to allow any of the detritus, dirt, sludge, refuse, garbage or mine water from his tenement:

B.32.1 to become a nuisance or an inconvenience to the holder of any other mining tenement or to the public; or

B.32.2 in any way to injure or obstruct any land used for agricultural, pastoral, fruit-growing, forestry or other useful purposes.

- B.33 Regulation 222 was at all material times enforceable by the State, including by its Minister, Department of Mines, inspectors, police and prosecutorial authorities.
- B.34 Regulation 222 prohibited the holder of any of the Wittenoom Mining Tenements, the Colonial Mining Tenements and the Yampire Mining Tenements (namely, ABA, HPPL, WPPL, MBM, WABAF and CSR) from permitting blue asbestos or material containing blue asbestos to escape from the relevant Tenement.
- B.35 The State did not at any time prosecute or otherwise enforce regulation 222 against ABA, HPPL, WPPL, MBM, WABAF and CSR (or any person or entity associated with them) or otherwise in respect of the Mines or the Tailings Dumps.
- B.36 The State engaged in the conduct set out in paragraphs B.27–B.35 above to maintain, and to avoiding interfering with, hampering or preventing, the continued operation of the Mines.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to paragraphs 111–116 above;
2. paragraphs B.27–B.35 above and the particulars subjoined to them;
3. paragraphs B.3–B.25 above, which set out conduct by which the State procured, invested heavily in and promoted blue asbestos mining at the Mines;
4. in the premises, it was the policy of the State not to take any step that might threaten the ongoing ability to operate or viability of the Mines.

(9) **Consideration of and failure to take any other step to remove, contain or otherwise remediate the blue asbestos**

- B.37 The Applicant, in respect of the period from 1937 to 1966:

B.37.1 repeats its allegations in paragraphs 35, 60, 82, 88, 94 and 94F above that the State did not take any or any adequate step, and repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment at each of the Mines, Wittenoom Racecourse, Wittenoom Airport and the Other State Places and the asbestos tailings deposited at each of the Tailings Dumps; and

B.37.2 says further that no such step was taken on the State's own case.

Particulars

The Applicant refers to paragraphs 35, 60, 82, 88 and 94 of the Defence and Schedule B thereto, which does not allege any act by the State prior to 1973.

II Period 2: 1967 to 1977 — After cessation of mining for blue asbestos

(1) Maintaining Wittenoom, Wittenoom Racecourse and Wittenoom Airport

B.38 From 1967 to 1977, the State maintained Wittenoom as a town, including its roads, its water supply and its electricity supply.

B.39 From 1967 to 1977, the State maintained the hospital, the police station and the school and their staff in Wittenoom.

B.40 From 1967 to 1977, the State maintained and continued to permit the use of Wittenoom Racecourse as a recreational facility.

B.41 From 1967 to 1977, the State maintained and continued to permit the use of Wittenoom Airport to enable air transport to and from Wittenoom.

(2) Failure to take steps to control blue asbestos released into the environment

B.42 Paragraphs B.30 and B.35 above are repeated *mutatis mutandis* in respect of the period from 1967 to 1977.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to paragraphs B.30 and B.35 above; and
 2. a Department of Public Health Inspector reported around 27 October 1973 that asbestos tailings from Wittenoom are being sold for use in making concrete in Wittenoom.
- (3) *Failure to take action to remove, contain or otherwise remediate blue asbestos upon the forfeiture or surrender of the Wittenoom Mining Tenements, Colonial Mining Tenements and Yampire Mining Tenements*
- B.43 The Applicant repeats its pleas that, on and after the surrender and/or forfeitures of each of the Wittenoom Mining Tenements, Colonial Mining Tenements and Yampire Mining Tenements, the State did not remove and left in situ the blue asbestos released into the environment in the areas of and surrounding the Mines and the asbestos tailings deposited in the Tailings Dumps, specifically:
- B.43.1 Wittenoom Mine and Mill and the Eastern Gorge Tailings Dump, as set out in paragraphs 29 and 31 above;
- B.43.2 Colonial Mine and Mill and the Colonial Tailings Dumps, as set out in paragraphs 54 and 56 above;
- B.43.3 Yampire Mine and Mill and the Yampire Tailings Dump, as set out in paragraphs 76 and 78 above.
- B.44 The State did so notwithstanding:
- B.44.1 its power and ability to take steps to remove, contain or otherwise remediate the blue asbestos released into the environment and the asbestos tailings, which were left and (insofar as they have not spread) remain upon Crown land, as set out in paragraphs 30, 32, 55, 57, 77 and 79 above; and
- B.44.2 further and in any event, its ownership of the asbestos tailings on the sites of mining tenements in the Tailings Dumps, as set out in paragraphs 33, 58 and 80 above.

