



4 March 2010

Australian Deer Association  
PO Box 464  
CROYON VIC 3136

**Victoria and Tasmania  
Registry**

Level 8, 310 King Street  
Melbourne VIC 3000  
GPO Box 9973  
Melbourne VIC 3001  
Telephone (03) 9920 3000  
Facsimile (03) 9606 0680

Reference: VC09/1

Dear Sir/Madam

**Native Title Determination Application — Gunai/Kurnai People #2  
Federal Court Application No — VID482/2009  
Notification Day — 24 March 2010**

The Gunai/Kurnai People have asked the Federal Court to recognise their traditional rights and interests in the area described below. A summary of the native title claim is attached to this letter.

**Background**

This is the second native title claim brought by the Gunai/Kurnai People. Their first claim was lodged in 1997 and identified specific parcels of Crown Land within the external boundary shown on the map below. This second claim is over parcels of Crown Land within the external boundary that were unintentionally omitted when the first claim was lodged or only became available for claim after the first claim was lodged.



**Location:** The claim area is located in Gippsland, eastern Victoria and covers specific parcels of Crown land within an area of about 39,100 sq kms as shown on the map.

The application falls within the local government authorities of the following Shire Councils: Alpine, Baw Baw, Cardinia, East Gippsland, La Trobe, Mansfield, Mount Baw Baw Alpine Resort (unincorporated), Mount Hotham Alpine Resort (unincorporated), South Gippsland, Wangaratta, Wellington and Yarra Ranges.

### Why are we writing to you?

The Registrar of the National Native Title Tribunal must notify people who have an interest in an area over which a native title claim has been made. The records of the Victorian Government show that your interest(s) (listed below) fall within the claim area:

Licence, lease or permit type	Licence, lease or permit ID
Recreation Use	N/A

### Details of this application

Please note that the Tribunal's Registrar has not accepted this claim for registration. Although this application has not been accepted for registration, it may still proceed to mediation in the Tribunal and/or determination in the Federal Court. For your information, each native title claim has to be registration tested by the Registrar of the Tribunal. If an application meets all the conditions of the registration test, it must be included in the Register of Native Title Claims. If included in the Register, the native title claimants have certain procedural rights.

### Will you lose your rights because of this application?

No. The law protects anyone who has existing valid leases, licences or permits over the area. Further, native title cannot be claimed on private freehold land. You may wish to have a look at the attached brochure which relates to a determination made by the Court in 2007 that native title exists over an area in the Western District claimed by the Gunditjmarra People. The brochure explains the relationship between the recognised native title rights and interests held by others.

### What happens next?

Settlement negotiations between the State of Victoria and the Gunai/Kurnai People (in relation to the Gunai/Kurnai # 1 claim) are currently on foot. Once the Federal Court decides who the parties for the Gunai/Kurnai # 2 claim will be, such parties will form part of the proceedings and will have an opportunity to participate in this process.

The State and the Gunai/Kurnai People have advised the Federal Court that they hope to reach agreement in relation to the two Gunai/Kurnai applications in mid 2010. Other parties to the two Gunai/Kurnai applications will soon have an opportunity to consider what is proposed. If all parties agree to a determination of native title, then the Court has the power to make a determination by consent. If, alternatively, everyone involved in the native title application cannot agree to a determination of native title, then the Court may be required to resolve the matter (e.g. by way of a trial).

### If you want to be involved, what do you do?

You can join in the application. This is called "becoming a party" to the application. This will give you an opportunity to have your say in mediation and, if necessary, in court to make sure your interests are taken into account.

If you want to become a party to this matter, you must write to the District Registrar of the Federal Court, 305 William Street, Melbourne VIC 3000, on or before 23 June 2010. You can use the enclosed form (*Form 5*) to do this. The attached guide to filling in the form sets out more details.

Before applying to the court to become a party we suggest that you check that your interests are not already represented in this matter by a peak body such as the Victorian Farmers Federation or another organisation. This can be done by contacting your peak industry body or ringing the Tribunal on the numbers below.

