

1 COMSR STEVENS

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3

4 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

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6

7 THURSDAY, 5 OCTOBER 1995

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9

10 RESUMING 10.25 A.M.

11 MR SMITH: The programme for today is, first of
12 all, the previous witness, Michael Jolly. Some matters
13 that were left unresolved in his evidence will be
14 hopefully resolved this morning. And then Frank
15 Tuckwell, who is the Director of Signal Point down on
16 the river at Goolwa. That will be all the evidence this
17 morning. I know I have said this before, but I would
18 expect that that might mean we will have some time spare
19 this morning. This afternoon is Rodney Hook, who is an
20 officer of the Department of Planning & Development.
21 And that will be all the evidence for today. Tomorrow
22 is Mr Samuel Jacobs QC in the morning and David Rathman,
23 the CEO of the Department of State Aboriginal Affairs.

24 So, that is the programme for the balance of that
25 week.

26 So, I recall to the witness box Michael Jolly.

27 WITNESS MICHAEL GEORGE WILLIAM JOLLY RETURNS TO WITNESS

BOX

28 COMSR: Is this necessary to reswear the
29 witness?

30 MR SMITH: No, I will just remind the witness that
31 he is on oath.

32 FURTHER EXAMINATION BY MR SMITH CONTINUING

33 Q. I just remind you that you are on oath.

34 A. Yes.

35 Q. On the last occasion you gave evidence we discussed a
36 fire on Hindmarsh Island and, on that occasion, you met
37 Sarah Milera and Doreen Kartinyeri. Do you recall
38 telling us about that.

1 A. Yes.

2 Q. There was some, not exactly debate, but we, in the
3 course of your evidence, took sometime to try and
4 pinpoint the date of that fire. I think you have made
5 some further enquiries about that, have you not.

6 A. Yes, I have. It is my understanding the date was 25
7 November 1993.

8 Q. Was that the occasion where there were two fires, one
9 following the other.

10 A. Yes, on the 25th there was a fire at a Mr Clegg's
11 property on Hindmarsh Island and on the following day,
12 on the 26th, there was a fire at Mr Crowhurst's property
13 on Hindmarsh Island.

14 Q. On that first day, the 25th, you recounted to us on the
15 last occasion how you went down to the ferry and you
16 there met Sarah Milera for the first time, is that
17 right.

18 A. That's correct.

19 Q. I take you back to that meeting. Had you met Sarah
20 Milera ever before.

21 A. No.

22 Q. Can you tell us what passed between you and her and how
23 it was that you met her.

24 A. Several of the people who attended the fire on Hindmarsh
25 Island were quite unhappy about the ferry holding up the
26 fire appliances and we - the picketers had made their
27 presence very, very obvious down at the ferry, much to
28 the disgust of the people who wanted the bridge on
29 Hindmarsh Island. And we were quite unhappy about the
30 hold up of the fire appliances coming to Hindmarsh
31 Island, so we decided that we would go down and confront
32 them and ask them what they thought they were about.

33 Q. Was it the case, if you know, that there was some
34 impediment to fire appliances getting on to the ferry
35 and getting across to the island caused by the
36 picketers.

37 A. Not only the picketers. I think it was actually a day -
38 a scheduled maintenance day on that day and the ferry

1 was actually I understand out of commission at the time
2 that the fire siren was actually sounded. And I think
3 it was hurriedly brought back into service. And we just
4 went down to make a point of why demonstrate against a
5 Bridge that perhaps could save lives or property in the
6 time of an emergency?

7 Q. You are not inferring that these people were holding up
8 the fire appliances or anything.

9 A. No, not at all, no.

10 Q. You went down there yourself.

11 A. Yes, I did.

12 Q. Are we talking about the Goolwa side of the ferry -

13 A. Yes.

14 Q. Or the Hindmarsh Island side.

15 A. No, the Goolwa side, that's right.

16 Q. You there met Sarah Milera and Doreen Kartinyeri. Tell
17 us about that.

18 A. What happened originally was that there was quite a
19 confrontation against the - with the anti bridge people
20 who seemed to have materialised down I think from Signal
21 Point. And there was quite a deal of shouting and
22 waving of arms and, after that had subsided somewhat, I
23 went back to the rear of the crowd and there were two
24 Aboriginal ladies standing by the right-hand side of the
25 ferry approach.

26 Q. You spoke to them.

27 A. Yes, I made a point of speaking to them, because I had
28 heard that there was a move afoot to bring the
29 Aboriginal influence in to stopping the bridge.

30 Q. Tell us how you heard about that.

31 A. I should say just gossip around the local area, that
32 when all else fails the Aboriginal question is quite
33 usually brought up.

34 Q. You spoke to these two women. First of all, there were
35 some introductions, were there. Tell us what happened.

36 A. Yes, I was interested to know who they were and where
37 they were from and I approached them and said `Hello,
38 how are you? Who are you?' I made a direct approach to

- 1 them. And Mrs Milera said 'I am Sarah Milera and this
2 is my Auntie Doreen.' And she said 'Doreen Kartinyeri'
3 and I mistook it for Kropinyeri. K-R-O-P-I-N-Y-E-R-I.
4 Q. And your response to that.
5 A. I said to her 'Kropinyeri?' I said 'Yes, I am very
6 familiar with your uncle, Uncle Dick.' And to which she
7 said 'No, not Kropinyeri, Kartinyeri.'
8 Q. You have I think in the months that followed this
9 incident seen Sarah Milera time and time again, is that
10 right.
11 A. I have probably only seen her once I think when she came
12 to our property with Neale Draper. I think that is the
13 - I may have seen her in the car crossing the ferry, but
14 that would be it. I have not spoken to her since, only
15 on those two occasions.
16 Q. She is, indeed, the Sarah Milera whom we see in The
17 Advertiser, for instance, and on -
18 A. Absolutely.
19 Q. And Doreen Kartinyeri, or this person that you thought
20 might have been Doreen Kropinyeri, at first, do you
21 confirm that it is the Doreen Kartinyeri that has been
22 prominent in the media talking about this dispute.
23 A. Yes, I do.
24 Q. You have no doubt about that.
25 A. I have no doubt about it.
26 Q. You told us about the conversation that then ensued
27 between these ladies about the island.
28 A. Yes.
29 Q. And I won't go back over that.
30 A. No.
31 Q. Can I just take up then that question of you mentioning
32 to Doreen and Sarah that you used to know Dick
33 Kropinyeri.
34 A. Kropinyeri, yes.
35 Q. You were born down there on Hindmarsh Island or nearby.
36 A. My father was born there and I was born there.
37 Q. Your father's Christian names were.
38 A. Jeffery Lancelot Jolly.

- 1 Q. And his father before him, was he -
2 A. Came there as a young man, working on Hindmarsh Island.
3 Q. Therefore did your grandfather take up land holdings on
4 Hindmarsh Island.
5 A. No, he worked for Rankines.
6 Q. But your father did, Jeffrey.
7 A. Yes.
8 Q. You inherited that land, did you.
9 A. Yes.
10 Q. And, what, have you made purchases of your own.
11 A. Yes.
12 Q. To the extent that, as at the time we are talking about,
13 you owned, how much land.
14 A. 920 acres.
15 Q. Did you go to school locally.
16 A. I went to school on Hindmarsh Island.
17 Q. High school.
18 A. Victor Harbor. Excuse me, I will just qualify that.
19 They closed the school on Hindmarsh Island in grade 5,
20 when I was in grade 5, and we then went to Goolwa to
21 complete the primary school education, yes.
22 Q. When you were a boy growing up on the island and even to
23 the point where you were going to high school in Victor
24 Harbor, did you come to know the Aboriginal people
25 living on the island and on the mainland.
26 A. Yes, the McHugh family lived on a neighbouring farm and
27 Mrs McHugh quite often - my mother actually helped Mrs
28 McHugh quite often with food and that for the children.
29 Q. Is that the family of John McHughes that has lived most
30 of his life in this area and in recent times at Goolwa.
31 A. Yes.
32 Q. And played football.
33 A. Yes.
34 Q. For the Goolwa football team.
35 A. Yes.
36 Q. What of other families on the island or in Goolwa. Can
37 you tell us -
38 A. I remember no other families on Hindmarsh Island, other

1 than the McHugh family.

2 COMSR

3 Q. You mean, no other Aboriginal family.

4 A. Yes, I am sorry, yes, no other Aboriginal families on
5 Hindmarsh Island, other than the McHugh family. In my
6 memory. But there were several families of local
7 Aborigines in Goolwa, who I became friendly with when I
8 went to Goolwa school.

9 XN

10 Q. You spoke of your father and Dick Kropinyeri. In what
11 way did your father have a relationship, if you like,
12 with Dick Kropinyeri.

13 A. Dad worked as a boy for Rankines and his father worked
14 for Rankines. They both worked for Rankines together.
15 And Dick Kropinyeri, Kropinyeri, was a regular shearer
16 at Rankines and they became quite friendly with Dick,
17 during that time.

18 Q. To the extent I think that they went off into the Far
19 North of South Australia shearing in the shearing season
20 together.

21 A. During the depression my father went north for work,
22 Broken Hill, where he came across Dick Kropinyeri. And
23 all manner of people were up there, at that time, from
24 Sydney and from everywhere, seeking work. And it was a
25 pretty rough environment and Dick sort of shielded my
26 father from quite a bit of that influence, I could say.

27 Q. So, when there was trouble, he helped your father.

28 A. He kept him out of trouble.

29 Q. Kept him out of trouble.

30 A. Yes.

31 Q. Did that mean then that somewhat of a lasting
32 relationship built up between your father and Dick
33 Kropinyeri.

34 A. They were very close. Whenever Dick was travelling
35 through Hindmarsh Island on his way to Goolwa he used to
36 come through the - I would suspect, because I was only a
37 child, at the time, he would come through from Raukkan
38 and travel through the islands, Hindmarsh Island, and go

1 up to Goolwa.

2 Q. When he did that, would he call on your parents.

3 A. He always called when he came through.

4 Q. And what would happen.

5 A. Dad would always have him in for tea. And, next day, he
6 would sort of travel on, yes.

7 Q. Is it the case that, as you grew up on the island and in
8 the Goolwa area and when you were at high school at
9 Victor Harbor, you became close and friendly with a
10 number of Aboriginal people from the area, is that
11 right.