(4) **Consideration of and failure to take any other step to remove, contain or otherwise remediate the blue asbestos**

B.45 The Applicant, in respect of the period from 1967 to 1977:

B.45.1 repeats its allegations in paragraphs 35, 60, 82, 88, 94 and 94F above that the State did not take any or any adequate step, and repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment at each of the Mines, Wittenoom Racecourse, Wittenoom Airport and the Other State Places and the asbestos tailings deposited at each of the Tailings Dumps; and

B.45.2 says further that no meaningful step was taken on the State's own case.

Particulars

The Applicant refers to the following matters:

1. paragraphs 35, 60, 82, 88 and 94 of the Defence and items B.1 to B.2 of Schedule B thereto, which are vague and plead only limited occupational and medical analysis; and
2. paragraphs B.42–B.45 above.

III Period 3: 1978 to 2016 — Wittenoom phase-down, exclusion and stalling of remediation process

(1) **Maintaining and then gradually phasing out human occupancy of or access to Wittenoom**

B.46 In November 1978, the State decided to phase out human occupancy of and access to Wittenoom over time.

B.47 In August 1979, the State decided to reverse that decision.

B.48 Some time in or after March 1981, the State decided again to phase out human occupancy of and access to Wittenoom.

B.49 From 1978 to March 2007, the State maintained Wittenoom as a town, including its roads, its water supply and its electricity supply, save that the State procured from December 1980 that new water and electricity connections were not available.

B.50 In March 2007, the State abolished Wittenoom as a town.

Particulars to paragraphs B.46–B.50

The Applicant refers to admissions substantially to this effect in Defence Schedule B items B.4, B.8, B.10, B.11, B.15 and B.37.

B.51 From 1978 to before 1990, the State maintained the hospital and its staff in Wittenoom.

B.52 From 1978 to 1985, the State maintained the school and its staff in Wittenoom.

B.53 From 1978 to 16 December 1989, the State maintained the police station and its staff in Wittenoom.

Particulars to paragraphs B.51–B.53

The Applicant refers to Defence Schedule B items B.18 and B.22.

(2) **Consideration of and failure to take any other step to remove, contain or otherwise remediate the blue asbestos, adoption of a policy of exclusion from Wittenoom and failure to have any or proper regard to the interests of the Banjima people**

B.54 The Applicant, in respect of the period from 1978 to the present, repeats its allegations in paragraphs 35, 60, 82, 88, 94 and 94F above that the State did not take any or any adequate step, and repeatedly determined not to take any step, to remove, contain or otherwise remediate the blue asbestos released into the environment at each of the Mines, Wittenoom Racecourse, Wittenoom Airport and the Other State Places and the asbestos tailings deposited at each of the Tailings Dumps.

