

Claim group membership criterion - descent from a known ancestor

Aplin on behalf of the Waanyi Peoples v Queensland [2010] FCA 625

Dowsett J, 18 June 2010

Issue

The separate questions determined in this case were whether a particular person known as Minnie (*Mayabuganji*) was Waanyi and whether her descendants should be included in the native title claim group for a claimant application made on behalf of the Waanyi People. The ‘crux of the ... problem’ (i.e. what it meant to say a person must be ‘a biological descendant of a known Waanyi person’) was that the parties ‘tended to assume that biological descent ... is an ascertainable fact, capable of being known with certainty’ when it actually ‘more likely to be a matter of belief or opinion’ absent DNA or other scientific evidence. Therefore, what mattered was ‘whose belief or opinion is relevant’ — at [83].

Justice Dowsett was inclined to the view that:

[A] person who has not previously been recognized as being Waanyi [such as one of Minnie’s descendants] must demonstrate that he or she identifies as Waanyi, either by assertion or by virtue of the way in which he or she conducts him- or herself. Living according to Waanyi laws and customs may be sufficient. When a person has one Waanyi and one non-Waanyi parent, it may be sufficient that the person has not chosen to abandon Waanyi identity. When a person is born of two Waanyi parents the question of self-identification may never arise. Only in this very wide sense, it is necessary to identify oneself as Waanyi or assert such affiliation — at [266].

It was more difficult to answer the question about whether Minnie was a ‘known Waanyi person’. It was found as a matter of fact that Minnie ‘identified as a Waanyi person’ and ‘was accepted by Waanyi people at Burketown and at Lawn Hill [respectively in and near the claim area] as being Waanyi’ during her lifetime, i.e. from circa 1888 to 1943.

However, whether Minnie’s descendants were entitled to ‘Waanyi identity’ depends upon the claim group accepting ‘each of them as being of Waanyi descent which ... in turn, depends primarily upon whether the present Waanyi people accept that Minnie was a Waanyi person’. It is the members of the claim group that ‘must determine that question’ but, to date, they have refused to do so. The court could not ‘take that decision for them’. Nor could his Honour ‘find that during her lifetime, the Waanyi people, as a whole, accepted her as being Waanyi’. The findings in this case ‘as to such acceptance are limited to the position as it was at Lawn Hill and at Burketown’. In the end:

It is for the claim group to determine whether that is a sufficient basis for accepting that she was a Waanyi woman, descent from whom is a basis for Waanyi identity—at [266].

Background

A claimant application was filed in 1999 on behalf of the Waanyi people. Minnie's descendants, who were numerous, had emerged and asserted they should be included in the claim group at a time when 'virtually all other matters in dispute' had been resolved and a native title determination was otherwise 'imminent'. The issue was brought into stark relief when the applicant sought to amend the application in 2009 so that membership of the native title claim group would require self-identification as Waanyi *and* recognition by other Waanyi people *in addition to* biological descent from 'known Waanyi ancestors'. Effectively, the applicant submitted Waanyi identity depends 'substantially, if not entirely, on acceptance by other Waanyi people' that any particular person is of Waanyi descent—at [5], [226] and [268].

Gregory Phillips, one of Minnie's descendants, submitted that Waanyi identity depended on biological descent or adoption and acceptance of that fact by one or more senior Waanyi persons. (It was noted that, although Mr Phillips relied on biological descent, he seemed to accept that this would 'generally be reflected in a person's views as to his or her affiliation and the views of family members and others'.) On Mr Phillip's submission, any claim group description that did not include Minnie's descendants did not 'accurately describe the group which, according to Waanyi traditional laws and customs', has native title in relation to the application area—at [19] and [226].

In those circumstances, the court listed the dispute for separate determination—at [5].

Claim group membership raises a justiciable question

Dowsett J found that resolving disputes about 'the rules governing membership of the claim group' and 'their operation' involved determining 'justiciable questions' because:

- the NTA 'provides a mechanism for obtaining a determination' that native title, 'vested in a claim group, continues to exist';
- pursuant to ss. 61 and 62, a claimant application 'must contain certain information concerning claim group membership and its decision-making processes';
- while the term 'native title claim group' is a 'creature' of the NTA, what it describes is 'a pre-existing social group – those people of indigenous descent who claim a shared interest in land or waters pursuant to shared traditional laws and customs' as explained in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422;
- the identification of that social group 'is a necessary element in any determination as to the existence' of native title;

- membership of a native title claim group ‘involves rights recognized by the common law’;
- the regime contained in the NTA ‘prescribes a procedure for establishing’ the continued existence of native title ‘vested in the members of an identifiable claim group’ —at [17] to [18].

