

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



Sia Lagos

Registrar

Important Information

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



Statement of Claim

Federal Court of Australia
District Registry: Victoria
Division: General

No 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 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 **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 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).

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 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, Group Members must enter the Determination Area, including in some cases the Affected Area.
- 11. The exercise by 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 Midalco 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(1) 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**).

Mining Tenement	Particulars	
	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 1 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(1) 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	10 October 1988
MC4700025	Transferred 19 September 1978 to MBM	18 January 1979
MC4700044	Transitioned to PL47/130 20 January 1984 held by HPPL	11 October 1988

MC4700054 Transferred 19 September 1978 to 18 January 1979
MBM

MC4700314 Transferred 19 September 1978 to 18 January 1979
MBM

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 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(1) 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	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	20 January 1984
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 (which was transitioned to a prospecting licence on 20 January 1984 and then surrendered) on 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;

- (c) 20 July 1984 in respect of the tailings in the areas covered by Mineral Claim MC4700014; and
- (d) 11 April 1989 in respect of the tailings in the area covered by MC4700049.
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 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(1) 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;
 - (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 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 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.

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.

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 105:
 - (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 105, 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;
4. Western Australian Mines Inspector Adams in 1944 referred in a report to the “*dust menace*” at Wittenoom, which was a reference to the need to reduce dust levels in and around the Wittenoom Mine and Mill;
5. the Western Australian Assistant State Mining Engineer in 1944 referred in a report to the dangers of the dust being generated at Wittenoom Mine;

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.
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 114 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”;

3. on or about 10 November 2025, the State, through the Premier, the Honourable 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;
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 1948, Professor Eric Saint, a doctor with the Royal Flying Doctors, warned Dr Eric Cook of the Department of Public Health that the mining operations at Wittenoom were likely to give rise to the richest crop of asbestosis disease known to the world's medical literature;
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 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;
8. in 1988, in the Heys/Barrow proceedings against CSR and Micalco (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 *Western Australian* expressed concern about the use of asbestos tailings in Wittenoom due to the possible health consequences;
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 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 and 93, the State has taken no 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:

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;

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.
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**.

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 Group Members' fear of harm from blue asbestos

122. The Applicant and 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 105;
- (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 105; and
- (e) the high incidence of mesothelioma that exists amongst Banjima people.

123. In consequence, the Applicant and Group Members have held and continue to hold a reasonable fear and/or apprehension of harm to the health and wellbeing of 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 Sites:
- (a) each Asbestos Site will continue to be a source of the spread of blue asbestos as set out in paragraph 95 to 105 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 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 Group Members are reasonably afraid to enter due to fear of harm to their health and wellbeing from blue asbestos;
 - (b) the Applicant and 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 Group Members become reasonably afraid to enter due to fear of harm to their health and wellbeing from blue asbestos;
- (c) the 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 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 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 paragraph 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 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 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 Group Members' native title rights and is liable in nuisance on the case accordingly.

G.4 Loss and damage

139. The Applicant and 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 paragraph 125 to 126.

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 Group Members.

H Relief

141. The Applicant claims the following relief on its own behalf and on behalf of the 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 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;

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 and on behalf of the 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 and on behalf of the 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 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;
4. as at 1994, the State had known for some 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 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 Honourable Carmen Lawrence) in August 1992;
 - (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 Sites were on Crown land, which the State controlled and managed, as set out in paragraph 127 to 129, and the State was for this reason also responsible for them;
- 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;
- 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 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;
- 10. in the circumstances, the failure and decisions in 3 constitute a conscious, contumelious, contemptuous and/or outrageous disregard for the rights of the Banjima people, including the group members, and the Applicant and Group Members are entitled to damages to assuage 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

Sturt Glacken KC

John Gordon

David Heaton

Counsel for the Applicant

DATE: 24th February 2026

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

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Gordon Legal
Solicitors for the Applicant

Schedule A: Acts and activities of the State

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	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 a reference to the need to reduce dust levels in and around the Wittenoom Mine and Mill.

Item	Date	Act or activity
A.15	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, 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.
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.
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.

Item	Date	Act or activity
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	11 April 1989	Asbestos tailings located on the site of Mineral Claim MC4700049 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	<p>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”.</p> <p>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].”</p> <p>Report recommends the clean-up of asbestos tailings at the Asbestos Sites.</p>
A.69	4 November 1992	<p>North West Minister Ernie Bridge announces that all Government-owned buildings in Wittenoom will be demolished.</p>
A.70	February 2001	<p>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.</p> <p>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.</p> <p>No activities to remediate blue asbestos are undertaken.</p>
A.71	25 June 2006	<p>Kimberley, Pilbara and Gascoyne Minister Jon Ford announces relocation program for individuals living in Wittenoom.</p>
A.72	November 2006	<p>State engages engineering consultancy GHD to produce a report on remediation of the Asbestos Sources.</p> <p>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.</p>
A.73	June 2007	<p>State de-gazettes Wittenoom township.</p> <p>Township’s name is removed from official maps and road signs.</p>

Item	Date	Act or activity
A.74	29 November 2007	<p>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.</p> <p>Audit commences on 29 November 2007.</p> <p>Auditor recommends site be Classified as “Contaminated — Remediation Required” under the <i>Contaminated Sites Act 2003</i> (WA).</p>
A.75	28 January 2008	<p>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).</p>
A.76	October 2013	<p>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.</p>
A.77	October 2015	<p>GHD produces “Wittenoom Remediation Strategy Tailings Remediation Geotechnical Investigation Report” for State Department of Lands.</p>
A.78	December 2015	<p>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.</p>
A.79	December 2016	<p>GHD produces “Koodaideri Iron Ore Mine and Infrastructure Project — Mandatory Audit Report” for Pilbara Iron Company (Services) Pty Ltd.</p> <p>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.</p> <p>Report provided to the CEO of the Department of Public Service pursuant to Ministerial Statement No 999.</p> <p>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.</p>

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.

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