#### **What will it cost?**

It does not cost anything to become a party on or before 23 June 2010. After 23 June 2010 you will need the Federal Court's permission before you can become a party. You may have to pay a fee.

#### **Financial Assistance**

If you decide to become a party to this application, financial assistance may be available from the Commonwealth Attorney-General's Department. Before you make a decision to apply for assistance, you should check whether a representative organisation has already applied for a grant of financial assistance that you may be able to access. For instance, if you are a member of a peak body, you may not need to prepare an individual application for financial assistance. For more information, please contact the Legal Assistance Branch, Attorney-General's Department, telephone (02) 6250 6770 or fax (02) 6250 5934, or online at [www.ag.gov.au](http://www.ag.gov.au).

Please note: you still need to complete the Form 5 even if a representative organisation has obtained financial assistance on your behalf.

#### **Only one determination of native title per area**

It is important to make sure that any Indigenous person who claims native title in the area becomes a party to this application. For this reason, the law says that you must be given the following information, whether or not it is relevant to you:

*Under the Native Title Act 1993 (Cwlth) there can be only one determination of native title for a particular area. If someone with native title rights and interests does not become a party to this application, there may be no other opportunity for the Federal Court, in making its determination, to take into account those native title rights and interests in relation to the area concerned.*

#### **How do you get more information or help?**

If you would like general information about native title claims, you may wish to visit our website at [www.nntt.gov.au](http://www.nntt.gov.au). You can get specific information about this application by calling me, Nadja Mack, as the Case Manager for this application, on freecall 1800 640 501 or on the numbers below.

Yours sincerely



**Nadja Mack**  
**Senior Case Manager**  
Tel: (03) 9920 3018  
Fax: (03) 9606 0680  
Email: [Nadja.Mack@nntt.gov.au](mailto:Nadja.Mack@nntt.gov.au)

**Enclosed:**  
Application Summary  
Form 5  
Gunditjmara brochure

FEDERAL COURT OF AUSTRALIA  
REGISTRY

(Insert State where filing)

GENERAL DIVISION

Form 5  
Native Title Act 1993

Notice of Intention to Become  
a Party to an Application

To: **The District Registrar  
Federal Court of Australia**

**1. Name of Native Title Determination Application:**

*Insert the name of the Native Title Determination Application as shown on the notification advertisement in the newspaper or in the letter received from the National Native Title Tribunal.*

**2. Federal Court File Number:**

*Insert the Federal Court file number. This is shown on the notification advertisement or in the letter from the National Native Title Tribunal.*

**3. Name of person, company or organisation wishing to become a party:**

*Insert the name of the person/s, company or other organisation wishing to become a party. If a person, write the name in full, initials are not sufficient.*

**4. Address of person, company or organisation wishing to become a party:**

*Insert the address of the person(s), company or organisation wishing to become a party.*

**5. Details of interest claimed:**

*Describe the nature of your interest/s and the manner in which it/they may be affected by a Native Title Determination.*

*Documentary evidence should be supplied. For example, if you hold a lease or licence in respect of the claim area please attach to this Form a copy or photocopy of that lease or licence. Identify the type of interest and its location in the claim area.*

I [or We] give notice under paragraph 84(3)(b) of the Act that I [or we] want to be a party in relation to the application under section 61 of the Act. The basis on which I [or we] want to become a party is \*:

\* More information can be provided and labelled "Attachment A"