This was compared with ‘proceedings to identify and enforce the rules of a voluntary association’ with which the courts do not generally concern themselves but will in cases where (for example) the organisation must, by force of an Act, be registered and so is found to be a ‘creature’ of Parliament—at [9] to [12].

Waanyi people

His Honour referred to a report by Professor David Trigger (one of the anthropologists called by the applicant) to describe ‘the Waanyi people and their history’. According to that report:

- ‘Waanyi’ denotes an Aboriginal language of the southern Gulf of Carpentaria region, the existence and location of which ‘have been well known’ since first contact;
- it is now used to identify Aboriginal people who have, or assert, traditional connection with, and rights and interests in, the claim area;
- most contemporary Waanyi people have lived most of their lives close to some part of Waanyi land;
- they understand themselves to be descended from previous generations of Waanyi people and acknowledge and observe a body of laws and customs, inferentially going back to British sovereignty;
- under those laws and customs, they have rights and interests in the claim area—at [21] to [24].

Waanyi membership rules according to the applicant

According to Professor Trigger’s report, in order to be a Waanyi person ‘entitled’ (among other things) to ‘rights in Waanyi country’, a person must:

- be a descendant (biological or adopted) of a Waanyi person;
- identify himself or herself as a Waanyi person; and
- be recognized by the broad group of Waanyi people as being a Waanyi person—at [25].

It was said in the report that a ‘reasonable degree of acceptance’ of the proposition that a person is a Waanyi person ‘among the holders of Waanyi traditional law and custom’ was needed. Elsewhere, it was indicated that acceptance of an assertion of Waanyi identity ‘may be demonstrated when no senior Waanyi person is willing to dispute the claim publicly’ —at [26] to [27].

The report also stated that, under Waanyi law laws and customs, each person has ‘particular traditional connections to some section or sections of Waanyi country’ determined by reference to laws and customs ‘anchored in the systems of dreamings and skins’. Further:

It is fundamental to Waanyi law and custom that rights to country are organized according to how people fit into the kinship system, including the skins system, dreamings and various spiritual features of the traditional landscape—at [27].

The report indicated that (among other things):

- acknowledgment ‘on the basis of ancestral links to one or more known Waanyi forebears ... may be through the father or the mother’ and anyone with ‘at least one Waanyi grandparent is usually able to sustain a claim to membership of the group’;
- there is no stated preference for patrilineal or matrilineal inheritance but ‘a choice is usually made’;
- there is ‘no single rule for resolution of multiple inherited potential [linguistic] affiliations. The choice often involves negotiation, largely carried out orally’.

It also indicated that, while Waanyi people ‘identified more with smaller clan groups within the Waanyi language group’ in the past, there is now ‘a greater focus upon membership of the larger group’. However, Professor Trigger still considers that:

[A]ccording to Waanyi laws and customs, an individual person’s claim to country is ultimately accepted or rejected through a process of collective debate and consideration, which process remains anchored in separate discussions among different Waanyi extended families—at [30].

Dealing with claims to membership rights made by ‘Diaspora people’

Professor Trigger’s identified what he called ‘Diaspora people’, i.e. Aboriginal people who, ‘for whatever reason’, have ‘dispersed or been dispersed into areas away from their traditional lands’. According to Professor Trigger:

Lengthy physical absence from the Southern Gulf region encompassing Waanyi land does not erase the right of persons to assert membership of the group; though this can be a complex and politically fraught issue—quoted at [33].

Professor Trigger also observed that among the Waanyi people:

- each individual family ‘generally claims distinctive connection to one or more of the identified Waanyi “countries”’ and these claims ‘are matters for public consideration’;
- without ‘a link to one of the distinctive Waanyi countries, it is difficult for people asserting Waanyi identity, on the basis of deceased Waanyi forebears, to gain acceptance by the Waanyi group’;
- this is because ‘connection through a deceased forebear to one of the Waanyi countries’ involves ‘a position’ in the Waanyi kinship and skins systems ‘as well as a publicly acknowledged set of relationships to particular ... spiritual features of Waanyi country’;
- people asserting Waanyi identity ‘are expected to know their forebears’ and if they do not, ‘they should be able to derive [this information] ... from discussions with knowledgeable senior Waanyi people’—at [34].