B.55 Further, from 1978 to the present, the State:

- B.55.1 kept under review and considered, via its Cabinet, Ministers and senior officials, its approach to Wittenoom, the Asbestos Sources and their remediation;
- B.55.2 identified the need to remove, contain or otherwise remediate the blue asbestos released into the environment from and/or the asbestos tailings at the Asbestos Sources (or some of them);
- B.55.3 considered taking steps to remove, contain or otherwise remediate the blue asbestos released into the environment from and/or the asbestos tailings at the Asbestos Sources (or some of them), including obtaining estimates of the scope of works required and costings; and
- B.55.4 adopted a policy of removing or discouraging the presence of persons in and around Wittenoom and the Asbestos Sources, instead of removing, containing or otherwise remediating the blue asbestos and the asbestos tailings at the Asbestos Sources;
- B.55.5 identified (from around 2010) that the presence or fear of blue asbestos in the Determination Area prevents the Banjima people from practicing their customs and traditions; and
- B.55.6 failed (throughout) to have any, or sufficient, regard to the interests of the Banjima people in accessing the Affected Area.

Particulars to paragraphs B.54–B.55

The Applicant refers to the following matters:

1. paragraphs B.46–B.50 above and the particulars subjoined thereto;
2. the memorandum from Mr M Wallwork, Main Roads Department, and M G V Coles, Public Health Department, entitled “Possible Asbestos Health Hazard at Wittenoom: Sources and Dispersion of Fibre and Suggested Measures for Any Necessary Control” from around March 1978 (SWA.0008.0002.0103), which identified that the State had two options in respect of the Asbestos Sources, namely, removing the sources of blue asbestos that contaminate Wittenoom (which included the Asbestos Sources) or effectively eliminating all

access to those parts of Wittenoom and adjacent areas affected by the tailings from mine workings;

3. the memorandum from the Minister for Health, Alan Ridge, with subject “Wittenoom Town Site” dated 19 July 1978 (1978 Ridge Memorandum) and the Cabinet decision of 22 July 1978 endorsed upon it (SWA.0009.0001.0424), by which the State:

- (A) identified several options in relation to Wittenoom; and
- (B) decided to obtain costs estimates for certain options of removing tailings deposits in the Wittenoom townsite and sealing or covering areas likely to be used extensively by children in Wittenoom and to negotiate the erection of notices; and
- (C) decided otherwise to consider further options in due course;

4. the policy of the State adopted by its Cabinet in December 1980 and March 1981 to phase down Wittenoom as a town, as reflected in the recommendation by the Minister Assisting the Minister for Regional Administration and the North West dated 20 March 1981 and decision of Cabinet dated 23 March 1981 endorsing this (SWA.0101.0005.0321);

5. the establishment of the Interdepartmental Committee to collectively manage the issues associated with Wittenoom in 1981 (see item B.13 of Schedule B to the Defence);

6. the policy adopted by the State via its Cabinet in October 1984 to phase down Wittenoom as a town (see Defence Schedule B item B.15), including the demolition of government and abandoned buildings, the acquisition of privately owned buildings, and a property purchase scheme, as recorded in documents including:

- (A) a memorandum from the Minister for the North West entitled “Wittenoom Asbestos Problem” and the note of the Cabinet decision of 17 November 1986 endorsed upon it (SWA.0009.0001.1010);
- (B) a Wittenoom position paper of July 1986 (SWA.0009.0002.0056); and
- (C) the submission of the Deputy Premier and Minister for the North West, Hendy Cowan, to Cabinet of around 1992 or

1993 (SWA.0009.0006.0025), which expressly rejected the recommendations of the “Inquiry into Asbestos Issues at Wittenoom” by Mark Nevill and Alan Rogers that Wittenoom should not be phased down and identified the cost of remediating the Tailings Dumps as \$38 million;

