Form 19
Rule 9.32

Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

No. VID198 of 2026

Federal Court of Australia

District Registry: Victoria

Division: General

Banjima Native Title Aboriginal Corporation RNTBC

Applicant

State of Western Australia

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or 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: [Registry will insert time and date]

Place: Federal Court of Australia
Owen Dixon Commonwealth law Courts Building
305 William Street
Melbourne, Victoria, Australia 3000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Filed on behalf of (name & role of party) The Applicant
Prepared by (name of person/lawyer) Peter Gordon, Partner
Law firm (if applicable) Gordon Legal
Tel 03 9603 3000 Fax Not applicable
Email pgordon@gordonlegal.com.au
Address for service (include state and postcode) Gordon Legal, Level 5, 500 Bourke Street, Melbourne VIC 3000

Date:

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

Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicant claims:

1. 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 in respect of the Relevant Beneficiaries ~~and/or the Group Members~~;
2. an order and/or mandatory injunction requiring the State to abate the nuisance;
3. damages, including damages for loss of amenity;
4. equitable damages in lieu of an injunction and/or an order to abate the nuisance;
5. aggravated and exemplary damages;
6. such further or other relief as the Court considers just.

Questions ~~common to claims of group members~~

The questions of law or fact ~~common to the claims of the group members~~ (using terms defined in the Statement of Claim and referring to Sections thereof) are:

Key factual matters

1. Do the Applicant and Relevant Beneficiaries ~~group members~~ have the native title rights, and are they of the nature, alleged?

Liability

2. Has the Respondent substantially interfered (alternatively other than by a common and ordinary use of land and/or not conveniently and/or unreasonably) with the Applicant's and Relevant Beneficiaries' ~~group members'~~ enjoyment and/or exercise of their native title rights, and does it continue to do so, so as to be liable for a continuing nuisance?
3. Is the presence and spread of blue asbestos at and from the Asbestos Sources a common injury to the public, of which the Respondent knows or ought to know, and which the Respondent can abate, so as to be liable for a public nuisance? Have the Applicant and Relevant Beneficiaries ~~group members~~ suffered special damage beyond that of the public generally?

4. Is the Respondent liable in nuisance on the case?

Damage and relief

5. ~~Are~~ Is the Applicant in respect of the Relevant Beneficiaries ~~and group members~~ entitled to (i) declaratory relief, (ii) an order or mandatory injunction requiring the State to abate the nuisance and/or (iii) damages?

6. ~~Are~~ Is the Applicant in respect of the Relevant Beneficiaries ~~and group members~~ entitled to aggravated and exemplary damages?

~~Representative action~~

~~The Applicant brings this application as a representative party under Part IVA of the Federal Court of Australia Act 1976.~~

The Relevant Beneficiaries ~~group members~~ to whom this proceeding relates are persons:

(1) who are Banjima people;

(2) 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 *Native Title Act 1993* (Cth) (**NTA**) in *Banjima People v Western Australia (No 3)* [2014] FCA 201 and varied on appeal in in *Banjima People v Western Australia* [2015] FCAFC 84 (**native title rights**); and

(3) 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:

(a) the former Wittenoom Mine;

(b) the Eastern Gorge Tailings Dump;

(c) the former Colonial Mine;

(d) the Colonial Upstream Tailings Dump and/or the Colonial Downstream Tailings Dump;

(e) the former Yampire Mine;

(f) the Yampire Tailings Dump;

(g) the Wittenoom racecourse; ~~and/or~~

(ga) the Other State Places as defined in paragraph 94A of the Amended Statement of Claim;

(h) the former Wittenoom Gorge Airport; and/or

(a) areas within the Determination Area to which blue asbestos has spread from (a) to (h); and

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

(5) who have not in consequence suffered personal injury.

Applicant's address

The Applicant's address for service is:

Place: Gordon Legal, Level 5, 500 Bourke Street, Melbourne, 3000

Email: pgordon@gordonlegal.com.au

The Applicant's address is Level 1, 165 Adelaide Terrace, East Perth, Western Australia, 6004.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~24 February~~ 9 October 2026

Signed by Peter Gordon
Lawyer for the Applicant

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged**:**	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	14/10/2026 5:25:40 PM AEDT
Date Accepted for Filing:	16/10/2026 10:44:24 AM AEDT
File Number:	VID198/2026
File Title:	BANJIMA NATIVE TITLE ABORIGINAL CORPORATION RNTBC v STATE OF WESTERN AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

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.