Conclusions on applicant's position on recognition

His Honour concluded that:

A person's connection to a particular area in Waanyi county is a matter of public knowledge. It may not necessarily be asserted publicly unless the need arises. Such need may arise in connection with land claims, Native Title, cultural heritage and related negotiations. Group recognition depends upon the relevant person asserting such connection to key persons regarded as senior in terms of knowledge of Wannyi cultural and historical matters. Senior persons exercise considerable influence over the decision-making process although, in practice, inter-personal politics may affect the outcome. As the matter is one of oral tradition, claims should be of a substantially public nature. Public assent may be inferred when no senior Waanyi person is prepared publicly to oppose a particular claim—at [35].

Basis of claim by Minnie's descendants

Mr Blackwood, an anthropologist retained by Mr Phillips and other members Minnie's family, described that family in his report, indicating that:

- the family members are descendants of a single apical ancestor who was a 'full blood' Aboriginal woman named Minnie (*Mayabunganji*) and her husband Ah Sam, a Chinese immigrant;
- they married in the late 19th century and lived and worked around the Gulf Region including Burketown, Woods Lake, Lawn Hill and Touchstone;
- their children were numerous and five of their daughters also had children;
- those five daughters were Sarah, Bessie, Janie, Lora (or Laura) and Maudie (all deceased) and their grandchildren now constitute the senior generation of the family;
- after Ah Sam's death in 1919, Minnie continued to live in the area until her death in 1943;
- the family's claim to native title is made on the basis of their descent from Minnie, who they believe was a Waanyi woman from the Lawn Hill area born in the early years of European settlement;
- Minnie's parents were (inferentially) born prior to such European settlement—at [38].

Evidence as to identity of Minnie's parents – look to contemporary opinion

According to Professor Trigger, the oral history and archival records suggested that Minnie and her descendants had an historical association with Waanyi country. She was married at Lawn Hill Station in Waanyi country and lived and worked there from 1888 until about 1916, when she moved to Woods Lake near Burketown, which is in the vicinity of Waanyi country. A number of her children were born and lived at Lawn Hill Station—at [53].

His Honour accepted there was little evidence upon which a firm view could be formed as to the identity of either of Minnie's parents, let alone their language affiliation. It was noted that this was 'hardly surprising' given 'the passage of time and the absence of official records for much of the relevant period'. However, Dowsett J went on to make the following point:

[W]hen one purports to identify oneself as the offspring of particular parents, one is generally stating an opinion or belief based on experience and the views of others, not stating proven biological facts. If Minnie said that she was Waanyi, then she was saying something about her understanding of her parentage. If other members of the community in which she lived said that she was Waanyi, they were also stating opinions. ... Opinion and belief may be based on knowledge, but are not, themselves, knowledge. In my view it is more helpful to look to such evidence as there is concerning Minnie's opinion of herself and the opinions of her contemporaries than to seek to create theoretical histories for her parents—at [125].

Factual findings

His Honour considered at length the evidence of numerous witnesses—at [167] to [225].

Dowsett J noted that, in this case, all of the witnesses' views as to Minnie's affiliations were 'almost certainly based upon the views of others'. His Honour inferred that those views had been 'passed down to the witnesses, in some cases over many years and through numerous generations'. While these 'inherited' views could not really be challenged in cross-examination, the reported views of non-witnesses 'may be of great value, notwithstanding the fact that their views cannot be tested in cross-examination'. His Honour found that, in this case, it was likely that earlier generations had a clearer knowledge of Minnie's roots than do present generations—at [228].

However, his Honour cautioned that:

Where there is unchallenged evidence that a relevant opinion was expressed, it may still be necessary to consider its reliability, having regard to the particular person in question, the likelihood that he or she would have had a reasonable basis for the opinion, and whether it is likely that he or she was being truthful and was otherwise reliable. Much may depend upon the circumstances in which the opinion was expressed—at [228].

Dowsett J surveyed what others who knew Minnie had to say about her. This included what was said in a conversation between Mr Phillips, Arthur Peterson and Billy Foster tape recorded in 1991. Mr Peterson was a senior Waanyi man. At the time, Mr Phillips was conducting interviews with Indigenous elders to help him establish his ancestry. He, Mr Peterson and Mr Forster were discussing Mr Phillip's grandmother Bessie, who was one of Minnie's daughters. While the context was not 'entirely clear', Mr Arthur apparently identified Bessie as Waanyi. His Honour noted (among other things) that:

- Mr Peterson was a senior Waanyi man 'whose views would normally have been respected';
- there was little or no evidence to support the applicant's submission that there was 'room for uncertainty as to whether he meant to identify Minnie as Waanyi' or, if he did, that this was done 'out of a desire to tell Mr Phillips what he thought that he wanted to hear';

- although the tape was ‘not entirely easy to understand and the ‘persuasiveness of this evidence’ had been criticised, it should not be dismissed out of hand—at [231].

