

# CLIENT ALERT

## FEDERAL COURT DISMISSES WONGATHA NATIVE TITLE CLAIM

Last week, Justice Lindgren handed down his decision in the Wongatha native title case. The Wongatha claim covered around 160,000km<sup>2</sup> of land in the Goldfields region of Western Australia, just south of Kalgoorlie and took in seven other overlapping claims.

### Claimant Groups not Authorised

Justice Lindgren dismissed the Wongatha claim (and the other overlapping claims to the extent of their overlap) on the basis that none of the claims were properly authorised under the Native Title Act (NTA). He noted that none of the claim groups identified to the full extent with the land the subject of the claims and that the groups were not recognised as landholding units under traditional Western Desert law and custom. Rather, the claimants were collections of individuals who had, for the purposes of making a group claim under the NTA aggregated their individual country areas.

The claims were an amalgamation of approximately 30 smaller overlapping claims and the claimants had previously been encouraged to amalgamate their claims following the amendments to the NTA in 1998 to streamline the related right to negotiate processes and to assist in the hearing of the claims.

It is more than likely that the claimant groups will appeal the decision and may seek a stay of the proceedings which would ensure that their right to negotiate rights continue under the NTA. Depending on any appeal lodged the decision to dismiss the claims, rather than make a determination that no native title exists, means that it is likely that smaller claims will be lodged over the area of the claim in the future.

### Implications for Other Claims

In addition, given the previous policy to encourage the amalgamation of claims we may see other claimants amending their applications and creating numerous smaller (potentially overlapping) applications to address the issues raised by Justice Lindgren in this case. While the State policy remains that grantee companies need only reach an agreement with one registered native title claim group this should not further complicate the right to negotiate process. However should this policy change we may see a return to the complications of negotiating with more than one claim group.

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## Implications for the Right to Negotiate Processes

At this stage it is not clear whether the State will modify its native title policy following the decision, or whether the claims will be removed from the Register of Native Title Claims (and lose the right to negotiate for any tenement applications made after that date). It is likely that any such policy decisions will be made following the lodgement of any appeal(s).

## Resolution – or lack thereof

Unfortunately, the decision provides little additional commentary or certainty as to the existence or otherwise of native title in the area and, does not determine any questions of extinguishment of native title. Given the likelihood of an appeal(s) from the decision it is likely that any determinations of this nature will be some time away.

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### **PULLINGER READHEAD LUCAS**

Level 2

50 Kings Park Road

West Perth WA 6005

Phone: (08) 9320 4999

Fax: (08) 9320 4900

Email: [info@prllawyers.com.au](mailto:info@prllawyers.com.au)

Internet: [www.prllawyers.com.au](http://www.prllawyers.com.au)