12 A. Yes.

13 Q. As did your family.

14 A. Dad and mum were particularly friendly with Dick, as I
15 mentioned, Dick Kropinyeri, and they were always very
16 friendly with Mr and Mrs McHugh, who they sought to help
17 whenever they could. Dad was also friendly with Ephie
18 Tripp.

19 Q. Another Aboriginal family.

20 A. Yes, and I understand - I can't think of his name - no,
21 I can't think of the other chap's name that was at
22 Goolwa that he was quite friendly with too.

23 Q. Not Sumner, or a name like that.

24 A. He knew and always spoke to the Sumners. And Charlie
25 Godfrey. I used to work for Charlie Godfrey when I was
26 a boy. He was an Aboriginal person.

27 Q. In the course then of your contact with the Aboriginal
28 people of the area, from time to time, did you or did
29 you not sit down and talk about history and matters
30 relating to the culture of the Aboriginal people.

31 A. Somewhat, but not in great depth, no.

32 Q. Did you ever hear, in your lifetime, up until recent
33 years, anything secret and sacred about the island.

34 A. No, I didn't.

35 Q. Is the first you ever heard of such a concept, if you
36 like, in connection with this dispute, sometime after
37 November 1993.

38 A. Could I have a repeat of that question?

- 1 Q. Yes, is the first you have heard of anything secret and
2 sacred relating to Hindmarsh Island or its environs, was
3 it, indeed, as this Hindmarsh Island bridge dispute
4 unfolded, after November and sometime after November
5 1993.
- 6 A. Yes, that was the first time I heard of it.
- 7 Q. In your evidence, on the last occasion, we touched upon
8 your contact with the archeologist, Government
9 archeologist, Dr Neale Draper. Can you remember telling
10 us about that.
- 11 A. Yes.
- 12 Q. You told us that Neale Draper initially was friendly to
13 you and then his mood changed and he betrayed to you
14 that he was, indeed, opposed to the bridge construction.
- 15 A. Yes.
- 16 Q. Is that correct.
- 17 A. Yes.
- 18 Q. You also told us that Draper had had some contact before
19 with your family and you mentioned your Aunt Pearl in
20 that connection. Do you remember that.
- 21 A. Yes.
- 22 Q. Can you tell us what contact your family then had. What
23 were the details of this contact with Mr Draper.
- 24 A. As I understand it, Neale Draper was the Government
25 archaeologist concerned with - working from the
26 Aboriginal Heritage Branch. He was the archaeologist
27 concerned with the Cape Jervis Tavern development,
28 investigating the Cape Jervis Tavern development.
- 29 Q. Did you have relatives living or working or operating a
30 business in the Cape Jervis area.
- 31 A. Yes, my cousin Allen and Daphne. Godfrey Wilson
32 operated the Cape Jervis Tavern.
- 33 Q. You knew of this development, did you, the proposed
34 development for Cape Jervis.
- 35 A. Yes, it was a great worry, to both my cousin and my
36 auntie, that this development would proceed and maybe to
37 - may proceed and would take quite a deal of business
38 from their established operation there.

M.G.W. JOLLY XN (MR SMITH)

- 1 Q. This was some sort of hospitality development on the
2 foreshore at Cape Jervis, is that right.
- 3 A. I understand it was a licenced restaurant jumping off
4 type place for the ferry going to Kangaroo Island.
- 5 Q. Including a motel, I think, is that right.
- 6 A. I am not sure about the motel facility, no.
- 7 Q. Mr Draper became involved in that, to your knowledge,
8 did he not.
- 9 A. Yes.
- 10 Q. You mentioned your aunt. Is that your very elderly Aunt
11 Pearl.
- 12 A. Yes.
- 13 Q. What was her involvement.
- 14 A. She was in continual liaison or continual touch with
15 Neale Draper over developments in this project. What
16 was happening. What stage the development project was
17 reaching.
- 18 MR MEYER: Is she the mother of the cousin?
- 19 WITNESS: Yes.
- 20 CONTINUED

1 XN

2 Q. She is the mother of Daphne Wilson, the co-owner of the
3 tavern, the existing tavern at Cape Jervis.

4 A. Yes.

5 Q. So the Aboriginal Heritage Branch became involved
6 through Mr Draper in that development.

7 A. Yes.

8 Q. And the development did not go ahead, to put it shortly,
9 is that right.

10 A. Yes, that's correct.

11 Q. Therefore, when Neale Draper came onto the island, and
12 onto your property in particular, there was some mention
13 of this matter, was there, and his connection with your
14 Auntie Pearl, is that the case.

15 A. No. I wouldn't say there was mention of the Cape Jervis
16 matter. I couldn't go so far as to say that, but he
17 came as a friend of Auntie Pearl. He had visited her
18 home on several occasions, and they were both well known
19 - both he and his wife were well known to Auntie Pearl.

20 Q. On the last occasion you gave evidence, on p.2,993 you
21 mentioned that Draper had rung you with some exciting
22 news over a find he had made. Do you remember that.

23 A. Yes, I do.

24 Q. After discussing that, and it is in the evidence, you
25 made a comment to him, according to what you told us
26 last time, 'You are trying hard now, Neale', or some
27 words to that effect.

28 A. Yes, I did, yes.

29 Q. What did you mean by that.

30 A. Well, by that stage -

31 OBJECTION Mr Kenny objects.

32 MR KENNY: That question was in fact asked on the
33 last occasion on p.2,993, 'What did you mean by that'
34 and it is answered by this witness. I am just wondering
35 a bit about the point of a lot of -

36 MR SMITH: I am asking it again.

37 COMSR: You felt that perhaps the answer -

1 MR SMITH: Yes. My reason for asking it again was
2 I want to elicit some more information from Mr Jolly on
3 that topic.

4 QUESTION ALLOWED

5 XN

6 A. To the best of my recollection, he said - I said to him
7 `You're trying hard now, Neale'. What I meant by that
8 was, by that stage it had become quite obvious that he
9 was against - he had become unfriendly, and was really
10 trying to connect a lot of places on Hindmarsh Island
11 with Aboriginal influence, to the detriment of any
12 further development taking place.

13 Q. So that is the extent of what you meant.

14 A. He was quite obvious in his intent.

15 Q. In your statement, which is an exhibit, you make a point
16 about the Goolwa Rate Payers Association. You were a
17 member of the Goolwa Rate Payers Association, were you.

18 A. Yes.

19 Q. You made an objection which you allude to in your
20 statement, which wasn't explored in evidence, to
21 something happening at Signal Point. Do you remember
22 what that was, and what the basis of your objection was.

23 A. We were told by someone that was working there on a
24 voluntary basis that school children were being handed
25 out pamphlets, et cetera, with - I will call it -
26 propaganda against the building of the bridge, and, as a
27 taxpayer in this country, I felt it was wrong that a
28 taxpayer-funded institution such as Signal Point should
29 be aligned against one side of the community and their
30 wishes.

31 Q. Your objection was minuted, I think, and the
32 dissemination of that information from Signal Point
33 stopped. Is that right.

34 A. I'm not sure whether it was minuted or not. It was
35 certainly taken aboard. A lady there, who I cannot - I
36 don't know her name - apologised and said that in future
37 nothing of this sort would take - any further sort of
38 propaganda would not be forthcoming from Signal Point.

M.G.W. JOLLY XN (MR SMITH)

- 1 Q. On the last occasion, too, you gave evidence as to your
2 membership of the Coorong Consultative Committee in 1988
3 and 1989.
- 4 A. Yes.
- 5 Q. You also told us that you tabled, at a particular
6 meeting of that committee, plans relating to your
7 proposed development and also the Chapmans' development.
8 Do you remember telling us that.
- 9 A. Yes.
- 10 Q. I think you have had an opportunity to search the
11 minutes which are MFI 184, and you actually located the
12 actual minute when that occurred, is that right.
- 13 A. Yes.
- 14 Q. Looking at MFI 184, do you recognise there the minute of
15 28 July 1989.
- 16 A. Yes, I do.
- 17 Q. Can you say then that it was in fact on 28 July 1989
18 that you tabled in that committee the development
19 proposals of yourself and the Chapmans in relation to
20 the island.
- 21 A. Yes, I can.
- 22 Q. You are not recorded -
- 23 A. No, but there are several instances there, or a couple
24 of instances there that I can point out where I am not
25 recorded as being present, yet my name appears in the
26 minutes as having input in the minutes. So I think it
27 might be a clerical error that I'm not there.
- 28 Q. I think I have misled you a bit there, too.
- 29 A. 3 July.
- 30 Q. The committee meeting was actually on 3 July, wasn't it.
- 31 A. Yes.
- 32 Q. Rather than the 28th.
- 33 A. Yes, we were looking at that number (INDICATES), yes.
- 34 MR SMITH: That can still be left as marked for
35 identification, subject to other people perusing it.

1 FURTHER CROSS-EXAMINATION BY MY MEYER

2 Q. Mr Jolly, how old are you.

3 A. I'm 52.

4 Q. Just to get this into a time span, that means you were
5 born toward the end of World War II.

6 A. 1943, yes.

7 Q. Your father bought land on Hindmarsh Island. Was that
8 before the war.

9 A. No, after the war. He bought that land in 1949.

10 Q. Was your grandfather living on Hindmarsh Island when he
11 was working there.

12 A. Yes.

13 Q. Did your dad live on Hindmarsh Island.

14 A. Yes.

15 Q. I want you to assume that Sarah Milera is about 49 years
16 of age. She appears to have suggested, at least at some
17 stage in a newspaper article, about trees on Hindmarsh
18 Island. The article and I am reading from 'The
19 Bulletin' dated 28 March 1995. The article says
20 'Milera' - and that is referring to Sarah Milera - 'now
21 49, can remember being able to drink the fresh water
22 around the island. She can recall the island being
23 covered with trees, most of which have gone, allowing
24 salt levels to increase'. So Sarah Milera is about your
25 age. A couple of years younger. From your knowledge,
26 and from discussions you have had with your father, when
27 you were a boy was Hindmarsh Island covered with trees.

28 A. Not at all. There is more trees there now than there
29 were when I was a boy.

30 Q. From your knowledge and what you have gleaned from your
31 family and friends, the farming type history of
32 Hindmarsh Island, were there trees previously on
33 Hindmarsh Island.