# NATIONAL NATIVE TITLE TRIBUNAL

## Claimant Application Summary

<b>Application numbers</b>	Federal Court number: VID482/09 NNIT number: VC09/1
<b>Application name</b>	Gunai/Kurnai People (Gunai/Kurnai # 2)
<b>Name of body where application filed</b>	Federal Court of Australia
<b>Date application filed</b>	29/06/2009
<b>Current stage(s)</b>	Pre Notification
<b>Registration information</b>	<i>Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.</i>  <b>Registration test status:</b> Not Accepted for registration
<b>Applicants</b>	Mrs Gwen Atkinson, Mrs Sheila Baksh, Mrs Beryl Booth, Mrs Rita Watkins, Mr Richard Young, Mrs Shirley Foster, Ms Rhoda Green, Mrs Margaret Donnelly, Mrs Lorraine Sellings, Ms Sandra Patten, Mr Jamie Thomas, Ms Julie Mongta, Ms Lynette Walsh
<b>Address for service</b>	Native Title Services Victoria Limited 642 Queensberry Street (PO Box 431) NORTH MELBOURNE VIC 3051 Phone: 03 9321 5300 Fax: 03 9326 4075
<b>Pers ons claiming to hold native title</b>	<p>This Application is made jointly on behalf of the Aboriginal people who are the custodians of lands owned traditionally by peoples known as the Gunai/Kurnai people 'native title claim group'.</p> <p>A person will be a member of the native title claim group if they satisfy the following criteria:</p> <p>The person is a descendant of the native title claim group Ancestors, or has acquired responsibilities of custodianship through the native title claim group Ancestors. The native title claim group Ancestors were, in accordance with the system of rules observed by them, the custodians of the Application area from a time before the arrival of non-indigenous people. A person is a descendant from the native title claim group Ancestors if they have a blood line connection. A person has acquired responsibilities of custodianship if the elders descendant from the native title claim group Ancestors recognise that this is so. The elders recognise that this is so by meeting and discussing the matter and making a decision. In making this decision the elders may have regard to length of residence on country, participation in life of the native title claim group, marriage into the native title claim group, taking and being accorded responsibility by the native title claim group for country.</p> <p>The native title group Ancestors are listed in Attachment A.</p>
<b>Native title rights and interests claimed</b>	Under the traditional laws acknowledged and the traditional customs observed by the applicants, the native title claim group possess the following rights and interests in the land and waters the subject of the application ("the land and waters"):

### 1 Exclusive Possession

The rights and interests possessed by the applicants under the traditional laws acknowledged and traditional customs observed by them confer on them possession, occupation, use and enjoyment of the land and waters to the exclusion of all others.

The applicants seek a determination that the native title rights and interests confer possession, occupation, use and enjoyment of the land and waters to the exclusion of all others, subject to the rights validly granted by the Crown pursuant to statute to others to possess, occupy, use or enjoy the land or waters.

### 2 Ownership

The right and interest of possession, occupation, use and enjoyment of the land and waters.

The right to be acknowledged as the traditional Aboriginal owners (the indigenous owners, or the owners according to traditional law and custom) of the land and waters.

### 3 Right to natural resources

The right and interest of ownership of the natural resources of the land and waters, and the right to take, use and enjoy those resources.

The natural resources of the land and waters includes, but is not limited to, animals, birds, plants, fish, marine animals, shellfish, timber, water, ochre, stone, minerals and subsurface materials.

### 4 Right to trade

The right to trade in the natural resources of the land and waters by exchange, barter, sale or otherwise.

### 5 Right to make decisions

The right to make decisions about the use of the land and waters in accordance with traditional law and customs.

This right includes the right to care for the land and waters, to maintain the environmental health of the land and waters, and to protect the land, waters and the natural resources of the land and waters from damage or harm.

### 6 Right to give or refuse access

The right to give or refuse permission to have access to the land and waters, or to occupy, use or enjoy the land and waters, or to use and enjoy the natural resources of the land and waters.

### 7 Protection of heritage

The right to protect places and areas of importance in the land and waters. Such places include places of significance to the applicants, places of spiritual significance, places of historical and cultural significance, burial grounds, places that record the presence of the applicants' ancestors including scarred trees, camping areas, middens.

### 8 Management of spiritual business

The right to manage the spiritual business and to safeguard the cultural knowledge associated with the land and waters.

This includes the right to the cultural knowledge relating to the land and waters, to perform ritual relating to the land and waters, to teach and transmit the knowledge, ritual and cultural heritage relating to the land and waters, to possess sacred objects relating to the land and waters.

