

MINISTER FOR ENVIRONMENT, HERITAGE AND
THE ARTS
Applicant

ROCKY LAMATTINA AND SONS PTY LTD
First Respondent

ROCCO LAMATTINA
Second Respondent

APPLICATION

This is a matter within the original jurisdiction of the Federal Court of Australia being proceedings for:

- civil penalties under sections 481 and 494 of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act)
- injunctions under section 475 of the Act; and
- declarations under section 21 of the *Federal Court of Australia Act 1976*;

in relation to alleged contraventions of sections 18, 484 and 494 of the Act.

The legislative basis for the Court's jurisdiction to hear the Application and to grant the relief sought is to be found in sections 475, 481 and 494 of the Act, sections 19, 21 and 23 of the *Federal Court of Australia Act 1976* and paragraph 39B(1A)(c) of the *Judiciary Act 1903*.

A. DETAILS OF CLAIM

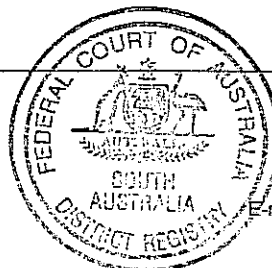
On the grounds stated in the accompanying Statement of Claim, the Applicant claims:

DECLARATIONS

1. A declaration that the First Respondent (RLSPL), by causing the clearance of native vegetation from the property known as "Acacia Downs" and more properly described as Certificate of Title Volume 5400 Folio 622 Sections 324, 325, 326, 327 and 328 in the Hundred of Hynam in the State of South Australia (**the property**) during September and October 2004, took an action likely to have had a significant impact on a listed threatened species included in the endangered category, namely the Red Tailed Black Cockatoo (*Cayptorhynchus banksii graptogyne*) in contravention of section 18(3) of the Act.

Filed on behalf of the Applicant by:

Australian Government Solicitor
Level 18, 25 Grenfell Street
Adelaide SA 5000
DX 105 Adelaide



Contact: Kate Sullivan

File ref: 06086640

Telephone: 08 8205 4534

Facsimile: 08 8205 4499

E-mail: kate.sullivan@ags.gov.au

2. A declaration that the Second Respondent, in his capacity as a director of RLSPL and by identifying the native vegetation to be cleared from the property and directing an employee of RLSPL to carry out the clearance of the vegetation:

2.1. aided, abetted, counselled or procured a contravention of a civil penalty provision;
and

2.2. was directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision

in contravention of section 484 of the Act.

3. Further or in the alternative to paragraph 2, a declaration that the Second Respondent, in his capacity as a director of RLSPL and by identifying the native vegetation to be cleared from the property and directing an employee of RLSPL to carry out the clearance of the vegetation:

3.1. knew or was reckless or negligent as to whether RLSPL contravened the Act,

3.2. was in a position to influence the conduct of RLSPL in relation to the clearance;
and

3.3. failed to take all reasonable steps to prevent the clearance

in contravention of section 494(1) of the Act.

INJUNCTIONS

4. An injunction restraining RLSPL by itself, its servants, agents or otherwise howsoever, from engaging in conduct in contravention of the Act.

5. An injunction restraining the Second Respondent by himself, his servants, agents or otherwise howsoever, from engaging in conduct in contravention of the Act.

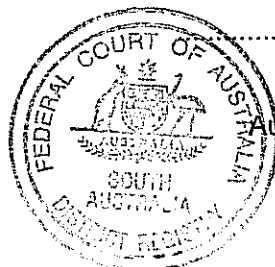
OTHER ORDERS

6. Civil penalties.

7. Costs.

8. Such further or other orders pursuant to section 475(3) of the Act that is in the opinion of the Court desirable.

Date: 19th December 2007



S. J. Court

Sarah Court
A solicitor employed by
Australian Government Solicitor
Solicitor for the Applicant

B. NOTICE TO RESPONDENTS

To the Respondents:

Rocky Lamattina and Sons Pty Ltd
3916 Hattah-Robinvale Road
WEMEN VIC 3549

Rocco Lamattina
3916 Hattah-Robinvale Road
WEMEN VIC 3549

This application has been set down for the time and place stated below. If you or a legal practitioner representing you do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

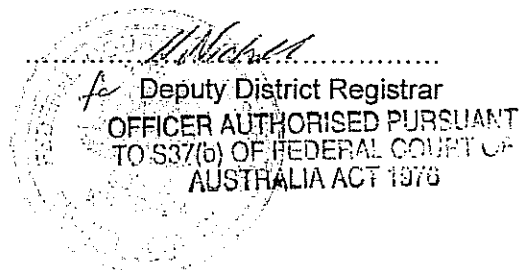
- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing: *Tuesday, 22 January 2008 at 9:30am*

Place: Federal Court of Australia
Level 5
3 Angas Street
ADELAIDE SA 5000

Date: **19 DEC 2007**



C. FILING AND SERVICE

This application is filed by Australian Government Solicitor for the:

Minister for Environment and Water Resources whose address for service is:

C/- Australian Government Solicitor
Level 18
25 Grenfell Street
ADELAIDE SA 5000

The Applicant's address is:

C/- Australian Government Solicitor
Level 18
25 Grenfell Street
ADELAIDE SA 5000

It is intended to serve this application on each person listed below:

Rocky Lamattina and Sons Pty Ltd

Rocco Lamattina