34 A. I understand there was. From what I have read, there
35 was low coastal type heath land on the lower part of
36 Hindmarsh Island, on the southern part of Hindmarsh
37 Island. On the northern part there was she-oak scrubs.
38 They have disappeared to a large extent because of the

RF 39B

M.G.J. JOLLY XXN (MR MEYER)
(MR KENNY)

1 large sheep population that was held in the early days
2 on Hindmarsh Island.

3 COMSR

4 Q. When you say 'early days', what are you referring to,
5 what times.

6 A. Possibly 1860s.

7 Q. So you are not saying you saw them in your time.

8 A. Not at all.

9 XXN

10 Q. I think it is a matter of pastoral history in South
11 Australia there were huge sheep numbers before the turn
12 of the century, weren't there.

13 A. Yes, particularly Mr Rankine.

14 Q. And you are including in that, big sheep numbers existed
15 on Hindmarsh Island.

16 A. Yes, to the extent, as I understand, the land started to
17 blow - erode and blow. Over-stocking.

18 COMSR

19 Q. On the day when you went and introduced yourself to the
20 two ladies down at the ferry, on that occasion, was that
21 the first time you had seen either of them.

22 A. Yes.

23 CROSS-EXAMINATION BY MR KENNY

24 Q. Mr Jolly, you have told us that you were close with a
25 number of Aboriginal people when you went through
26 school.

27 A. Yes.

28 Q. Can you remember who those people were.

29 A. It would have been Darryl and Doug Sumner, Hector and
30 Herb Rigney, Herbert Rigney senior, Charlie Godfrey and
31 his son. Like I knew these people well, but I didn't -

32 Q. You weren't actually - they didn't sort of come over to
33 your place on a regular basis and play with you after
34 school and things like that. Is that what you are
35 trying to tell us.

36 A. No, no.

37 Q. You just knew them because they went to school with you.

- 1 A. Yes, and we played football and sport and generally,
2 like country kids do, hang around together, but not
3 particularly come to my house or -
- 4 Q. So you knew them by virtue of the fact that you went to
5 a school that presumably was fairly small, you played
6 sport with them, you socialised with them.
- 7 A. Yes, that's correct.
- 8 Q. But you are not saying there was some special
9 relationship between you.
- 10 A. No.
- 11 COMSR
- 12 Q. Which school are we talking about at this stage.
- 13 A. That would be Goolwa School.
- 14 XXN
- 15 Q. So that was between grade 6 and grade 7.
- 16 A. Yes, and into high school.
- 17 Q. At Victor Harbor.
- 18 A. At Victor Harbor.
- 19 Q. Presumably that was a bigger school, Victor Harbor, the
20 high school.
- 21 A. I'm sorry.
- 22 Q. Was the Victor Harbor High School a bigger school than
23 the Goolwa School.
- 24 A. Yes, yes.
- 25 Q. Did you have less contact with them when you went to
26 high school.
- 27 A. Yes, right through high school, and after - up until
28 probably about 20 years old, or 18 years old, 20 years
29 old, played football with old Herb Rigney, and he was
30 called Uncle Herb to all the boys in the football club.
- 31 Q. That was about 30 years ago.
- 32 A. Yes.
- 33 Q. In the last 30 years, you, I take it, haven't had any
34 close contact with these people.
- 35 A. No, I haven't. Only John McHugh, and Gordon, who was my
36 best friend when I was a little kid. Gordon is John's
37 younger brother. He has just come back to Goolwa, but

- 1 they seemed to drift away in their teenage years and
2 went and found jobs.
- 3 COMSR
- 4 Q. What happened to their families, did they remain in Goolwa.
- 5 A. The McHugh family remained in Goolwa, yes. The other
6 families seemed to dissipate away.
- 7 XXN
- 8 Q. You are not sure what happened to them or where they
9 went.
- 10 A. I asked Doug Milera what had happened to them when I saw
11 him when they came over with Neale Draper, and he told
12 me that they had gone to work for the Electricity Trust
13 on Kangaroo Island, and some of them now hold quite high
14 positions in the Aboriginal groups at Murray Bridge, I
15 understand.
- 16 COMSR
- 17 Q. Did other Aboriginal families come to take their place
18 at Goolwa, when you say that during their teenage years
19 they and their families left, the ones you knew.
- 20 A. Yes. Mainly - just about all of the Aboriginal families
21 left, except the McHugh family and the descendants of
22 the McHugh family. They were virtually the only
23 Aboriginals that - well, Aboriginal people that I know
24 of that inhabited Goolwa in the last 30 years.
- 25 XXN
- 26 Q. John McHugh, I understand you know him, but would you
27 describe him as a friend.
- 28 A. Yes, he is a good friend.
- 29 Q. How often do you see him.
- 30 A. Possibly - very hard to say, but I probably saw him five
31 or six times a year, but our friendship comes from a
32 long way back, so I mean -
- 33 Q. I take it you would run into him around Goolwa.
- 34 A. I'm sorry.
- 35 Q. You would run into him occasionally at Goolwa.
- 36 A. Yes, and I used to play football with him, yes.
- 37 Q. What I am trying to get at is, has there been any social

1 contact. Has he been over to your place in the last
2 five to ten years.

3 A. No.

4 Q. Have you been to his.

5 A. No.

6 Q. Dr Draper, I take it you were fairly friendly with him
7 at the start as well.

8 A. Yes.

9 Q. But I imagine you made it fairly clear to him that you
10 were in favour of the bridge.

11 A. I made a point - I will make a point to anyone that I am
12 in favour of the bridge, but that doesn't mean to say -
13 I am quite friendly with a number of anti-bridge people.

14 Q. I am only talking about Dr Draper.

15 A. Yes.

16 Q. I take it, from your comment about the finds on your
17 property, and the comments you have made, that you don't
18 think that there is terribly much in the way of
19 Aboriginal significance on the island, is that correct.

20 A. No. On the contrary. I think there is quite a deal of
21 Aboriginal significance on Hindmarsh Island. It just
22 happens not to be on my property.

23 NO CROSS-EXAMINATION BY MRS SHAW

24 NO RE-EXAMINATION

25 NO FURTHER QUESTIONS

26 WITNESS RELEASED

L.F. TUCKWELL XN (MR SMITH)

1 MR SMITH CALLS

2 LEON FRANK TUCKWELL SWORN

3 EXAMINATION BY MR SMITH

4 Q. I think you're a Counsellor with the District Council of
5 Goolwa and Port Elliot.

6 A. That's correct, I'm a Ward Counsellor for Goolwa and
7 Hindmarsh Island.

8 Q. For how long have you been a counsellor.

9 A. A half term, and I was re-elected on this term, so that
10 would make it almost three years.

11 Q. Have you been a long-time resident of the
12 Goolwa/Hindmarsh Island area, or not so.

13 A. Yes, I was locally born and I'm a member of a family - I
14 think my son was fifth generation.

15 Q. So where have you lived, then.

16 A. In Goolwa.

17 Q. I think your current position, apart from being a Ward
18 Counsellor with the District Council, you are, I think,
19 Director of Signal Point.

20 A. That's correct.

21 Q. Would you tell us what is the Signal Point operation and
22 the nature of it.

23 A. It's a bicentenary commemorative project. It was funded
24 jointly by the Commonwealth and State Governments and
25 the District Council of Port Elliot and Goolwa and, on
26 its opening, it was handed over into the possession of
27 the District Council of Port Elliot and Goolwa, and is
28 currently managed by a community-based body. Its role?

29 Q. Yes, its role.

30 A. Its role is to interpret the Murray Darling Basin.

31 Q. That has an Aboriginal content to it too, I think, is
32 that right.

33 A. Yes, there are elements of Aboriginal culture within the
34 displays.

35 Q. But it's not exclusively the province of Signal Point to
36 be interpretive of Aboriginal culture.

37 A. No.

38 Q. I think in November of 1993, you obtained a special

L.F. TUCKWELL XN (MR SMITH)

1 appointment from the council, did you not.

2 A. That's correct.

3 Q. What was that exactly.

4 A. I became the liaison person between the District Council
5 of Port Elliot and Goolwa and the Ngarrindjeri community
6 through the lower Murray Aboriginal Heritage Committee.

7 Q. Was that or not because by November 1993, there was
8 vigorous Aboriginal interest in the developments that
9 were proposed for Hindmarsh Island and, in particular,
10 the bridge.

11 A. I believe that was so.

12 Q. Was your appointment designed - no pun intended - to
13 bridge the gap between the Aboriginal interests and
14 perhaps the community or council interests.

15 A. I'm not quite sure why my fellow counsellors actually
16 elected me into that position, but I would assume that
17 was the case.

18 Q. I will come to it in more detail in a moment but, in
19 that connection, you attended joint meetings between
20 Aboriginal representatives of, for instance, the Lower
21 Murray Aboriginal Heritage Committee and the council,
22 did you not.

23 A. Yes, and I attempted to meet with them wherever I
24 possibly could.

25 Q. Can I ask you a general question about your attitude to
26 the bridge, first of all: Are you in favour of the
27 bridge or against it.

28 A. I'd have to qualify the answer, of course, so it can be
29 clearly understood. It's true that I was not in favour
30 of the bridge, but not the bridge per se, I opposed the
31 economic arrangements for the bridge, and I made that
32 quite clear in council, and my objection is that I
33 believe the State should have built, financed and built
34 the bridge, and that the District Council of Port Elliot
35 and Goolwa should not have been involved with the
36 financial arrangements.

37 Q. Is it not the case, however, at the end of all of the
38 negotiations, that the arrangement, the financial

L.F. TUCKWELL XN (MR SMITH)

1 involvement of the council, was to maintain the bridge
2 rather than to finance its construction.

3 A. Yes. My reasoning was that the State was providing the
4 ferry service, the State should replace that with a
5 bridge, it should be a State obligation, State financed,
6 the road to the bridge from - the main road to the
7 bridge and over the bridge should have been a State
8 responsibility, and that was my position.

9 COMSR

10 Q. I wonder if I can clarify this: So, at the end of the
11 day, are you saying you were in favour of the bridge,
12 subject to the financial arrangements being those that
13 you considered were prudent as far as the council was
14 concerned.

15 A. Yes, I was.

16 XN

17 Q. I think you'd like to emphasise that that is your
18 personal view as opposed to the council's view.

19 A. Yes. I must admit that the council's view, apart from
20 that, was that the bridge should be built with their
21 involvement.

22 Q. I take it, bearing in mind that you've always lived in
23 the Goolwa area, haven't you.

24 A. Yes.

25 Q. Or worked in the Goolwa area, by 1993 is it the case
26 that the bridge proposal was years old. In other words,
27 that it was well-known in the area.

