

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Number:	WAD302/2026
File Title:	STATE OF WESTERN AUSTRALIA v YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC ICN 8721 & ORS
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

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

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



Notice of Appeal

No. WAD of 2026

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

On appeal from the Federal Court

STATE OF WESTERN AUSTRALIA

Appellant

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721) and others

Respondents

To the Respondents

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

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Peter Durack Commonwealth Law Courts Building
1 Victoria Avenue
Perth WA 6000

Date:

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

Filed on behalf of:	State of Western Australia	Date	26 August 2026
Prepared by:	Alicia Warren and Matthew Offer		
Law firm:	State Solicitor's Office		
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The Appellant appeals from the whole of the judgment or alternatively orders 2, 3 and 4 of the Federal Court given on 1 July 2026 at Perth, Western Australia.

GROUND OF APPEAL

Entitlement to compensation

1. The trial judge erred in finding that the Yindjibarndi people were entitled to compensation for the compensable acts on the basis that the conditions in s.24MD(3)(b) of the *Native Title Act 1993* (Cth) (NTA) were satisfied. That erroneous finding resulted from some or all of the following errors:
 - 1.1. The trial judge erred in finding that the *Mining Act 1978* (WA) (MA) provides recompense for loss and damage “*from the mining*” and does not provide compensation “*for the act*” (i.e., the grant of a mining tenement) (Reasons [174] – [175]) in circumstances where:
 - (a) the parties agreed that compensation is payable under the MA to a freeholder “*for the act*” (NTA s.240) (Reasons [176]); and
 - (b) the Court’s later findings did not meaningfully distinguish between “*mining*” and “*the acts*” (see for example Reasons [1205] – [1218]).
 - 1.2. The trial judge erred in finding that s.123 MA does not provide compensation to Yindjibarndi people as an “*owner*” of land (Reasons [178] - [183]).
 - 1.3. The trial judge erred in finding that s.123 MA does not provide compensation to Yindjibarndi people as an “*occupier*” of land (Reasons [184] – [203]).
 - 1.4. The trial judge erred in concluding, in the alternative, that if the entitlement to compensation arose under s.123 MA the terms of the MA may nevertheless be racially discriminatory such as to attract the operation of the *Racial Discrimination Act 1975* (Cth) (Reasons [465]).

Operation of s 47B NTA

2. The trial judge erred in finding that s.47B NTA took effect from the date of the filing of the Yindjibarndi #1 native title determination application on 9 July 2003, with the consequence that the Yindjibarndi people were entitled to claim compensation on the basis that they held exclusive possession native title rights and interests in relation to the exclusive area from that date (Reasons [282] and [656]). The trial judge should have found that s.47B NTA operated only from 13 November 2017, being the date on which the determination of native title was made in *Warrie*



(formerly TJ) v *State of Western Australia (No 2)* [2017] FCA 129, and that compensable acts done before that date were compensable for their effect on non-exclusive native title rights and interests only.

2.1. As a result of the error identified above, the trial judge erred in calculating economic loss for the following compensable acts (granted prior to 13 November 2017) on the basis that, to the extent that they were located within the exclusive area, they were compensable for their effect on exclusive native title rights and interests (Reasons [656], [719] and [723]-[725]). The trial judge should have found that the following compensable acts were compensable for their effect on the non-exclusive native title rights and interests only:

(a) M 47/1409-I, M 47/1411-I, M 47/1413-I, M 47/1431-I, M 47/1453-I, M 47/1473-I, M 47/1475-I, L 1SA, L 47/302, L 47/361, L 47/362, L 47/363, L 47/367, L 47/396, E 47/1319-I, E 47/1333-I, E 47/1334-I, E 47/1398-I, E 47/1399-I, E 47/1447-I, E 47/3205-I and E 47/3464-I.

2.2. As a result of the error identified above, to the extent the trial judge erroneously took into account the content of the native title rights and interests for calculating compensation for cultural loss (see ground 4 below) he further erred in considering that those rights and interests were rights of exclusive possession.

