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**ASIC**

Australian Securities &  
Investments Commission

## **COURT MAKES ORDERS IN YANDAL LITIGATION**

Following its reasons for judgement published on 10 December 1999, the Full Federal Court has made orders in the Yandal litigation.

In June 1999, Justice Merkel found that Yandal Gold Pty Ltd, Edensor Nominees Pty Ltd (the trustee of the Gutnick Family Trust) and subsidiaries of Normandy Mining Ltd breached the takeover provisions of the Corporations Law in relation to the takeover of Great Central Mines Ltd. Justice Merkel ordered Edensor to pay shareholders \$28.5 million.

In December 1999, Justices Hill, Sundberg and Mansfield found that, while the Federal Court had jurisdiction to hear the matter, the Federal Court did not have power to make orders under the Corporations Law. No orders were made at that time.

The Full Federal Court has now made declarations that:

- the order by Justice Merkel that Edensor pay shareholders \$28.5million is invalid for want of jurisdiction; and
- the Federal Court had no jurisdiction to hear and determine the proceedings under the Corporations Law.

However, the Full Federal Court also stated that in their view the order that Edensor pay \$28.5 million is an ineffective judgement under the *Federal Courts (State Jurisdiction) Act(Vic) 1999*.

Therefore Edensor is still obliged to pay this sum to shareholders as if the order was made by the Supreme Court of Victoria.

The Federal Court did not make any order that the \$28.5 million held by it be released holding that, subject to any party seeking leave to appeal from its decision to the High Court, "the future course of these proceedings should be dealt with by the Supreme Court of Victoria, at least in respect of the order for payment".

In accordance with an undertaking ASIC has made to the Court, an application for special leave to appeal to the High Court is being pursued. Edensor's appeal to the Full Court of the Federal Court was otherwise stood over pending the outcome of the appeal to the High Court.

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