28 A. Yes.

29 Q. That there were moves to build a bridge from Hindmarsh
30 Island to Goolwa.

31 A. Yes.

32 Q. From, I think, 1987 onward, the push to construct a
33 bridge gathered momentum, and was in the public arena in
34 a vigorous way. Would you agree with that.

35 A. There were suggestions on odd occasions, I'm not quite
36 sure whether they were vigorous to start, because I
37 recall that at one stage even the Chapman family said
38 that they would prefer the marinas without the bridge.

L.F. TUCKWELL XN (MR SMITH)

- 1 I think that was very early in the piece but, yes, it is
2 true that the bridge has been canvassed for a long time.
- 3 Q. The media clippings, which I can show you, featured
4 pictures of the bridge as early as 1988.
- 5 A. That's right.
- 6 Q. In about October of 1993, the protest movement against
7 the bridge had, would you agree with this general
8 proposition, gathered momentum.
- 9 A. Yes.
- 10 Q. In October of 1993, construction work was actually
11 stopped by a protest at the site, was it not.
- 12 A. Yes.
- 13 Q. At Amelia Park.
- 14 A. Yes.
- 15 Q. Is it the case that it was at this time that Aboriginal
16 opposition to the bridge first emerged.
- 17 A. Yes.
- 18 Q. There was a meeting, I think, on 8 October 1993, in
19 Centennial Hall in Goolwa.
- 20 A. Yes.
- 21 Q. Did you attend that meeting.
- 22 A. Yes.
- 23 Q. I'll see if I can show you a flier on that, just to make
24 sure. Perhaps I can ask you a question about it: There
25 was a meeting on the 8th, and I think another meeting or
26 another picnic - there was a picnic following that on 23
27 October.
- 28 A. Yes.
- 29 Q. Did you go to the picnic too.
- 30 A. Yes, I certainly did.
- 31 Q. By then, you hadn't been appointed the liaison officer,
32 had you, but you took an interest anyway.
- 33 A. Yes.
- 34 Q. The first meeting on 8 October, the meeting was in
35 effect supported by the Friends of Hindmarsh Island, a
36 group which called themselves then the Friends of
37 Hindmarsh Island.
- 38 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

1 Q. They were actually an opposition group, a group which
2 opposed the bridge, and that opposition group later
3 became known as the Friends of Goolwa and Kumarangk, is
4 that right, Hindmarsh Island.

5 A. Yes, that's correct.

6 Q. Then we have the Conservation Council of South Australia
7 supporting that meeting, and the opposition, talking of
8 the meeting -

9 A. I'm not quite sure exactly who were there, because they
10 were early days and I was as interested as everybody
11 else in my Ward to see those kinds of things, and I
12 wasn't quite sure exactly who made it up, but I do
13 believe that they were there, yes.

14 Q. Can you tell us or not whether, on 8 October, this was
15 the first appearance of the Lower Murray Aboriginal
16 Heritage Committee members at such a gathering.

17 A. Well, to my - yes, to my knowledge, yes. I'm not sure
18 whether they had been there or not.

19 Q. Who do you remember being there at that meeting at
20 Centennial Hall on 8 October from the Lower Murray
21 Aboriginal Heritage Committee.

22 A. No, at that stage I wouldn't have known them very well,
23 so I really couldn't even hazard a guess as to who would
24 have been there.

25 COMSR

26 Q. Can you assist to this extent: At that meeting, were
27 there some Aboriginal men in attendance.

28 A. Yes, there would have been.

29 XN

30 Q. It's been suggested to us that Henry Rankine and George
31 Trevorrow were there. Do you have a memory of that.

32 A. This was at the Centennial -

33 Q. At the Centennial Hall.

34 A. They could have been.

35 COMSR

36 Q. You can't say one way or the other, is that what you
37 say.

38 A. I have the problem that there was a crowd of people

L.F. TUCKWELL XN (MR SMITH)

1 there, and so recognising people in a crowd, because I
2 would have come at some time and gone and not socialised
3 - it wasn't my practice to socialise at those sorts of
4 meetings - but it could quite possibly, they could quite
5 possibly have been there.

6 Q. There has been evidence that at that meeting, Henry
7 Rankine -

8 OBJECTION Mr Kenny objects.

9 MR KENNY: Rather than lead the witness off, this
10 witness has no idea whether Henry Rankin was there or
11 not. The best he can say is that he could have been or
12 not. It's quite clear that he doesn't know. If my
13 learned friend is going to lead to him as to what Henry
14 Rankine was supposed to have said, I object. If he
15 wishes to find out what Henry Rankine might have said,
16 he should ask him what he did or didn't say.

17 COMSR: We are not exactly in a trial situation.

18 MR KENNY: I appreciate that, but I suggest that is
19 leading the witness.

20 COMSR: Counsel assisting can lead a witness
21 through statements.

22 MR KENNY: I quite agree, but we have no statement
23 on this witness, I don't know what this witness'
24 knowledge is, and it appears to me that, to the best of
25 his knowledge, he did not know Henry Rankine, and he
26 does not know whether he was there.

27 COMSR: The witness will tell me, I'm quite
28 sure.

29 WITNESS: May I get some direction at the moment?
30 I'm a little confused.

31 MR SMITH: Just hang on. Can I ask that question
32 please?

33 COMSR: Look -

34 MR KENNY: I'm trying to object before there is any
35 further leading.

36 COMSR: I know, but we're not really in a
37 situation where you can object to leading questions put
38 to the witness, but I take -

L.F. TUCKWELL XN (MR SMITH)

- 1 MR KENNY: I haven't been objecting to leading
2 questions, this is sort of going a little further than
3 what I would call reasonable leading. This witness has
4 been led pretty well all the way through, and I haven't
5 taken objection, but I mean if my friend is going to put
6 to him now that Henry Rankine said something, then I
7 object, because the witness said he doesn't know whether
8 he was there.
- 9 COMSR: Exactly, and I'm sure the witness will
10 be able to tell me as much. There are some witnesses,
11 of course, that one mightn't think would be able to do
12 so, but with this witness, I don't think there will be a
13 problem in any event, but it all goes to the weight that
14 I attach to those things.
- 15 MR KENNY: Certainly.
- 16 MR SMITH: Perhaps I will withdraw the question and
17 start again.
- 18 COMSR: By now I'm sure the witness would have
19 forgotten it.
- 20 XN
- 21 Q. On the stage there were an array of persons who actually
22 spoke and answered questions.
- 23 A. Yes, I now recall.
- 24 Q. Were there any Aboriginal persons amongst those on the
25 stage who spoke up and answered questions, for instance.
- 26 A. If this was the meeting at which the Leader of the
27 Opposition, the then Leader of the Opposition attended,
28 then I do recall because - I haven't got my diary with
29 me, I'm not quite sure which of those meetings it was,
30 but if it was that meeting at which the present Premier,
31 or the then Leader of the Opposition was present, yes,
32 Henry Rankine was present at that meeting and spoke.
- 33 Q. I'm looking at document 49 of Exhibit 178, October 1993,
34 a flier 'Motions Passed by Goolwa Public Meeting 8
35 October 1993'. Looking at that document, that's details
36 of the motions passed at the meeting on Friday 8
37 October.
- 38 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

1 Q. Does that refresh your memory as to the meeting.

2 A. Yes, it certainly does.

3 Q. It does assert, doesn't it, that George Trevorrow and
4 Henry Rankine were present for the Lower Murray
5 Aboriginal Heritage Committee.

6 A. Yes.

7 Q. Can you remember Henry Rankine speaking, and I'm really
8 focusing, rather than lead you too much, on a question
9 asked of Henry Rankine about any Aboriginal significance
10 of areas near the bridge, the proposed bridge
11 construction.

12 A. No, I really can't, I can't recall that kind of detail.

13 Q. Can I tell you what is said and see if that refreshes
14 your memory.

15 OBJECTION Mr Kenny objects.

16 MR KENNY: The witness has told us his answer. I
17 Don't mind leading, but this is now telling him and then
18 saying something like 'Does this refresh your memory'.
19 I mean -

20 MR SMITH: What on earth is wrong with that?

21 MR KENNY: He is telling the witness what to say.
22 He is overstepping the boundary by telling the witness
23 what to say.

24 COMSR: He's not telling the witness at all,
25 he's telling him what's been said and seeing - if it
26 doesn't refresh his memory, if he has no recollection of
27 it at all, he will just say so.

28 MR KENNY: Certainly.

29 MR SMITH: Lest it be misunderstood what is
30 happening here, this is present evidence in this
31 enquiry. This witness was at that meeting. He may at
32 this moment not remember anything about it, and I am
33 perfectly at liberty to explore that with him from
34 existing evidence.

35 XN

36 Q. Now it's been said that at that meeting Henry Rankine
37 was asked a question about sites of Aboriginal
38 significance in the area of the proposed construction of

L.F. TUCKWELL XN (MR SMITH)

- 1 the bridge, and his answer was that he didn't know of
- 2 any, but he was sure that some could be found, or words
- 3 to that effect. Do you remember any such exchange
- 4 taking place at that meeting.
- 5 CONTINUED

- 1 A. No, honestly I can't. I can't recall that kind of
2 detail.
- 3 Q. It was subsequent to that meeting, on 8 October, that
4 the protest at Amelia Park occurred and construction
5 work in respect of the bridge was stopped, that's
6 correct, isn't it.
- 7 A. That's correct.
- 8 Q. Just to put it in perspective.
- 9 A. Yes.
- 10 Q. Is it not also correct that the next event was, or that,
11 prior to that event, there was the picnic at Amelia
12 Park, is that right.
- 13 A. That's right.
- 14 Q. It was prior to the stoppage of work.
- 15 A. That's correct.
- 16 Q. I think it was on that occasion that you first meet the
17 Mileras, is that right.
- 18 A. It was the first time I had met Doug. I had met Sarah
19 earlier, on one of the registered sites, which was just
20 down beyond Amelia Park.
- 21 COMSR: We won't go into details.
- 22 XN
- 23 Q. Are we at a time, and I don't want to confuse you with
24 the dates, are we at a time where construction work had
25 been stopped in part as a result of protests. That is,
26 when you first met Sarah.
- 27 A. No, that would have been subsequent to the stoppage.
- 28 MR MEYER: The question is, did he meet Sarah
29 before the picnic, isn't it?
- 30 MR SMITH: Yes, I will ask that.
- 31 XN
- 32 Q. Did you meet Sarah before the picnic at Amelia Park,
33 which we know was 23 October.
- 34 A. Yes, I would have met her subsequent to that, because I
35 met Doug at that meeting. So, the timing is I met Sarah
36 prior to that, at the sites.
- 37 COMSR
- 38 Q. I am not quite clear now. Can you tell me, as best you