### 9 Transmission of Rights

The right to inherit and dispose of our land and waters in accordance with our laws and

	<p>customs.</p> <p>10 Cultural and Intellectual Property Rights</p> <p>The right to own, control and manage our cultural and intellectual property in accordance with our laws and customs.</p>
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<p><b>Area</b></p>	<p><b>Jurisdiction:</b> Victoria</p> <p><b>Location:</b> The areas in the application include Crown land, inland and coastal waters in the Gippsland Region of eastern Victoria.</p> <p><b>Local government region(s):</b> Wellington Shire Council, East Gippsland Shire Council, Alpine Shire Council, Yarra Ranges Shire Council, South Gippsland Shire Council, Latrobe City Council, Cardinia Shire Council, Mansfield Shire Council</p> <p><b>Representative A/TSI body(s):</b> Native Title Services Victoria Research Unit</p> <p><b>Land/water and/or sea:</b> Land/Water and Sea</p> <p><b>Area covered by the claim (as detailed in the application):</b> Information identifying the boundaries of:</p> <p>a) The area covered by the application;</p> <p>The area covered by the application ("the Claim Area"), subject to the paragraphs below, is the lands and waters comprised in so much of each of the portions or part of the portions that lie within the external location boundary described in Attachment B that is not already claimed in Gunai Kurnai Native Title Determination Application VG6007 of 1998.</p> <p>The external location boundary of the Claim Area is shown on the map in Attachment C.</p> <p>In the event of any inconsistency between the description of the external location boundary in Attachment B and map of the external location boundary in Attachment C, the description in Attachment B shall prevail.</p> <p>For the purposes of section 61A(4) of the Native Title Act 1993, the applicant relies on sections 47A and 47B of the Native Title Act 1993 to the maximum extent possible. However, until a detailed tenure analysis has been completed, the areas to which sections 47A and 47B apply can only be described in the general terms set out below.</p> <p>Section 47A of the Native Title Act 1993 applies to so much of the area that is the subject of this application and:</p> <p>(a) that, when this application is made, is the subject of a freehold estate, lease or vesting of the kind mentioned in section 47A(1)(b)(i) or is an area of the kind mentioned in section 47A(1)(b)(ii); and</p> <p>(b) in respect of which native title rights and interests have been extinguished by a grant or vesting of the kind mentioned in section 47A(1)(b)(i), the doing of a thing that resulted in a holding or reservation of the kind mentioned in section 47A(1)(b)(ii) or the creation of any other prior interest in relation to the area.</p> <p>Section 47B of the Native Title Act 1993 applies to so much of the area that is the subject of this application and:</p> <p>(a) that, when this application is made, is not:</p> <p>(i) covered by a freehold estate or a lease; or</p> <p>(ii) covered by a reservation, proclamation, dedication condition, permission or authority, made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth or the State under which the whole or a part of the land or waters in the area is to be used for public purposes or for a particular purpose; or</p> <p>(iii) subject to a resumption process as defined in section 47B(5)(b) of the Act; and</p> <p>(b) in respect of which native title rights and interests have been extinguished by the creation of any prior interest in relation to the area.</p> <p>b) Any areas within those boundaries that are not covered by the application.</p> <p>The following areas are not covered by the application, except where any extinguishment by the acts mentioned is required by sections 47A or 47B of the Native Title Act 1993 to be disregarded:</p> <p>(a) Any area that, when the application is made, is subject to any of the following kinds of acts as they are defined in either the Native Title Act 1993, as amended (where the act in</p>
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	<p>question is attributable to the Commonwealth), or Land Titles Validation Act 1994 (Vic), as amended, (where the act in question is attributable to the State of Victoria):</p> <ul style="list-style-type: none"> <li>(i) Category A past acts;</li> <li>(ii) Category A intermediate period acts;</li> <li>(iii) Category B past acts that are wholly inconsistent with the continued existence of any native title rights or interests;</li> <li>(iv) Category B intermediate period acts that are wholly inconsistent with the continued existence of any native title rights or interests;</li> </ul> <p>(b) Any area in relation to which a previous exclusive possession act under section 13H or 13I of the Land Titles Validation Act 1994 (Vic) was done and that act is attributable to the State of Victoria;</p> <p>(c) Any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B(7)) of the Native Title Act 1993 was done in relation to the area and the act was attributable to the Commonwealth; and</p> <p>(d) Any area where native title rights and interests have otherwise been wholly extinguished;</p> <p>(e) Specifically, any area where there has been:</p> <ul style="list-style-type: none"> <li>(i) An unqualified grant of an estate in fee simple;</li> <li>(ii) A public work as defined in section 253 of the Native Title Act 1993; <ul style="list-style-type: none"> <li>or</li> </ul> </li> <li>(iii) An existing dedicated public road.</li> </ul>
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<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. List of Gunai/Kurnai ancestors, Attachment A of the Application, 1 page - A4, Attached 30/06/2009.</li> <li>2. External Location Description, Attachment B of the Application, 4 pages - A4, Attached 30/06/2009.</li> <li>3. Map showing boundary, Attachment C of the Application, 1 page - A4, Attached 30/06/2009.</li> <li>4. List of s29 notices, Attachment I of the Application, 3 pages - A4, Attached 30/06/2009.</li> <li>5. Draft order, Attachment J of the Application, 3 pages - A4, Attached 30/06/2009.</li> <li>6. Authorisation affidavits, Attachment R of the Application, 40 pages - A4, Attached 30/06/2009.</li> </ol>
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<b>NNTT contact details</b>	<p><b>Case manager:</b> Nadja Mack</p> <p><b>Address:</b> National Native Title Tribunal Level 8 310 King Street MELBOURNE VIC 3000</p> <p>GPO Box 9973 MELBOURNE VIC 3001</p> <p><b>Phone:</b> (03) 9920 3000 Freecall 1800 640 501</p> <p><b>Fax:</b> (03) 9606 0680</p> <p><b>Web page:</b> www.nntt.gov.au</p>
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National  
Native Title  
Tribunal