7. the recommendation of the Interdepartmental Committee from its meeting on 11 June 1985 that options for removing asbestos tailings from the Tailings Dumps should not be pursued and that the solution was to remove the threat of exposure by relocating Wittenoom to a new site (PLH.0003.0001.0126);
8. the July 1985 Report of OB Hawthorne and Associates entitled “Preliminary Report on Methods of Reducing the Hazards Associated with The Presence on the Surface of Asbestos Bearing Wastes at Wittenoom Gorge WA”, which developed proposals to contain the asbestos tailings in the Tailings Dumps in a dam or pump them back into the Mines, and costings for this work;
9. the recommendation from Dr McNulty to the Minister for Health, Barry Hodge, in August 1985, noted by the Minister on 6 September 1985, identifying that containing the asbestos tailings at the Tailings Dumps and Mines would cost between \$22.17 million and \$34.70 million, and that it was doubtful that the expenditure of \$20 million was justifiable, where the plains to which the blue asbestos had spread were “deserted and barren” (SWA.0001.0001.0907);
10. the recommendation from the Minister for Health, Barry Hodge, to the Premier dated 16 October 1985, which identified that the cost to stop continued contamination of Wittenoom from the Tailings Dumps would be \$22 million to \$32 million, and that dust monitoring should cease, as it was raising hopes and deferring necessary decision-making, along with attached observations from Dr McNulty that predicted that the number of Wittenoom workers who were likely to contract mesothelioma was 460 to 775 (SWA.0012.0001.1197);
11. the recommendation by the Cabinet Subcommittee chaired by Mr J F Grill in November 1985 that the State should maintain its policy of preventing new connections or reconnection of water or power services to premises in Wittenoom (SWA.0012.0001.1203);

12. the State's "Wittenoom Position Paper" dated July 1986 (SWA.0009.0002.0056):
 - (A) recommending that the State's policy should continue to be to encourage all residents of Wittenoom to relocate voluntarily, that no new water or electricity services will be connected or reconnected, that eligible residents who had indicated an intention to leave Wittenoom prior to the end of 1985 (only) would receive financial assistance, that government offers to buy properties of long-term residents and businesses would end by the end of December 1986, and that government-owned property should be demolished by November 1986;
 - (B) concluding that it was "*feasible in the engineering sense*" to remove the asbestos tailings from the Tailings Dumps either as a slurry down the Mine shafts or by flooding Wittenoom Gorge, cost made it "*an unrealistic concept*"; and
 - (C) concluding that blue asbestos contamination of the Fortescue River flood plain is "*not a problem*";
13. the State's approval by its Cabinet of substantially the steps recommended in the Wittenoom Position Paper, as recommended in the memorandum from the Minister for the North West entitled "Wittenoom Asbestos Problem" and as recorded in the endorsement of the Cabinet decision of 17 November 1986 upon it (SWA.0009.0001.1010) and a Cabinet Decision Sheet entitled "Wittenoom Asbestos Problem" (SWA.0009.0002.0002);
14. the consideration by the Interdepartmental Committee in 1988 of proposals to pump tailings back into the mine stopes and to flood the workings at an estimated cost of \$75 million, and the decision not to proceed with either proposal, as reflected in a note by Mr J Young of the State's Crown Legal Department (SWA.0013.0004.0062) from and minutes of the Interdepartmental Committee of a meeting on 24 October 1988 (SWA.0009.0001.1048) (24 October 1988 IDC Minutes);
15. the Memorandum of Mr Ross Guyton, Special Projects Officer, Department of Regional Development and the North West dated 22 March 1990 (SWA.0006.0001.0549 to 0563);