- 1 can, when you first met Sarah Milera in relation to
2 either that meeting that you have been asked about or
3 the picnic meeting or some other occasion. I have just
4 lost track of when you say that first meeting was.
- 5 A. The picnic meeting wouldn't have been the first time I
6 would have met Sarah, but the first time I would have
7 met Doug.
- 8 XN
- 9 Q. I will get those dates straight now in everybody's mind.
10 On 29 October there was an article in The Advertiser,
11 which is document 52 in Exhibit 178, recording that, on
12 the day before the 28th, work on the bridge had been
13 stopped, as a result of protests.
- 14 A. Right.
- 15 Q. Have a look at it.
- 16 A. Yes.
- 17 Q. I am showing you document 52 to Exhibit 178.
- 18 A. Right, yes.
- 19 Q. Is that correct, that work was brought to a halt on the
20 28th. You would agree with that. Just to get the date
21 straight.
- 22 A. Without consulting my diary, yes, I believe so.
- 23 Q. And that the picnic at Amelia Park was on Saturday, 23
24 October. (NOT ANSWERED)
- 25 Q. Again, I will show you a document, document 49 of
26 Exhibit 178.
- 27 A. Right.
- 28 Q. You would be happy with that sequence of dates.
- 29 A. Yes.
- 30 Q. Given that, so the picnic at Amelia Park for the Ferry
31 Friendly Folk, on 23 October, the actual stoppage of
32 bridge construction work on the 29th.
- 33 A. Right.
- 34 Q. When was it that you met Sarah Milera, for the first
35 time.
- 36 A. I would have to say that it was prior to that.
- 37 Q. Prior to the 23rd.
- 38 A. Yes.

1 Q. Shortly prior to it.

2 A. Shortly prior to it.

3 Q. It is the case that you have become quite friendly with
4 Sarah Milera, in the ensuing time.

5 A. With all members of the committee.

6 Q. In fact, Sarah and Doug Milera have an involvement in
7 Signal Point, don't they.

8 A. That's correct. They are members of the Management
9 Committee.

10 Q. Are they still members of the Management Committee.

11 A. Yes.

12 Q. When were they made members of the Management Committee,
13 do you know.

14 A. The appointment was in January of this year.

15 Q. Does that bring with it an emolument of some sort.

16 A. Not at all.

17 Q. Doesn't it.

18 A. No, they are honorary positions.

19 Q. Did Doug Milera occasionally borrow money from you or
20 borrow money at all from you.

21 A. As a private citizen?

22 Q. Yes, as a private citizen.

23 A. In no respect in any connection with my council
24 involvement nor as director of Signal Point. I think,
25 on two occasions, before I discovered that Doug was an
26 alcoholic, I had loaned him money for - to get to Murray
27 Bridge, to put some gas in the car.

28 Q. I am not suggesting anything sinister about this, it is
29 just that it has been said in evidence that, at the
30 time, for instance, that Doug Milera went to the
31 Middleton Tavern, amongst other things, he said there
32 that he owed you \$50.00.

33 A. That's correct.

34 Q. And he did, did he. And this is about 5 June 1995.

35 A. That's correct. I constantly remind him of it.

36 Q. He is also alleged to have said that he was upset with
37 you, he had not been paid for anything. That assertion
38 is a mystery to you, is it.

- 1 A. Yes, it may have come - and I can only answer this in -
2 I can only suppose what Doug had in mind when he was
3 appointed. But there was no question of any sort of
4 payment for any work that he would do for the centre,
5 because, quite clearly, it was an honorary position.
6 And, if he had any other idea, then he was quite wrong.
7 Nor was he led to believe that there would be any
8 payment.
- 9 Q. Perhaps I will give you all of what is said and I
10 emphasise it is secondhand.
- 11 A. Right.
- 12 Q. It is at p.2924 in the evidence of Mr Chapman.
13 According to Mr Chapman Doug had said to him at
14 the Middleton Tavern that Doug had been - perhaps
15 I had better adjust that. It is said at that page
16 that it was in the local press that Sarah and Doug
17 had been appointed to the Management Committee of
18 Signal Point.
- 19 A. Right.
- 20 Q. That's correct, isn't it.
- 21 A. That's correct.
- 22 Q. To be paid out of a grant that had been given and it
23 was mooted that it was a museum grant.
- 24 A. To clear that, the History Trust of South Australia had
25 made a grant of \$6,500 to Signal Point, to mount a
26 display on Aboriginal food technology. A component
27 within that grant could be made available for a
28 consultant, should we need it. That consultant was not
29 necessarily anybody who would have been involved from
30 the - of the Aboriginal community or from the white
31 community, because, in the nature of mounting that
32 display, the consultant, for instance, may have been a
33 designer, not necessarily an Aboriginal person. The
34 reason why Doug and Sarah were appointed was that they
35 would become advisers to the centre on the correct use
36 of either artefacts or to check the text work which
37 would go up into the displays. If there was an
38 assumption that the consultant would be Doug Milera,

L.F. TUCKWELL XN (MR SMITH)

1 then that would not have been correct. Although it
2 would have been possible to have paid for an Aboriginal
3 person to actually do that, but it was not necessary,
4 because they were appointed to the committee to do that
5 job.

6 Q. So far as you know, at least, there is no basis that you
7 could be responsible for of giving Doug Milera the
8 impression that he was entitled to some money from the
9 Signal Point operation.

10 A. No, that would have been a misconception that Doug had
11 made.

12 Q. Nonetheless, did you see a lot of the Mileras, in the
13 months following October 1993, down at Signal Point.

14 A. Yes, they would have, in the nature of the work that we
15 did together, they would have been present at least once
16 a week at the early stages and then - although I haven't
17 seen them - it has been on and off, because of the
18 nature of the present situation, they have been away
19 from Goolwa most of the time.

20 Q. Sarah's position, is it correct, was at least, at some
21 stage, that the island was very special to her, is that
22 correct, just to put it in general terms.

23 A. Yes.

24 Q. I think you had an involvement, didn't you, in helping
25 Sarah really trace her forebears and her connections
26 with the island.

27 A. Not with Hindmarsh Island so much as with Goolwa,
28 because I was familiar with her relatives who lived in
29 Goolwa. And that was the Walker family. And most of
30 them, the older people, would have been familiar with
31 the Walker family, anyway.

32 Q. Can you tell us, how did this come about, that you
33 talked to Sarah about such matters.

34 A. In enquiring into and, first of all, from my position
35 as Signal Point Director, I would first of all try to
36 establish as much as I could about Aboriginal connection
37 with Goolwa. In a private capacity, because she
38 mentioned she was a descendant of the Walker family and

- 1 my interest in local history, because I am also Chairman
2 of the local National Trust, I was able to assist her in
3 establishing her family tree in Goolwa going back
4 through the Walker family.
- 5 Q. Did that go to the extent of taking her to the cemetery
6 and that sort of thing.
- 7 A. I showed her the cenotaph in Goolwa, which has in the
8 front of it the names of the fallen from the First World
9 War and Arthur Walker, who was one of her forebears, was
10 one of the fallen from the First World War. And I was
11 able to show her that. And also walk over the grounds
12 that Reuben Walker - where Reuben Walker lived. And -
- 13 Q. Did Sarah, herself, know about her links to people
14 living in Goolwa, for instance, or was it you who
15 spelled them out to her.
- 16 A. No, she was aware of them. I was only able to fill in
17 the detail, to the best of my knowledge. I am not an
18 expert in genealogy.
- 19 Q. She was, however, indebted to you and she expressed her
20 indebtedness to you for what you did in this area for
21 her. That is, the tracing of her genealogies, is that
22 right.
- 23 A. I would say that I would react the same way to somebody
24 who showed me my genealogy. For instance, if I went
25 back to England and somebody did that as well.
- 26 Q. Is it the case that, at some stage, or at least I will
27 put this particular situation to you and see. It is a
28 note I have, and you might recognise the handwriting of
29 it. Is that the mayor, Mr Mills's handwriting.
- 30 A. Yes, I believe that is Mr Mills's writing.
- 31 Q. We will come to this, in a moment, but you actually did
32 attend a meeting, on 21 April 1994, with the Lower
33 Murray group, as Mr Mills records it, concerning Amelia
34 Park.
- 35 A. Yes, I did attend a meeting on 21 April.
- 36 Q. We will come to that. You have noted that, haven't
37 you.
- 38 A. Yes.

- 1 Q. Mr Mills, was he present at that meeting.
2 A. Yes, he was the mayor and he led that meeting.
3 Q. That was a successful meeting, in the sense that it
4 worked out a compromise relating to Amelia Park, didn't
5 it.
6 A. That's right, yes.
7 Q. Mr Mills noted here that Sarah was in Errol's office.
8 That is Errol Commane, is that.
9 A. That is the clerk.
10 Q. That she put her hand on your shoulder and said 'If it
11 hadn't been for my friend Frank's help I would not have
12 known all about the issues here and I thank him for
13 that as it has now linked me back with my ancestors.'
14 First of all, is that an accurate note of -
15 A. I would say that that expression probably occurred. I
16 couldn't recall that incident, but, if the mayor has
17 stated that, that's what must have transpired.
18 Q. With the reservations you have previously described, you
19 did help Sarah make a linkage with her ancestors in the
20 Goolwa area.
21 A. I think that is a general statement that Sarah would
22 have made there in regard to my role as liaison officer.
23 And I think this has been confused now, because it was
24 my role to establish good relationships between the
25 Ngarrindjeri people and the District Council of Port
26 Elliot and Goolwa and, in that respect, that was part of
27 my role as liaison officer.
28 Q. But Sarah was certainly, and perhaps I am using the
29 wrong verb here, building up a close attachment to the
30 island and the environs of Hindmarsh Island, was she
31 not.
32 A. She appeared to be rediscovering those things.
33 Q. I want to ask you some questions about Doreen
34 Kartinyeri. You have met Doreen Kartinyeri, have you
35 not.
36 A. Yes.
37 Q. Can you tell us where it was that you first met her. I
38 will come to the date, in a moment.