Yuan Hookey’s evidence on this issue was ‘also of particular importance’, given that both his parents were Waanyi and Mr Hookey grew up next door to Minnie in Burketown. He lived with his mother and his grandmother (also Waanyi), both of whom recognised Minnie as Waanyi.

While Burketown was outside Waanyi country, Waanyi people had historically resided there. According to Dowsett J, the fact that ‘one Waanyi family living in Burketown ... in close proximity to Minnie recognized her as a Waanyi woman’ provided some basis for drawing inferences that ‘she was Waanyi, or that she was so recognized by the broader Waanyi community’. This was because:

It seems unlikely that in a relatively small community, one Waanyi family would have held views which differed substantially from those held by other Waanyi families in the area—at [232].

If Mr Hookey’s evidence was accepted as ‘credible and reliable’ (and his Honour found it was), it could provide the basis for ‘significant inferences concerning both Minnie’s view of herself and the views of her Waanyi contemporaries, or at least of those living in close proximity to her’. Further: ‘If Minnie believed herself to be Waanyi, it was probably because she believed that at least one of her parents was Waanyi’ —at [233].

Roy Seccin was treated by all the anthropologists involved in this case as a senior Waanyi man who was very knowledgeable about Waanyi affairs. However, it seemed the only person he discussed ‘the Minnie question’ with was Mr Blackwood. The conversation took place in 2004, when Mr Seccin was around 86 years old. He was born circa 1918 at Lawn Hill and grew up there but his contact with Minnie probably occurred at Burketown.

Mr Seccin clearly identified Minnie as being a Waanyi woman. His Honour found it ‘difficult to discount’ this opinion ‘given the high regard in which he [Mr Seccin] was otherwise held as a senior and knowledgeable man’. There was no challenge to Mr Blackwood’s evidence that the conversation took place, albeit the accuracy of his report of it was challenged because of some variations between his account of the conversation and his field notes. However, Dowsett J was satisfied that notes are ‘often designed to prompt memory rather than to be ... a precisely accurate account of ... events’ and generally accepted Mr Blackwood as ‘an accurate reporter’. It was also noted there was ‘no evidence suggesting a motive’ for a person of Mr Seccin’s ‘seniority and knowledge’ to make ‘any assertion which he did not believe to be true’. Nor was there any reason ‘to doubt that he believed that Minnie was a Waanyi woman’. The court accepted Mr Seccin knew Minnie while he was at Lawn Hill and she was in Burketown and inferred that, if there had been ‘any dispute about her affiliation’ at either location, Mr Seccin might be expected ‘to have known of it’ —at [235] to [239].

His Honour concluded that:

It is difficult to resist the inference from Mr Seccin's evidence that during his time at Lawn Hill, the Waanyi people there accepted ... [Minnie] as a Waanyi person. Such acceptance must have pre-dated her departure from Lawn Hill and may have dated from 1888 or earlier. It follows from Mr Seccin's views, using the logic which I have previously used in connection with Mr Hookey's evidence, that Minnie identified as a Waanyi woman. It also follows that at the time at which Mr Seccin knew her, she was probably accepted as a Waanyi woman by the Waanyi community in Burketown. ... Mr Hookey's evidence also supports the inference that she was accepted as Waanyi by the Waanyi people at Burketown until her death in 1943. Mr Seccin lived his life as a Waanyi man. I infer that throughout that period, he accepted that Minnie was a Waanyi woman. It is reasonable to infer that those Waanyi people with whom he had contact throughout his life, and from whom he derived information about Waanyi affairs, provided him with no basis for departing from that view—at [239].

His Honour placed substantial weight upon the evidence of Mr Hookey and Mr Seccin, rather than that of other witnesses, because they identified 'the time at which each of them first learned that Minnie was Waanyi' and, in each case, 'the relevant view was formed during Minnie's lifetime'. His Honour inferred that this was 'based upon information received in an environment in which any contrary view would probably have been apparent'—at [245].

Based on the evidence, the following factual findings (among others) were made:

- during her life, Minnie identified herself as a Waanyi woman based on her belief that she had at least one Waanyi parent;
- Mr Seccin met Minnie in the early to mid-1920s and, from that time on, he understood her to be a Waanyi woman;
- in about 1942, Mr Hookey was told Minnie was a Waanyi woman and, from that time on, he understood her to be a Waanyi woman—at [250].