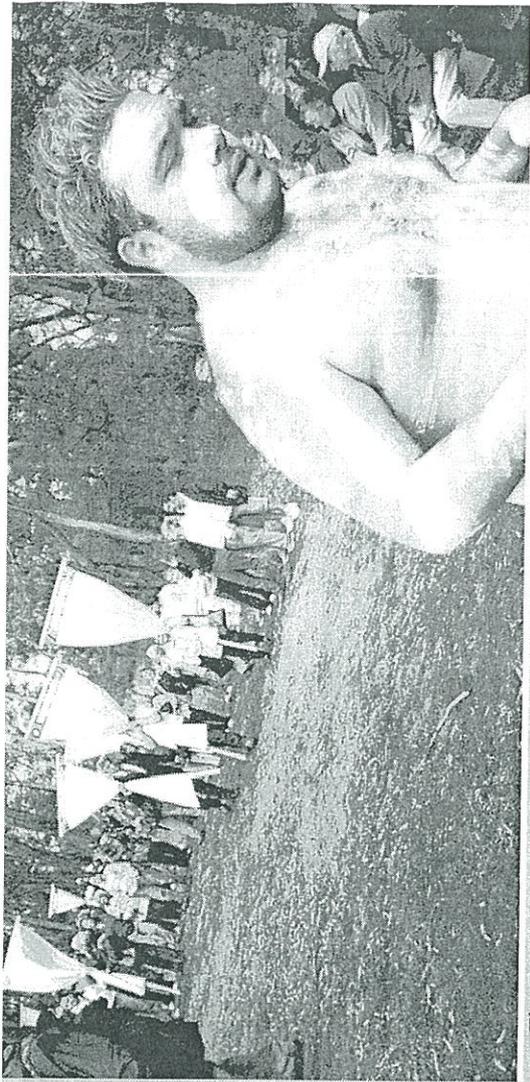
*Do you need more information?*

National Native Title Tribunal  
GPO Box 9973  
in your capital city or  
Freecall 1800 640 501  
Website [www.nntt.gov.au](http://www.nntt.gov.au)

