



National
Native Title
Tribunal



Do you need more information?

National Native Title Tribunal

GPO Box 9973
in your capital city or
Freecall 1800 640 501
Website www.nntt.gov.au

Native Title Services Victoria

PO Box 431
North Melbourne Victoria 3051
www.nts.v.com.au

Prescribed Body Corporate

Gunditj Mirring Traditional Owners
Aboriginal Corporation
c/- Native Title Services Victoria
PO Box 431
North Melbourne VIC 3051

**For a copy of the judgement and
determination**

Federal Court of Australia
Website www.fedcourt.gov.au
Search under 'Judgements'



The Gunditjmara People celebrate the consent determinations.

The Gunditjmara People's native title determinations

30 March 2007
South-west Victoria

This is provided as general information and should not be relied upon as legal advice for a particular matter. Any words and phrases not defined in this information have the meaning given to them in the *Native Title Act 1993* (Cwth).

Resolution of native title issues over land and waters.

The Gunditjmara People's native title determinations

The Federal Court of Australia made two consent determinations on 30 March 2007 recognising the Gunditjmara People's non-exclusive native title rights and interests over the majority of almost 140,000 hectares of vacant Crown land, national parks, reserves, rivers, creeks and sea north-west of Warrnambool in Victoria's western district.

This outcome marks Australia's 100th registered native title determination. It's only the second time the Federal Court has recognised native title through a consent determination in Victoria, a state where two centuries of non-indigenous land holdings have made native title difficult to achieve.

What is native title?

A set of rights and interests over land or waters where Aboriginal and Torres Strait Islander groups have practised traditional laws and customs since before the time of European occupation and continue to do so.

Under the *Native Title Act 1993* (Cwlth) Aboriginal and Torres Strait Islander people can apply to the Federal Court to have their native title recognised under Australian law. Native title cannot be claimed over freehold title.

A native title determination is a decision by a court or recognised state or territory body that native title does or does not exist in an area. A consent determination can be made if all parties reach an agreement about native title through mediation.

"Without goodwill and good people the negotiations would not have succeeded. The Court pays tribute to those who participated in the mediation and were responsible for this outcome."
— Justice Tony North



Gunditjmara representatives John Lovett and June Gill at the consent determinations.

The determinations

Over 400 individuals and groups with interests in the claimed area became parties to the claim and participated in negotiations. The majority of these two claims are now finalised through these determinations.

During mediation the State of Victoria reached an indigenous land use agreement (ILUA) with the Gunditjmara People that establishes how they will exercise their rights and interests in the determination area. An ILUA is an agreement about the use and management of land and waters made between one or more native title groups and other people.

In addition, the State Government and the Gunditjmara reached agreements that involve:

- cooperative management of Mt Eccles National Park and the establishment of a joint body, the Budj Bim Council, to oversee daily management
- transferring freehold title of the Lake Condah Reserve to the Gunditj Mirring Traditional Owners Aboriginal Corporation.

The Gunditjmara native title determinations

On 30 March 2007 the Federal Court of Australia made two consent determinations over almost 140,000 hectares north-west of Warrnambool, recognising the Gunditjmara People's native title rights over the majority of the area.

The determination area is bounded on the west by the Glenelg River, and to the north by the Wannon River. It covers national parks including the Lower Glenelg National Park, Mt Richmond National Park and Mt Eccles National Park as well as Lake Condah and State Forests including Cobboboonee State Forest, Dunmore State Forest and Hotspur State Forest.

200 years recognised in determinations

In an outdoor courtroom in Mt Eccles National Park – not far from where their ancestors once farmed eels for food and trade – the Gunditjmara People's rights to their traditional lands were recognised for the first time under Australian law.

Describing it as a step towards reconciliation, Justice North of the Federal Court of Australia made two consent determinations recognising the Gunditjmara People's non-exclusive native title rights over the majority of their claimed area.

"By doing justice to the Gunditjmara People the State, the Commonwealth and the other respondents have taken a step to right past wrongs and lay a basis for reconciliation between Indigenous and non-Indigenous Australians."

— Justice Tony North

The determinations followed agreements negotiated between groups with interests in the Gunditjmara People's claimed area to finalise the majority of the group's two native title claims.

"We have never been in any doubt about our ownership of this beautiful place."

— Gunditjmara representative, Johnnie Lovett

Lake Condah – now grass and stone – was once the site of one of Australia's earliest and largest aquaculture ventures operated by the ancestors of the Gunditjmara People – a large settled Aboriginal community.

The Gunditjmara People were able to provide evidence that they were descended from this community and had maintained an ongoing connection to their country.

Having reached this successful outcome through mediation and agreement, the parties now aim to resolve the remainder of the claimed area through mediation.

The recognised native title rights and interests include the non-exclusive right to:

- have access to or enter and remain on the land and waters
- camp on the land and waters landward of the high water mark of the sea
- use and enjoy the land and waters
- protect places and areas of importance on the land and waters
- take resources of the land and water.

Where the native title rights and interests are inconsistent with those of the other parties, the native title rights and interests have no effect.



On the day: Gunditjmara dancers, with Justice Tony North, at the consent determinations.

Determination and ILUA areas

140,000 hectares of vacant Crown land, national parks, reserves, rivers, creeks and sea north-west of Warrnambool (Part A).

The determination area does not include any private freehold land except where the *Native Title Act 1993* (Cwlth) provides that land may be included. The ILUA covers several parcels of land in the area where the Court recognised that native title exists.



Case name:

Lovett on behalf of the Gunditjmara People v State of Victoria

How to say the claim name:

Gourn-ditch-mara

Rights to coexist:

The native title rights and interests will co-exist with the other parties' rights and interests, which are protected under the determinations.

Parties to the application:

27 interest groups including:

- State of Victoria
- Commonwealth Government
- miners
- farmers
- fishing license holders
- beekeepers
- recreational land users.

Stepping stones

1996-1999	Six applications lodged with the Federal Court
1999	Six applications combined to form one application, 'Gunditjmara #1'
August 2002	Federal Court refers claim to Tribunal for mediation
August 2002- June 2005	Tribunal conducts mediation conferences between claimants and State of Victoria and also with other parties
July 2004	Lake Condah/Mt Eccles area included in the National Heritage List
June 2005	Federal Court starts conducting mediation between parties
June 2006	Another application lodged, 'Gunditjmara #2' over parcels of unclaimed Crown land within the boundary of the first claim
January 2007	Federal Court split claim into two parts, 'Part A' which included 96.5 per cent of the claim and 'Part B' which included the remainder
March 2007	Gunditjmara People and State of Victoria sign in-principle agreement
30 March 2007	Federal Court sits in Mt Eccles National Park and makes consent determination over 'Part A'.