16. the 7 May 1990 IDC Minutes and attached proposed brochure about the dangers of blue asbestos at Wittenoom, which stated that that removal of asbestos tailings had been considered but was not acceptable because it was expensive;
17. in around July to October 1990 (see Defence Schedule B items B.24 and B.25):
 - (A) the inspections by the State via the Department of Mines of Wittenoom Mine and/or the Eastern Gorge Tailings Dump, Colonial Mine and/or the Colonial Tailings Dumps and Yampire Mine and/or the Yampire Tailings Dump;
 - (B) the estimation of the tailings that were required to be removed to render safe and remediate those places and the cost of this as \$37.99 million; and
 - (C) the reporting of those matters to the Department of Regional Development;
18. the State's consideration around September 1990 of whether and decision not to attempt to use powers of the Environmental Protection Authority (EPA) to require the Asbestos Sources to be remediated, as evidenced by the "Report on Inspection Visit by Officers of the Environmental Protection Authority (EPA) to Wittenoom and Surrounding Areas Affected by Asbestos Contamination" signed by Noel Davies, Assistant Director, Pollution Control Division (SWA.0009.0001.1170);
19. the February/March 1991 IDC Recommendations and the Cabinet submission of the Minister for the North West, Ernie Bridge, of August 1991 (SWA.0012.0003.0153) (**August 1991 Cabinet Submission**), considered by Cabinet in October 1991, proposing to continue to phase down Wittenoom, referring to the high cost of effectively treating widespread contamination in the Tailings Dumps and allocating "nil" funds to treatment of the Mines and Tailings Dumps and of the Yampire Gorge Road;
20. the State's decision of around 1992 or 1993 to reject the recommendations of the Nevill Inquiry to the effect that Wittenoom not be phased out (see Defence Schedule B item B.27);
21. the announcement on 4 November 1992 by Minister for the North West, Ernie Briedge, that all State-owned buildings in Wittenoom will be demolished;

22. the identification by Mr A J Bradley, District Mining Engineer (Rehab), on 15 September 1994 of options to remediate the Mines and the Tailings Dumps (SWA.0009.0009.0084);
23. an October 1994 Cabinet submission from the Deputy Premier, Hendy Cowen (SWA.0009.0007.0010) (**October 1994 Cabinet Submission**), recommending the acceleration of the phasing down of Wittenoom so as to be completed by 1997 and identifying the cost of remediating the Tailings Dumps as \$38 million and the Mines as an additional \$6.4 million, whose adoption on 17 October 1994 is recorded in Cabinet Decision Sheet 9735 (SWA.0009.0007.0008);
24. the State's consideration, via Cabinet, of a July 1995 Cabinet submission from the Deputy Premier, Hendy Cowan (SWA.0012.0018.0005) (**July 1995 Cabinet Submission**), which identified that the three problems that require attention are unsealed openings of the Mines, abandoned buildings and equipment at the Mines, and the Tailings Dumps and referred to informal advice from the Department of Minerals and Energy that remediation of the Tailings Dumps is not practicable because of technical difficulties and excessive cost;
25. the procuring of designs to contain or encapsulate the asbestos tailings in the Tailings Dumps by Metplant Engineering Services Pty Ltd in around July 1995 (SWA.0009.0010.0123);
26. the State's consideration and approval on 12 February 1996, and subsequent execution through the Western Australian Building Management Authority, of works by DTMT Construction Company to seal openings of the Mines at a cost of \$950,000 (see Defence paragraphs 17, 41 and 66 and Schedule B item B.32);
27. the State's engagement of McMahon Services to remove and dispose of all plant, equipment, building, improvements and rubbishes from General Purposes Leases 47/4M and 47/6 near the Colonial Mine and 47/5 near the Wittenoom Mine, whose scope of work included:
 - (A) installing a gate on Mine Site side of Cathedral Pool (near Wittenoom Mine);
 - (B) installing earth mounds to restrict four-wheel drive access on roads; and

