

# LOVETT ON BEHALF OF THE GUNDITJMARA PEOPLE V STATE OF VICTORIA

---

Federal Court of Australia, Victoria District Registry (North J)  
30 March 2007  
[2007] FCA 474

---

This matter involved the determination of a native title claim brought by John Maxwell Lovett, and others, on behalf of the Gunditjmarra People, pursuant to section 87 of the *Native Title Act 1983* (Cth) ('NTA').

Respondents in the matter totalled 170 individual parties encompassing State and Commonwealth Government interests as well as mining, farming, fishing, beekeeping and recreational land user interests.

The area in question extended over 140,000 hectares. It is bound on the west by the Glenelg River, to the north by the Wannon Rive and to the east by the Shaw River. It also includes Lady Julia Percy Island and a section of costal foreshore between the South Australian border and the township of Yambuk.

The procedural history of the litigation is complex. The determination of the existence of native title does not encompass the entire area initially sought. In particular, the area labelled Schedule 3 (comprising 7600 hectares) contained no native title as the parties agreed that title had been wholly extinguished.

The Court noted that in making a determination under section 87 its primary consideration is whether there is an agreement, and whether it was freely entered into on an informed basis: *Nangkiriny v State of Western Australia* (2002) 117 FCR 6; [2002] FCA 660; *Ward v State of Western Australia* [2006] FCA 1848. Having satisfied itself that this threshold had been met, and that the Gunditj Mirring Traditional Owners Aboriginal Corporation would act as trustee over the determined area under section 56(2) of the NTA, the Court consented to the agreement reached by the parties.

As such, the native title determined to exist in the 133,000 hectare Native Title Area, defined in Schedule 1, consists of non-exclusive rights to access and remain on the land; to camp on the land and waters of the high water mark; to the use and enjoyment of the Native Title Area; the right to take land and water resources (for domestic and ordinary use); and the right to protect places and areas of importance (without resort to unlawful physical force). These rights do not extend to minerals as defined in the *Mineral Resources Development Act 1990* (Vic), petroleum as defined in the *Petroleum Act 1998* (Vic) or groundwater as defined in the *Water Act 1989* (Vic).

*The full text of this determination is available at: <[http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal\\_ct/2007/474.html](http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal_ct/2007/474.html)>.*