L.F. TUCKWELL XN (MR SMITH)

- 1 A. Yes. On the three or four occasions that I met her, two
2 or three of those occasions would have been in Signal
3 Point, and at least on one occasion it would have been
4 at what's commonly called 'the college', which is
5 Graham's Castle.
- 6 Q. Perhaps I can help you with some dates so we can fix
7 this. It is common ground that there was a gathering of
8 Ngarrindjeri women at Graham's Castle on 19 and 20 June
9 1994.
- 10 A. That's correct.
- 11 Q. And there was a reconciliation meeting at Graham's
12 Castle on 23 April 1995 this year.
- 13 A. Right.
- 14 Q. As far as Graham's Castle was concerned - and don't be
15 wedded to those two dates, there may have been other
16 times that women gathered there, but does that help you
17 in any way fix a date when you saw Doreen or met Doreen
18 at Graham's Castle.
- 19 A. No. I would say that it was at one of those types of
20 meetings there, and it would have been last year some
21 time.
- 22 Q. So that would make it then the Professor Saunders'
23 Graham's Castle gathering, would it.
- 24 A. No.
- 25 Q. So it must be another occasion again.
- 26 A. Yes, yes.
- 27 Q. Do you remember an occasion when there were fires on
28 Hindmarsh Island two days running.
- 29 A. Yes.
- 30 Q. I think we have established that that was on 25 and 26
31 November 1993.
- 32 A. It certainly was warm - warm weather, yes.
- 33 Q. You would go along with that, would you.
- 34 A. Yes.
- 35 Q. You were about the place on those occasions.
- 36 A. Yes. I think the second fire I assisted the Channel 7
37 crew to - the local stringer to film that fire.

L.F. TUCKWELL XN (MR SMITH)

1 Q. In your role as the liaison officer between the council
2 and the Ngarrindjeri people, or the Aboriginal people of
3 the area, you attended meetings, kept notes, and, to
4 some extent, had something to say about the topics of
5 discussion.

6 A. Yes.

7 Q. You were wearing two caps on those occasions, were you,
8 a councillor -

9 A. Yes.

10 Q. But a councillor charged with liaison.

11 A. Yes.

12 Q. A liaison function.

13 A. Yes.

14 Q. I think the first of such meetings was on 21 April 1994.

15 A. Yes.

16 Q. And you noted that, I think.

17 A. Yes.

18 Q. Looking at this bundle of notes produced to you -

19 A. They are my notes.

20 Q. There is a typewritten transcript on the top.

21 A. Right.

22 Q. And your handwriting on the document underneath.

23 A. That's right.

24 Q. Would you agree then that 21 April 1994 was the first
25 such occasion that you kept comprehensive notes of a
26 meeting between the Lower Murray Aboriginal Heritage
27 Committee and some council members.

28 A. Yes, that's correct. I have a dreadful memory and it
29 was - I was having problems with discharging my duty, so
30 I decided then that I would keep detailed notes as much
31 as possible.

32 Q. You haven't had an opportunity to check the transcript,
33 but that purports to be a transcript of them.

34 A. Right.

35 EXHIBIT 185 Notes of meeting between Council and
36 members of Lower Murray Aboriginal
37 Heritage Committee dated 21.4.94
38 tendered by Mr Smith. Admitted.

1 Q. I think you heard Mr Jolly say that he protested about
2 some leaflets being handed out from Signal Point to
3 people coming into Signal Point.

4 A. Yes.

5 Q. I think you want to say something about that.

6 A. Yes. On that occasion I acted very quickly. We had a
7 volunteer - volunteers come to us and we don't vet them
8 to find out what their particular views on any
9 particular subject are, and, as a result, we had one
10 volunteer who was over-zealous. There was no leaflets
11 passed out. That is incorrect. What had happened was
12 we were attempting to poll the community, or the
13 visitors, with two petitions - one for and one against
14 the bridge - and it was pointed out to me that one of
15 the volunteers was actually collecting signatures by
16 canvassing them. When I discovered it, within a half an
17 hour of that, I had contacted the mayor, who actually
18 had a phone call from somebody within the centre. I
19 reacted immediately because the centre is non-political.
20 We don't allow any sort of political material to be
21 either disseminated or discussed within the centre
22 during the business hours. An apology was issued to the
23 school, and everything that was done was done within a
24 half an hour of that happening. The instruction is now
25 very clear to volunteers that they may not participate
26 in that kind of activity and, in fact, we withdrew both
27 petitions from the centre at that time.

28 Q. Can I go back to the time of the bushfires and put this
29 to you for your comment. There was, and correct me if I
30 am wrong, not a confrontation exactly, but there were
31 protesters down at the ferry, weren't there.

32 A. Yes.

33 Q. Protesters in opposition to the bridge.

34 A. Yes.

35 Q. And some island residents approached and there was
36 somewhat of a confrontation.

37 A. Exactly.

38 Q. Mr Jolly was involved in that.

1 A. Yes.

2 Q. You were there then, were you.

3 A. Yes.

4 Q. Can you tell us if you remember whether or not Doreen
5 Kartinyeri was present.

6 A. No. I couldn't recall whether - in both groups exactly
7 how many people were there and who they were. I
8 remember Mike quite clearly. I remember one or two
9 other people quite clearly. My concern was - I came
10 down to the group because I was concerned that it would
11 get out of hand, and once again I saw my council duty as
12 being to see that those sorts of things didn't occur. I
13 spoke to people on both sides, and asked them to try and
14 calm it down. It did after - initially, but, no, I
15 can't recall whether Doreen Kartinyeri was there.

16 Q. Bob Hockey was there too.

17 A. Yes, Bob was there.

18 Q. Did you walk back to Signal Point in company with Bob
19 Hockey and also in company with Sarah Milera at about
20 the time of this confrontation, with your arm around
21 Sarah, addressing her as Queen Sarah.

22 A. No, no. That wouldn't be correct. I did talk to Bob
23 Hockey. Bob said 'Your mob is getting out of hand' and
24 I said to -

25 Q. Incidentally, I just interrupt you there to say, I don't
26 mean anything intimate about that at all. I wish to
27 convey to you that it might only have been, you know
28 'Come with me, Sarah', with your arm outstretched in the
29 area of her shoulders. I am not suggesting you embraced
30 her or anything like that. You perhaps went so far as
31 to guide Sarah away, toward Signal Point, and addressing
32 her at the same time, or thereabouts, as Queen Sarah.

33 A. No, I don't recall that. My memory of that occasion was
34 that I did talk to Bob, and pointed out to him that my
35 only concern in that demonstration was that people would
36 get out of hand and hurt one another, and Bob's remark
37 to me, 'Well, if it has come from you, Frank, I accept
38 that', and that is my recollection of that particular

- 1 incident. If Sarah was present at that occasion, she
2 would have probably been distressed, too. In that case,
3 I may have shepherded her away, as I would have any
4 other member of those two protest groups if there had
5 been distress to anybody on either side.
- 6 Q. Putting that incident aside, was Sarah addressed by you
7 or anyone else as Queen Sarah from time to time.
- 8 A. I've never heard that expression.
- 9 Q. When did women's business - secret women's business
10 associated with Hindmarsh Island or its environs become
11 known to you as something that was asserted by some
12 Aboriginal people.
- 13 A. First of all, I really have no knowledge of women's
14 business.
- 15 Q. I am just talking about the fact of it.
- 16 A. Indeed, up to that point of time, I would not have been
17 aware of women's business, nor would it have been made
18 known to any other person, particularly men, and
19 absolutely particularly white men. So, therefore, I
20 would have had no knowledge of it at any time prior to
21 it becoming an issue.
- 22 Q. When did it come to your knowledge that secret women's
23 business was asserted to be associated with Hindmarsh
24 Island or the waters around Hindmarsh Island.
- 25 A. I guess, in that regard, it would have been about the
26 time that everybody else discovered it. I had no
27 special knowledge of that, nor would I have been a party
28 to that knowledge prior to the general announcement of
29 that.
- 30 Q. Are we talking about April or so of 1994.
- 31 A. I couldn't be sure of the date and time.
- 32 Q. It is the case that the government announced in about
33 March 1994 that bridge construction was to recommence.
- 34 A. Right.
- 35 Q. Do you agree with that, around about that time.
- 36 A. Around that time.
- 37 Q. The protest movement, as far as the Aboriginal people

L.F. TUCKWELL XN (MR SMITH)

1 were concerned, was still current, if you like, and
2 vigorous. Is that right.

3 A. That's correct.

4 Q. There was a meeting of council and Matt Rigney on 3 May
5 1994, is that right.

6 A. That's right.

7 Q. Again, in your capacity as liaison officer, you attended
8 that meeting and made notes of it.

9 A. That's correct.

10 Q. Again, looking at the original notes produced to you
11 dated 3 May, do you recognise them as your handwritten
12 notes.

13 A. That's my notes, yes.

14 Q. You won't necessarily verify this, but there is a
15 transcript on the front of it.

16 A. Right.

17 EXHIBIT 186 Record of discussion between Council and
18 Mr Matt Rigney at the Goolwa Council
19 offices on 3 May 1994 tendered by Mr
20 Smith. Admitted.

21 Q. To put it at its highest, the problem of the bridge
22 wasn't resolved at that meeting at all, was it.

23 A. No.

24 Q. Mr Rigney made the Aboriginal position clear, namely,
25 that the Aboriginal people were opposed to it, and the
26 council, on the other hand, were arguing for the
27 construction of the bridge.

28 A. Yes.

29 Q. On 9 May there was a gathering of Aboriginal
30 Ngarrindjeri women on the Hindmarsh Island, was there
31 not.

32 A. That's right.

33 Q. On 11 and 12 May there was attempts to recommence work
34 on the bridge site, which eventually culminated on 12
35 May, the Federal Minister making an order which ceased
36 to work.

37 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

1 Q. Did you have any involvement, and could you tell us what
2 it was, in the gathering of those Ngarrindjeri people on
3 the island, commencing on 9 May.