Native Title Services Victoria  
PO Box 431  
North Melbourne Victoria 3051  
[www.nts.vic.com.au](http://www.nts.vic.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](http://www.fedcourt.gov.au)  
Search under 'Judgements'



*The Gunditjmirra People celebrate the consent determinations.*

# The Gunditjmirra People's consent 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* (Cwlth).

*Resolution of native title issues over land and waters.*

# The Gunditjmarra People's native title determinations

The Federal Court of Australia made two consent determinations on 30 March 2007 recognising the Gunditjmarra 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



*Gunditjmarra representatives John Lorett 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 Gunditjmarra 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 Gunditjmarra 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 Ginditjmarara 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 Gunditjmarara 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 Gunditjmarara 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 Gunditjmarara People's non-exclusive native title rights over the majority of their claimed area.

"By doing justice to the Gunditjmarara 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 Gunditjmarara People's claimed area to finalise the majority of the group's two native title claims.

"We have never been so proud of our ownership of this beautiful place."

— Gunditjmarara representative  
Ishmael Brown

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 Gunditjmarara People – a large settled Aboriginal community.

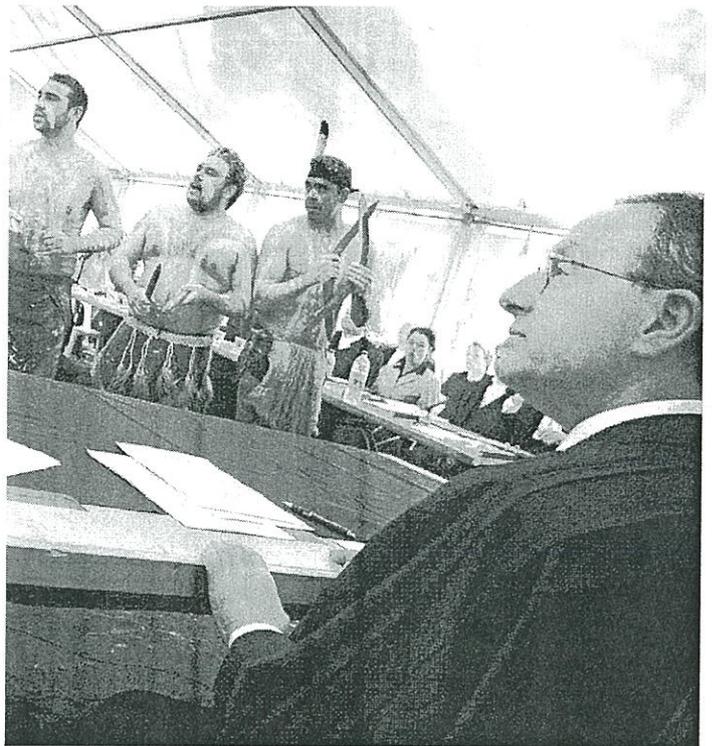
The Gunditjmarara People were able to provide evidence that they were descended from this community and had maintained an ongoing connection to their country.

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.

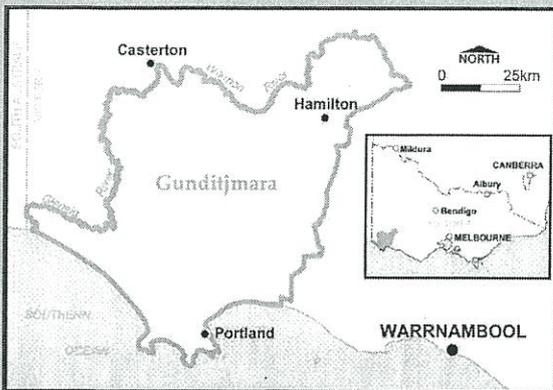


On the day: Gunditjmarara dancers, with Justice Tony North, at the consent determinations.

## 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 Gunditjmarara 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, 'Gunditjmarara #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, 'Gunditjmarara #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	Gunditjmarara 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'.

 National  
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Freecall 1800 640 501 [www.nntt.gov.au](http://www.nntt.gov.au)