- (C) installing signs warning of the hazard posed by blue asbestos;
28. the consideration and negotiation, and the conclusion in May 2003, by the State of an agreement with HPPL and WPPL to undertake works to bury the Colonial Mill and various other works (SWA.0013.0014.0122), which expressly excluded any clean-up of tailings from its scope, and the contribution by the State of \$2 million towards these works (see Defence Schedule B item B.34);
29. the State's announcement on 25 June 2006 by Minister for the Kimberley, Pilbara and Gascoyne, Jon Ford, of a further relocation program for individuals continuing to live in Wittenoom;
30. the State's commissioning and consideration of the 2006 GHD Report, 2013 GHD Report, October 2015 GHD Report, and the December 2015 GHD Report (see items B.36 and B.41 of Schedule B to the Defence);
31. the November 2015 GHD Letters, which in the State endorsed and agreed with GHD's advice in relation to the encapsulation strategy and requested that Phase 2 of the scope of works to provide a conceptual design for the encapsulation strategy commence;
32. the technical, environmental, geotechnical and remediation planning studies that the State commissioned between 2011 and 2015 to develop remediation options and costs estimates for the Affected Area or parts of it, as admitted in Defence Schedule B item B.41;
33. the report Hanson and Associates entitled "Ngampikunha — An Ethnographic and Archaeological Study of Aboriginal Sites in the Wittenoom Locale", commissioned by the State's Department of Regional Development and Lands (November 2010) (see item B.40 of Schedule B to the Defence);
34. the papers attached to the agenda for an Interdepartmental Committee meeting on 23 April 2013 (PLH.0001.0002.0001) and the discussion recorded in the minutes of that meeting (PLH.0001.0002.0090), which;

- (A) identified that engagement with the Banjima people about the Wittenoom Asbestos Waste Hazard had been “minimal”;
 - (B) recorded that the State had not identified until the 2006 GHD Report that many Indigenous people were suffering from asbestos related diseases, due to the Wittenoom Asbestos Waste Hazard;
 - (C) considered and adopted a communication strategy directed to discouraging access by the Banjima people to their Country around the Wittenoom area, including sacred sites, without a means of, or a pathway to, safe managed access;
 - (D) recorded a direction from the Department of Premier and Cabinet that native title claims and compensation issues should not be discussed with the Banjima people; and
 - (E) proposed continued engagement with GHD (which was at that time preparing the GHD 2013 Report) in relation to its recommendations for priority sites including Colonial Mine and Mill and the Colonial Tailings Dumps, Wittenoom Mine and Mill and the Eastern Gorge Tailings Dump, and Wittenoom Gorge;
35. the particulars subjoined to paragraph 117 above, including the State’s consideration of the three strategies there identified, for example as recorded in the minutes of the Interdepartmental Committee meeting of 6 December 2013 (PLH.0001.0003.0031) (6 December 2013 IDC Minutes), which refers to:
- (A) the State’s independent review of the 2013 GHD Report commissioned from McMahon Services, which recommended adoption of an encapsulation strategy; and
 - (B) the State’s decision to advance work on the encapsulation strategy (referred to as “Strategy 2”);
36. the consideration by the Core Working Group of the Interdepartmental Committee (referred to as the Wittenoom Steering Committee) in March 2016 and by the Minister for Lands in November 2016 (see Defence paragraph 152);
37. the demolition and burial in 2023 and 2024 of all remaining buildings, infrastructure and relics in Wittenoom, and the

installation of earth bunds to prevent vehicular access to the town and the gorge (see Defence Schedule B item B.47);

38. the sampling programme undertaken by the Department of Energy, Mines, Industry Regulation and Safety from 2024, and the results obtained in September 2024 (see Defence Schedule B item B.48), comprising 585 samples of which 60 returned positive results for blue asbestos at concentrations of up to 29% by mass, as set out in the Department of Energy, Mines, Industry Regulation and Safety's presentation entitled "Stage 1 preliminary results" dated September 2024 (PLH.0009.0002.0015);
39. the State's commissioning and consideration of the 2025 GHD Report (see Defence Schedule B item B.50), which states that, after 2015, "progress practically stalled" on work to advance remediation of the Asbestos Sources;
40. the failure from around 2016 to take any step to remove, contain or otherwise remediate the blue asbestos released into the environment at each of the Mines, Wittenoom Racecourse and Wittenoom Airport and the asbestos tailings deposited at each of the Tailings Dumps is to be inferred from the extensive consideration, scoping of works, obtaining of costs estimates (including those set out in the particulars above) and the failure to take any such step.