These (and other) findings supported 'further inferences, based upon the fact that neither man apparently perceived any reason to change his view concerning Minnie's affiliation'. Those inferences were that:

- neither man 'became aware of any dissent concerning the question within his family or the Waanyi community in which he was living, or in which he had learnt of Minnie's Waanyi affiliation';
- although 'there was a gap between Minnie's departure from Lawn Hill and Mr Seccin's first meeting with her', views at Lawn Hill did not change during that time—at [251].

Further, since Minnie was 'a long-standing resident at Lawn Hill', it was 'unlikely that she was quickly forgotten'. Therefore, it was inferred that:

- from 1888 'until at least 1939, Minnie was recognized by the Waanyi people at Lawn Hill as a Waanyi woman'; and
- from 'about 1916 until her death in 1943, Minnie was recognized by the Waanyi people at Burketown as a Waanyi woman'—at [251].

Credibility and reliability

In his Honour's view, Mr Seccin and Mr Hookey were the people whose views concerning Minnie were likely to be reliable because:

- they both knew her;
- their respective Waanyi identities did not depend upon her status as a Waanyi woman—at [240].

This, combined with Mr Peterson's statement to the effect that the Minnie family was of Waanyi descent, 'made it difficult to resist the conclusion that the reason for this shared view is that it is based in truth'—at [240].

Membership of the claim group

Subsection 61(1) and s. 253 provide that the native title claim group must be 'the persons ... who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed'. Those sections, along with s. 251B (which deals with authorisation), 'inevitably' lead to the conclusion that, for the purposes of the NTA, the claim group must 'determine its own composition'. However:

A claim group cannot arrogate to itself the right arbitrarily to determine who is, and who is not a member. As to substantive matters concerning membership, the claim group must act in accordance with traditional laws and customs—at [256].

His Honour then referred to various cases, concluding that the case law 'clearly demonstrates that membership must be based on group acceptance', a requirement that 'is inherent in the nature of a society'. However, a society may 'accept the views of particular persons as sufficient to establish group acceptance'—at [260].

Acceptance of a claim to Waanyi identity depends on 'recognition by other Waanyi people that the relevant candidate is descended from a recognized Waanyi person'. However, this did not precisely accord with the wording of the proposed amended description of the claim group 'which requires that a person be recognized as being a Waanyi person'. This would in itself 'necessitate a decision as to the meaning of the term "Waanyi person"'. According to Dowsett J:

The amendment is intended to define that term. It can hardly do so by reference to the term itself. Fairly clearly, the intention is that the person must be recognized as being of Waanyi descent—at [263].

In the event, it was held that:

[A] person who has not previously been recognized as being Waanyi [such as one of Minnie's descendant's] must demonstrate that he or she identifies as Waanyi, either by assertion or by virtue of the way in which he or she conducts him- or herself. Living according to Waanyi laws and customs may be sufficient. When a person has one Waanyi and one non-Waanyi parent, it may be sufficient that the person has not chosen to abandon Waanyi identity. When a person is born of two Waanyi parents the question of self-identification may never arise. Only in this very wide sense, it is necessary to identify oneself as Waanyi or assert such affiliation—at [266].

Up to the claim group as to whether Minnie recognised as a Waanyi person

As noted earlier, as a matter of fact it was found that Minnie identified as a Waanyi person and was accepted as such by Waanyi people at Burketown and at Lawn Hill. This finding is binding on the parties.

However, according to Dowsett J, her descendants' entitlement to Waanyi identity depends on group acceptance of each of them as being of Waanyi descent. This, in turn, depends 'primarily upon whether the present Waanyi people accept that Minnie was a Waanyi person'. This was something the claim group must determine. It was not a decision the court could make. Nor could Dowsett J find that the Waanyi people, as a whole, accepted Minnie during her lifetime as being Waanyi. The findings in this case as to acceptance were 'limited to the position as it was at Lawn Hill and at Burketown' at that time. It was now up to the claim group to determine whether 'that is a sufficient basis for accepting that she was a Waanyi woman, descent from whom is a basis for Waanyi identity' — at [267].

It was noted that this issue arose:

[I]n a way which makes it difficult to resolve rationally. At a time when a Native Title determination is imminent, the members of the Minnie family have emerged as possible members of the claim group. There are many of them. For reasons of history, mixed descent and geographical dispersal, many Waanyi people do not recognize the family as Waanyi. There are conflicting views on the subject. It is no doubt difficult for the claim group to marshal the various views in order to assess their persuasiveness — at [268].