Compound interest

3. The trial judge erred in awarding compound interest on the economic loss (Reasons [524]). That erroneous award resulted from one or both of the following errors:

3.1. The trial judge erred in finding that it was open for the Court to award compound interest on the award of compensation for economic loss and failed to have proper regard to the principles set out in paragraphs [115]-[151] and [335]-[359] of the High Court's reasons in *Northern Territory v Griffiths* [2019] HCA 7; 269 CLR 1 (Reasons [524]).

3.2. The trial judge erred in any event in finding that such an award was open on the evidence (Reasons [524]).

Assessment of cultural loss

4. The trial judge's determination of compensation for cultural loss at \$150 million (Reasons [1219]) was erroneous or speaks of error as being manifestly excessive. That determination resulted from some or all of the following errors:



- 4.1. The trial judge purported to apply the principles established in *Griffiths* in relation to quantifying cultural loss but misconceived their relevance and effect.
- (a) The trial judge erred by having regard to the legal content of the native title rights and interests, including that those rights conferred exclusive possession. In doing so, the trial judge misdirected himself as to the relevance of *Griffiths* and *Davey v Northern Territory (No 5)* [2026] FCA 15 which his Honour distinguished on the ground that those cases involved non-exclusive rights only. The trial judge further erred by having regard to the effect of the non-extinguishment principle on the native title rights and interests in that assessment (Reasons [1206] – [1207]).
 - (b) The trial judge erred by including within the determined amount a component for aspects of loss of rights and duties of ownership (including by reference to the legal content of the native title rights and interests).
 - (c) The trial judge should have but failed to determine compensation for cultural loss by undertaking a subjective assessment of the particular and inter-related effects that the compensable acts had on the Yindjibarndi People’s spiritual connection to land and waters having regard to the content of their laws and customs.
 - (d) As a result of the errors identified in (a)-(c), the trial judge erred by failing to undertake the separate assessments of economic loss and cultural loss necessary to ensure that the Yindjibarndi people were compensated once for the same loss.
 - (e) The trial judge erred by having regard to a per hectare rate derived from *Griffiths* and *Davey* as “a point of comparison that may provide some normative standard when quantifying cultural loss” (Reasons [1196]).
 - (f) The trial judge failed to have proper regard to both *Griffiths* and *Davey* as relevant comparable authorities when identifying both the nature and extent of the Yindjibarndi People’s connection to land and waters and the effects of the compensable acts on that connection.
- 4.2. The trial judge otherwise erred by failing to make findings on material facts or give adequate reasons necessary to justify the cultural loss award.
- (a) The trial judge failed to make findings on material facts or give adequate reasons for proceeding on the basis that the Solomon Hub Project impacted places of “*high cultural significance*” (Reasons [1164]).
 - (b) The trial judge failed to give adequate reasons for awarding a sum that is 115 times greater than the sum awarded in *Griffiths* and 2.5 times greater than the sum awarded in *Davey*.



ORDERS SOUGHT

In the event that ground 1 is made out:

1. The appeal is allowed.
2. The Orders of the Federal Court dated 1 July 2026 are vacated.
3. The Compensation Application is dismissed.

Alternatively, if ground 1 is not made out but grounds 2 – 4 are made out:

1. The appeal is allowed.
2. Orders 3 and 4 of the Orders of the Federal Court dated 1 July 2026 are set aside.
3. The parties confer and supply to chambers by [insert date] draft minutes of order giving effect to the reasons of the Full Court of the Federal Court of Australia.

APPELLANT'S ADDRESS

The Appellant's address for service is:

Place: State Solicitor's Office
Level 24
David Malcolm Justice Centre
28 Barrack Street
Perth, WA, 6000

Email: a.warren@sso.wa.gov.au
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The Appellant's address is c/o State Solicitor's Office, Level 24 David Malcolm Justice Centre, 28 Barrack Street, Perth WA 6000 Australia

SERVICE ON THE RESPONDENTS

It is intended to serve this application on all Respondents.

Dated: 26 August 2026

A handwritten signature in blue ink, appearing to be "A. Warren", is written above a horizontal line.

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



Schedule

No. WAD of 2026

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

RESPONDENTS

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

Date: 26 August 2026