4 A. Yes. I asked the women whether I could attend the
5 meeting at which the police representative from
6 Christies Beach would be present, to brief them on what
7 would happen if they mounted a protest or tried to stop
8 work. Once again, I felt, because it is my ward and my
9 responsibility, that I should be present at that
10 meeting, and also because, in the earlier stop work, the
11 STAR force came down with police dogs, and I actually
12 raised a question in council in regard to that. So I
13 really wanted to know what was going to happen if the
14 demonstration occurred, so that I would be fully
15 informed. So, under those conditions, I was present at
16 that meeting. I was not permitted to be present at
17 other parts of that meeting.

18 Q. There is evidence before this inquiry of a gathering of
19 women, in particular, on the afternoon of 9 May at the
20 Mouth House.

21 A. No, I wouldn't be aware of that.

22 Q. So you weren't there. You don't know anything about
23 that.

24 A. No.

25 Q. You know the Mouth House belongs to Ann Lucas.

26 A. Yes.

27 Q. Later in that day, was a letter brought to your premises
28 at Signal Point, a letter from the Ngarrindjeri people
29 to the Federal Minister.

30 A. There was a letter brought in for me to look at. It was
31 a letter that just dealt briefly with some sort of a
32 protest and appeared to be signed by a number of people.

33 Q. That letter was brought in. What did you see happen to
34 that letter when you - you looked at it.

35 A. Yes, but it was beyond my capacity. It was outside of
36 my responsibility. I couldn't help.

37 Q. Who brought that letter to you.

- 1 A. There would have been two or three people present at the
2 time. I gather it was a letter that was put together by
3 a number of people, and there were several Ngarrindjeri
4 ladies present.
- 5 Q. Sarah Milera being one.
- 6 A. Yes, she would have been.
- 7 Q. Dorothy Wilson being another.
- 8 A. I don't recall Dorothy Wilson.
- 9 Q. Who else of the ladies do you remember. Sarah was one.
- 10 A. No, I can't recall who the others were, because at that
11 stage most of the Ngarrindjeri ladies, apart from Sarah,
12 I didn't have much to do with. I had met Doreen on one
13 or two occasions, but I doubt whether Doreen had been
14 there either. I can't really recall. But it was late
15 in the afternoon and it would have been something that I
16 couldn't have dealt with anyway.
- 17 Q. Of all the ladies that attended, you remember Sarah
18 being one of them.
- 19 A. Yes, I remember Sarah.
- 20 CONTINUED

L.F. TUCKWELL XN (MR SMITH)

- 1 Q. You said earlier there were a number of ladies. How
2 many, do you think.
- 3 A. There probably would have been two or three, I can't
4 recall at the time.
- 5 Q. Was it Sarah who proffered the letter to you.
- 6 A. Dear no, I really couldn't recall that, but it quite
7 possibly would have been.
- 8 Q. For your advice, was it.
- 9 A. No, it was being shown to me obviously for my opinion,
10 but the letter seemed to be - or it wasn't in a letter
11 form, it tended to be a sort of a rambling type of
12 statement with a lot of signatures on it, and I really
13 couldn't see the point in the letter, and I really
14 didn't give it much thought.
- 15 Q. You read it, did you.
- 16 A. I just briefly precised it, and it just seemed to be a
17 letter of appeal of some sort.
- 18 Q. Do you remember it being a claim that there's something
19 secret about the island relating to women's business.
- 20 A. No, I couldn't recall that sort of detail.
- 21 Q. What do you recall about the letter.
- 22 A. The signatures. I remembered the signatures and that
23 there was a lot of detail about their belief, but
24 nothing in particular that I could -
- 25 Q. Do you remember or do you not remember that it was
26 addressed to the Federal Minister, Mr Tickner.
- 27 A. Yes, I recall that.
- 28 Q. Do you remember at least that it was a plea, if you
29 like, to him to stop the bridge on these grounds, was
30 that it.
- 31 A. No, I can't recall the body of the letter because it, as
32 I say, was a sort of a rambling statement, and what the
33 point to it was really escapes me. I don't have a very
34 clear recollection of that, and I know that may sound
35 strange.
- 36 Q. There were a number of signatories on the letter weren't
37 there.
- 38 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

1 Q. Can you tell us whether the document was in the one hand
2 or obviously two different hands, that is segments of it
3 of a different handwriting.

4 A. No, I couldn't recall that sort of detail, or I wouldn't
5 have had any reason to analyse it in that way.

6 Q. So you had a look at the letter. What did you say to
7 these ladies who had come in and proffered this letter
8 to you.

9 A. Well, I think I recall at the time, because I'm
10 extremely busy at that time of evening - we are closing
11 down, we're doing security - and I recall at the time
12 saying I wished I could spend more time, but there was
13 nothing I could do to help them, and they went away.

14 Q. Bearing in mind that you were the liaison officer and
15 you had helped Sarah with her genealogies and
16 everything, why didn't you help them more than that.

17 A. Well, there are many occasions when I couldn't help on a
18 number of issues, and I mean this is only one, probably
19 one of a number that I wouldn't have been able to help
20 on, and where I see that it wasn't strictly related to
21 my duties, or it fell outside of my duties, then it
22 would have to fall into personal relationships and, at
23 this stage, I wouldn't have had time even for that.

24 Q. Was the letter photocopied at your premises.

25 A. Yes, I believe it was.

26 Q. Did you organise that.

27 A. I don't know whether I did it, I can't recall.

28 Q. I take it that that would have meant that one or other
29 of these ladies, or all of them, would have had to have
30 access to the office area of Signal Point to do that.

31 A. Well, normally when you come in to see me, you have to
32 come into my office, and you have to come into that sort
33 of an area, a working area. If you want to see me, you
34 have to speak to me in that situation because of our
35 level of staffing, and so that to talk to me, you would
36 have to be in our offices.

37 Q. Who asked you to photocopy it, and did you assist with
38 it, and why was it being photocopied.

L.F. TUCKWELL XN (MR SMITH)

- 1 A. As I said, I can't recall whether I would have done it,
2 but vaguely I remember that there was a photocopy made,
3 and I'm not quite sure of the reason - well, I suppose
4 because they would have wanted to mail the letter, they
5 would have kept a photocopy it. I'm not quite sure why
6 they wanted to photocopy it.
- 7 Q. Do you have a fax at Signal Point.
- 8 A. No.
- 9 Q. Did any of the ladies, Sarah in particular, for
10 instance, tell you that this was going to be faxed to
11 the Federal minister, this letter.
- 12 A. They might have said that at the time, I don't know.
- 13 Q. You don't remember.
- 14 A. No.
- 15 Q. So the ladies, approximately three of them, left with
16 the letter and what, one photocopy of it.
- 17 A. Well, I can't recall whether it was one or a dozen, but
18 it was photocopied.
- 19 Q. Anything else done to the letter while in your presence
20 that you can remember.
- 21 A. Not that I know of, no.
- 22 Q. Was there any expression of intent made to you about
23 what was going to happen to the letter, by Sarah for
24 instance.
- 25 A. No, I couldn't recall that sort of a statement.
- 26 Q. On the next day, there was a gathering, I think, at The
27 Pines establishment on the island, is that right.
- 28 A. No, I couldn't recall. I wouldn't have gone to it. I
29 wasn't aware that there was one.
- 30 Q. I'm suggesting to you that the letter was brought to you
31 on 9 May. You wouldn't vigorously disagree with that,
32 would you, or don't you know.
- 33 A. No, I wouldn't know, but it sounds like it was the day
34 we just discussed.
- 35 Q. The day the police came down.
- 36 A. The day the police came.
- 37 Q. I think on the next day there was some sort of
38 gathering, still on the island, of these women, wasn't

1 there, but if you don't know -

2 A. No, I don't know of any other.

3 Q. Then the next day, the 11th, there was a protest at the
4 bridge site.

5 A. Yes.

6 Q. A protest again on the 12th.

7 A. Yes.

8 Q. Which culminated in work being stopped primarily because
9 of the minister's declaration.

10 A. Yes.

11 Q. I wasn't listening carefully enough when you were
12 answering this question before, but did you tell us that
13 you did go to one of those gatherings of women on the
14 9th, 10th.

15 A. I went to the one where the police briefing was taking
16 place, and I was present at the protests on those other
17 days as an objector, and photographed the protest. That
18 was a practice that I always adopted.

19 Q. Well, The Pines is an establishment you're familiar with
20 on the island.

21 A. Yes.

22 Q. Did you go there on this series of days.

23 A. No, only on the day the police were there.

24 Q. On the day the police were there.

25 A. Yes.

26 Q. To The Pines.

27 A. Yes.

28 Q. What was happening then.

29 A. That was the briefing by the police officer from
30 Christies to lay out what would happen if they went on
31 with their protest, and I felt that I should be there to
32 determine whether, what was going to happen, because of
33 my concern that people would be hurt.

34 Q. Can I move now to June of 1994. Professor Saunders,
35 Cheryl Saunders, visited Goolwa, didn't she.

36 A. Yes.

37 Q. You actually made a submission to her, didn't you.

38 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

- 1 Q. Was it a short submission to her which, for economic
2 reasons, you said that you opposed the construction of
3 the bridge.
- 4 A. Yes. No, that's not quite true. The submission dealt
5 with the history of Aboriginals from the time of
6 European contact in the Goolwa area up to the present
7 time. It had no relationship to the bridge, I just
8 wanted to point out the fact that Aboriginals actually
9 lived on the elbow right through that time, and that
10 there were records to verify that.
- 11 Q. By 'the elbow', what do you mean.
- 12 A. It's the bend of the river on which the town of Goolwa
13 is built.
- 14 Q. Just looking at Exhibit 80 behind you here, are you
15 indicating the sweep of the river around the location of
16 the proposed bridge site.
- 17 A. Yes.
- 18 Q. When do you say Aboriginals lived there.
- 19 A. There was evidence that in Sturt's journals he records
20 the presence of Aboriginals in that area.
- 21 Q. On the island side or the Goolwa side.
- 22 A. On both sides.
- 23 Q. Then there is evidence including ritual fights on what
24 is now the Goolwa or the South Lakes Golf Club, and some
25 incidents regarding Aboriginal settlements within the
26 town of Goolwa from the time when the area was
27 incorporated.
- 28 Q. Sturt's journals that you referred to, they are
29 available for perusal at Signal Point, are they.
- 30 A. Yes.
- 31 Q. With those sorts of records.
- 32 A. That's right.
- 33 Q. I think there was yet another meeting between the Lower
34 Murray Aboriginal Heritage Committee and members of the
35 council at the Goolwa Council Chambers on 16 December
36 1994, was there not.
- 37 A. Yes.
- 38 Q. Again, as liaison officer, you attended that meeting and

1 noted the outcome of it, did you.