Suggestions for progress of the matter

Dowsett J thought it unlikely that a claim group meeting could 'give the necessary measured consideration to the question in order to arrive at an informed and fair decision' because the 'politics of the situation are likely to confuse and distort views of the evidence which must be considered in order to make that decision' — at [269].

Therefore, Dowsett J made some suggestions, which were that:

- those advising the claim group should 'encourage them to seek the considered views of a small committee, perhaps made up of those who presently constitute the applicant';
- that committee should 'examine the evidence in the light of' the court's findings (which bind them) and 'subject to such legal or other advice as they may deem appropriate';
- the committee 'should be asked to formulate a recommendation for adoption' at a claim group meeting after giving careful consideration to 'the recorded views of Mr Hookey, Mr Seccin and Mr Peterson and the likely bases of those views', i.e. these views 'should not be dismissed out of hand merely because they do not comply with preconceived notions concerning' Minnie's descendants — at [269].

Possibility of judicial review

While resolution of this matter is primarily for the claim group, his Honour pointed out that any decision of that group 'may not ... be beyond review, given its

significance' under the NTA. It was noted there is no precedent as to 'the availability of judicial relief in the event that persons who, *according to traditional laws and customs, are entitled to Native Title rights and interests, are wrongfully excluded from membership of the claim group*'. Dowsett J thought that the doctrine of fraud on the power, which provides relief against the oppression of the minority of company shareholders, might provide an analogy — at [270] (emphasis added).

In this context, the discussion of the process for the recognition of Diaspora people by Professor Trigger is of note:

Lengthy physical absence from the Southern Gulf region encompassing Waanyi land *does not erase the right of persons to assert membership of the group*; though this can be a complex and *politically fraught* issue. Families or individuals who may have lived distant from Waanyi country for several generations appear to maintain the *potential right to reactivate involvement in Waanyi affairs and Waanyi country*. Their success in doing so follows from a range of factors, including their choice of whether to live in the southern Gulf region or at least participate actively in social interaction with Waanyi people, and the strength of their assertions. Central to the negotiation of establishing acceptance of a person's right to involvement in Waanyi culture and country is agreed knowledge about their forebear(s) — quoted by Dowsett J at [33], emphasis added.

Decision

After making the findings of fact noted above, his Honour decided to entertain requests for further findings of fact and submissions as to appropriate orders.

Postscript

On 24 June 2010, the notice of motion to amend the description of the claim was adjourned to 23 July 2010 or an earlier date to be fixed. The parties were also order to confer with a view to agreeing to a proposed consent determination. On 23 July 2010, the court made a declaration by consent that the laws and customs of the Waanyi People concerning who are Waanyi People are that a person is a Waanyi person if and only if

- the other Waanyi People recognise that he or she is descended (which may include by adoption) from a person who they recognise as having been Waanyi; and
- the person identifies himself or herself as a Waanyi person.

It was also declared by consent that Minnie (*Mayabuganyi*):

- identified herself as a Waanyi woman during her life;
- was understood by the late Roy Seccin, from the early to mid-1920s, to be a Waanyi woman and has been understood by Yuen Hookey, from about 1942, to be a Waanyi woman;
- was recognised by the Waanyi People at Lawn Hill from 1888 until at least 1939 as a Waanyi woman and from about 1916 until her death in 1943 was recognised by the Waanyi People at Burketown as a Waanyi woman.

Orders were made by consent that the applicant has leave to amend the application in the form filed in the court. In the amended application, the native title claim group is 'the Waanyi People', further described as follows:

A person is a Waanyi person if and only if:

1. the other Waanyi people recognise that he or she is descended (which may include by adoption) from a person who they recognise as having been Waanyi; and
2. the person identifies himself or herself as a Waanyi person.

It is accepted that adoption may take place and that where adoption has occurred it confers upon the adoptee the right to identify as being a Waanyi person.

The following deceased persons are recognised as having been Waanyi people from whom living Waanyi people may be descended: [going on to list a number of people but not including Minnie].

The applicant is also to file and serve an agreement signed by all of the parties setting out the terms of a proposed consent determination, along with supporting submissions and materials, by 29 October 2010. The State of Queensland and any other respondent who wants to do so are to file and serve supporting materials by 12 November 2010. The matter is listed for determination on 8 December 2010. There was no order as to costs.