(3) Failure from around 2016 to act on viable options for remediation identified from around 2011 and stalling of the process of remediation

B.56 Further, from around 2011:

B.56.1 until around November 2016, the State, including by repeated engagements of GHD:

- (a) identified primary source areas within the Asbestos Sources to be prioritised for the remediation of blue asbestos and/or asbestos tailings;
- (b) developed options for their remediation and determined that a strategy of encapsulation was feasible;

- (c) commissioned and received a conceptual design, program and costing for the encapsulation strategy; and
 - (d) thereby placed itself in a position to implement the remediation of the primary source areas;
- B.56.2 in around November 2016, identified certain further work required to advance the remediation of the Asbestos Sources and that the Banjima people needed to be consulted in relation to this; and
- B.56.3 thereafter, failed to undertake the steps that had been identified as necessary to advance remediation of the primary source areas.

Particulars

The Applicant refers to the following matters:

1. the particulars subjoined to paragraph 117 above; and
2. particulars 30–40 subjoined to paragraph B.55 above.

(4) Policy of seeking to avoid asbestos liability

- B.57 From about 1983 onwards, the State was exposed, and knew that it was exposed, to liability or potential liability in litigation brought by former workers at the Mines and other people at Wittenoom for injury caused by exposure to blue asbestos or material containing blue asbestos.

Particulars

The Applicant refers to the following matters:

1. the State was exposed to common law liability in respect of its own conduct, under workers' compensation or relief statutes and because it owned the State Government Insurance Office (SGIO), which insured ABA in respect of ABA's common law liability to workers at Wittenoom;
2. from at least 1985, the State (whether directly and/or through SGIO) and CSR determined jointly to defend CSR and ABA from common law liability, including by retaining the same solicitors and adopting a policy of making no offers in cases arising out of exposure to asbestos at Wittenoom;

3. large numbers of claims arising out of exposure to asbestos at Wittenoom and resulting disease were made against CSR and/or ABA, and in some instances the State directly, from around 1983, including over 350 proceedings that were commenced in the Supreme Court of Western Australia in 1985 or 1986 by former workers at the Mines (and/or their families);
4. SGIO (as insurer of the employee liabilities of ABA) defended the negligence claim arising out of exposure to asbestos at Wittenoom in *Rabenalt v Midalco (ABA)* in the Supreme Court of Victoria, in which, in 1988, Midalco was found liable in negligence, liable to pay \$425,000 in compensatory damages and liable to pay \$250,000 in exemplary damages, which was upheld by the Full Court of the Supreme Court of Victoria;
5. from no later than this time, the State estimated that its direct insured common law liabilities arising out of exposure to asbestos at Wittenoom could run to hundreds of millions of dollars;
6. in the Heys/Barrow proceedings against CSR and Midalco (ABA) arising out of exposure to asbestos at Wittenoom, the Supreme Court of Western Australia found in August 1988 that both CSR and Midalco were directly liable in negligence at common law; and
7. the State's liability and potential liability arising out of exposure to asbestos at Wittenoom was recognised by the Interdepartmental Committee and senior State officials, as recorded for example in the 1978 Ridge Memorandum (SWA.0009.0001.0424), Interdepartmental Committee minutes of 7 May 1990 (SWA.0006.0001.0570) (**7 May 1990 IDC Minutes**) and advice from around 1994 from the Interdepartmental Committee to the Premier (SWA.0100.0005.0191).

B.58 From about 1983, the State adopted and implemented a policy of not taking any step in relation to the Asbestos Sources (or any of them) that might accept, expose or increase its liability or potential liability in respect of claims arising from exposure to blue asbestos at Wittenoom.

B.59 In furtherance of the policy in paragraph B.58 above, the State:

- B.59.1 jointly defended common law claims of persons injured by exposure to asbestos at Wittenoom with CSR (and ABA);
- B.59.2 in around 1989, entered into an agreement with CSR (and ABA) as to the joint defence of and contribution to common law claims of persons injured by exposure to asbestos at Wittenoom that made no provision for the remediation of the Asbestos Sources;
- B.59.3 did not commence or pursue legal proceedings against CSR or ABA, in nuisance, under statute or otherwise, to require them to remediate the Asbestos Sources or any of them, including because this would have led to disclosure of the State's knowledge of the spread from the Asbestos Sites, and dangers presented by, blue asbestos and material containing blue asbestos and its authorisation or acquiescence in the nuisance alleged in this claim;
- B.59.4 considered and failed to accept and act upon CSR's offer to the State made in around June 1995 to contribute around \$3 million to the remediation of the Asbestos Sources (or some of them) conditional upon the resolution of damages claims then on foot against CSR and Midalco (ABA);
- B.59.5 obtained and considered legal advice in connection with these matters.

Particulars to paragraphs B.58–B.59

The Applicant refers to the State's consideration of its own liability or potential liability, and that of CSR, ABA and other operators of the Mines, as well as legal advice sought and received in relation to this, including as set out or referred to in:

1. 24 October 1988 IDC Minutes and papers prepared for the Committee around that time (SWA.0009.0001.1048), which appear to record legal advice being given and requested and record recommendations from the Committee to seek the support of the Attorney-General to a request to Midalco (ABA) and CSR to remove the asbestos tailings from the Tailings Dumps;

2. the Memorandum of Mr Ross Guyton, Special Projects Officer, Department of Regional Development and the North West, dated 22 March 1990 (SWA.0006.0001.0549), including its identification in connection with the need to clean up the Mines and Tailings Dumps that “[a]ction against the former mine operators was not favoured initially because of the then current legal action to gain compensation for workers and residents afflicted by asbestos related diseases”;
3. the recommendation of the Interdepartmental Committee in around May 1990, recorded in the 7 May 1990 IDC Minutes, not to further investigate methods to treat the Tailings Dumps until “until the issue of who was responsible for treating the tailings dumps and the mine sites was determined”, in respect of which Crown Law was to research ownership and the Committee to plan an outcome either through the courts or by negotiation with the former owners/operators;
4. the August 1991 Cabinet Submission, which appears to contain legal advice in relation to Wittenoom Gorge;
5. the minutes of an Interdepartmental Committee meeting on 3 January 1993 (SWA.0009.0006.0132), which record advice from Michael Miller, of the State’s Crown Law Department, that the State and its instrumentalities could not become actively involved in operations in the Wittenoom area so as to expose their own employees or others to asbestos fibres, if it is did to the State would owe a duty of care and be liable;
6. the October 1994 Cabinet Submission, especially Appendix 2 and Appendix 5, which refers to “legal and technical aspects” in relation to the Mines and Tailings Dumps and to there being “negligible prospect” of the State recovering from CSR the cost of making safe the Mines and the Tailings Dumps under existing legislation, and recommends that the Deputy Premier be authorised to enter into negotiations with CSR and the Hancock Group to seek contributions towards clean-up operations; and
7. the July 1995 Cabinet Submission, which records that CSR had offered to contribute \$3 million to clean-up costs but “the final outcome of those discussions is likely to be dependent upon the manner in which damages claims by Wittenoom residents, and CSR claims in turn for contribution from the State, are resolved”;
8. the papers attached to the agenda for an Interdepartmental Committee meeting on 23 April 2013 (PLH.0001.0002.0001),

which identify that legal advice had been or was to be sought in relation to the demolition of buildings in Wittenoom and addressing the remaining residents in Wittenoom, and had been sought in September 2012 as to the effect of contamination on the Banjima people's native title claims; and

9. the 6 December 2013 IDC Minutes, which appear to record legal advice in relation to the approach to removing, containing or otherwise remediating the blue asbestos at the Mines and the Tailings Dumps.

Certificate of lawyer for Applicant

I, Peter Gordon, certify to the Court that, in relation to the statement of claim, the factual and legal material available to me provides a proper basis for each allegation in the pleading.



.....

Peter Gordon
Senior Partner
Gordon Legal
Solicitor for the Applicant