2 A. Yes, that's correct.

3 Q. Looking at your original notes there, five pages of
4 handwritten notes recording the meeting outcome of 16
5 December 1994 -

6 A. I'd like to point out an error in there. I had actually
7 listed it as 16 December, it was 6 December, and the
8 council's agenda is also incorrect because it shows it
9 as 6 November. The fact is that that meeting was 6
10 December.

11 Q. Looking at this bundle of documents produced to you,
12 putting aside the transcript on the top, the first
13 document of yours or document produced by you is the
14 agenda.

15 A. Yes.

16 Q. Which purports to set the meeting for Tuesday 6 November
17 1994.

18 A. Yes.

19 Q. That's wrong, it should be December.

20 A. Yes, that date is actually a Sunday.

21 Q. That's the agenda for the meeting, then the meeting did
22 actually take place, but not on the 16th as your rough
23 notes record, but on the 6th.

24 A. On the 6th.

25 Q. Subject to those reservations, everything else is in
26 order.

27 A. That's correct.

28 EXHIBIT 187 Agenda and notes of the meeting with the
29 Lower Murray Aboriginal Heritage
30 Committee of 6 December 1994 tendered by
31 Mr Smith. Admitted.

32 Q. I take it that in this period between - well, say,
33 between the middle of 1993 and the middle of 1994, you
34 came to know the members of the Friends of Goolwa and
35 Kumarangk.

36 A. Yes.

37 Q. Headed by Richard Owen.

38 A. Yes.

L.F. TUCKWELL XN (MR SMITH)

1 Q. There are a number of people, members of that group, all
2 of whom you would know, would that be right.

3 A. I know a lot of them, I don't know them all.

4 Q. You were never a formal member of that organisation.

5 A. Not a formal member, no.

6 Q. You went to some meetings, did you.

7 A. Yes. I felt that the way to have very close
8 relationships with the Ngarrindjeri people, because they
9 form part of the Friends, was to have a relationship
10 with those. I did attend some of their meetings, I
11 still occasionally do.

12 Q. Were you sent minutes of their meetings.

13 A. No, not personally, I never received minutes.

14 Q. Were minutes kept.

15 A. I'm not aware of minutes being kept, no. The main form
16 of communication generally was fliers and other similar
17 material, and I responded on the basis of those. I'm
18 not aware it.

19 Q. When you say you're 'not aware of it', there is just a
20 hint of reservation there. If you were at a meeting of
21 the Friends, presumably there would be a secretary who
22 would normally keep minutes, wouldn't that be right.

23 A. Yes.

24 Q. Did that happen at any meetings you went to.

25 A. No, most of them were outside. There are all kinds of
26 activities going on around the group, and I would have
27 stood in a place in amongst the group. If there was
28 somebody recording minutes, I wasn't aware of them. I
29 wouldn't know who was recording the minutes, nor was I
30 interested in a formal relationship with the group. It
31 was a watching brief, basically.

32 Q. You were an observer.

33 A. Yes.

34 Q. It is the case, isn't it, that Douglas and Sarah Milera
35 were attenders at these meetings, at least the ones you
36 went to.

37 A. Yes.

38 Q. It's the case, isn't it, that the Friends of Goolwa and

L.F. TUCKWELL XN (MR SMITH)

- 1 Kumarangk took up, if you like, as a weapon to stop the
2 bridge, the Aboriginal cause.
- 3 A. I don't think I could comment on that. I'm aware that
4 it was very much part of their philosophy.
- 5 Q. Their armoury, that would be a fair way to put it.
- 6 A. No, I'd be reluctant to use those kinds of words.
- 7 Q. That's a bit emotive, is it.
- 8 A. Yes.
- 9 Q. Is it the case, from your knowledge, that correspondence
10 purporting to emanate from the Mileras was actually
11 prepared by the members of that organisation, the
12 Friends of Goolwa and Kumarangk.
- 13 A. I was never that close to the organisation to be aware
14 of that. No, I couldn't comment on that.
- 15 Q. So, at the meetings you went to, were there resolutions,
16 for instance, that letters should pass from their
17 organisation to people in positions of power, or what
18 happened.
- 19 A. I guess the organisation could have been worked in two
20 ways; there could have been an executive that carried
21 that forward, an executive group, and therefore what we
22 were seeing was more or less the social out-working, the
23 social meetings at which I attended. Occasionally there
24 were resolutions passed there.
- 25 Q. Well, do you or do you not know that Richard Owen went
26 to Canberra with some members of the Lower Murray
27 Aboriginal Heritage Committee.
- 28 A. Yes, I was aware of that.
- 29 Q. Do you or do you not know that members of this
30 organisation assisted the Aboriginal people and, in
31 particular, the Lower Murray Aboriginal Heritage
32 Committee, to put their case to the Federal minister.
- 33 A. I'm assured that that is right, yes, I believe that
34 would be right.
- 35 Q. If you went to the meetings, wouldn't you know that
36 positively, though.
- 37 A. Well, you must understand the way that I attended the
38 meetings. I never attended the meetings regularly,

L.F. TUCKWELL XN (MR SMITH)

1 because that would imply that I was taking up that issue
2 fully, and that was not my intention.

3 Q. I'm not asking you to tell tales on the Friends of
4 Goolwa and Kumarangk, I'm just asking you to tell me
5 what you saw and what you heard at the meeting. Did you
6 observe or see or hear anything that indicated that the
7 friends of Goolwa and Kumarangk were assisting the
8 Aboriginal people, and in particular the Lower Murray
9 Aboriginal Heritage Committee, to plead their case to
10 the minister.

11 A. Yes, I feel that there was a genuine attempt to assist
12 the Aboriginal people. I'm not sure whether it went to
13 the extent where they actually assisted the Lower Murray
14 Aboriginal Heritage Committee because, knowing
15 Aboriginal people, they don't like that sort of close
16 contact with their decision making body, and anybody who
17 has any business with Aboriginal bodies knows that the
18 process of decision making is very slow, and therefore
19 you cannot get Aboriginal people to make a decision on
20 the spot, so therefore I don't believe that you could
21 actually get alongside the Lower Murray Aboriginal
22 Heritage Committee, for instance, and make decisions for
23 them. It's a very slow process, as a liaison person I
24 have discovered, in getting a decision made.

25 CONTINUED

- 1 Q. We have some firsthand knowledge of that with Mr
2 Kenny, I think. When Douglas Milera appeared on
3 television on the Channel 10 News on the evening of
4 6 June 1995 and then Sarah appeared in The Advertiser,
5 on 7 June, I take it that that was a matter of - those
6 two incidents were a matter of great interest to you,
7 were they.
- 8 A. Yes, it was very, very disturbing. And it just didn't
9 make any sense to me. Absolutely no sense at all.
- 10 Q. At that stage, they were both living in Goolwa, weren't
11 they.
- 12 A. Yes.
- 13 Q. Sarah and Doug Milera.
- 14 A. Yes.
- 15 Q. At Sexton Street.
- 16 A. Yes.
- 17 Q. They were regular visitors to Signal Point.
- 18 A. Yes.
- 19 Q. They were on the -
- 20 A. They were on the board -
- 21 Q. They were on the board.
- 22 A. They were on the committee, rather.
- 23 Q. Did you speak to Sarah and Doug about those two
24 incidents, the Douglas Milera interview on Channel 10
25 and 'The great lie of Hindmarsh Island' article, of 7
26 June.
- 27 A. No, in general conversations there would have been, sort
28 of, broad references to it, but, if you are talking
29 about a serious conversation, no.
- 30 Q. It has been suggested in evidence to this Inquiry
31 that, following the 6 June television interview, where
32 Douglas Milera said a number of things, and I won't
33 canvass them with you, he then contacted a number of
34 people on the following day to let or the day following
35 his talk with the journalist Chris Kenny, which would
36 be 6 June, that is, the day before the airing of the
37 programme, contacted a number of people to tell them
38 what he had done. Did he contact you.

1 A. No.

2 Q. Did he contact you at all about what he had done in that
3 television programme.

4 A. Not in that period of time, no.

5 Q. But subsequently.

6 A. Yes, when he came back to - when they came back to
7 Goolwa to live again.

8 Q. And Sarah, did she contact you after 'The great lie of
9 Hindmarsh Island' article, of 7 June 1995, in The
10 Advertiser.

11 A. Yes, there would have been visits to Signal Point.

12 Q. Did she explain to you what -

13 A. Apart from - not more than apart from saying that she
14 was disappointed. And she didn't elaborate on it. And
15 I find that when both Doug and Sarah are distressed you
16 can feel their distress, but they really don't open up
17 very much to you. And in the case of that particular
18 article she was clearly distressed, but she didn't go
19 very deeply into that particular issue.

20 Q. What did Milera tell you then when he finally spoke to
21 you about this topic of the Chris Kenny interviews.

22 A. I think the drift of the conversation was that he was so
23 drunk that he would have said anything, but that was
24 basically what he - you know, the conversation I had
25 with him.

26 Q. And Sarah when she spoke to you about the article of 7
27 June, what did she say.

28 A. Her - she was clearly distressed about it and her
29 expression of that was that she was disappointed. I am
30 not quite sure what she meant by that.

31 Q. Can you tell us anything about the reaction of the
32 Friends of Goolwa and Kumarangk to those two incidents.
33 In particular, Richard Owen. Do you know whether - did
34 Richard Owen express any reaction to you about the
35 Douglas Milera television interview and the Sarah Milera
36 'The great lie of Hindmarsh Island' article.

37 A. I think I have been to one meeting since that has
38 occurred and there was a feeling or an expression from

L.F. TUCKWELL XN (MR SMITH)
XXN (MR MEYER)

- 1 Richard that he felt that the incident was disgraceful.
2 That was, I guess, in regard to Doug. And that he felt
3 that the way that The Advertiser article was written was
4 very unfair, but they were sort of general statements
5 that he made to the meeting.
6 COMSR
7 Q. Did you yourself see the television interview of Doug
8 Milera.
9 A. Yes, I did.
10 Q. Were you fairly familiar with Doug, at that time, were
11 you, and his appearance and his manner.
12 A. Yes.
13 Q. And did you form any view, yourself, looking at the
14 television interview.
15 A. Yes, I was - it wasn't - I felt that it wasn't Doug.
16 It seemed like - he seemed to be a shadow of himself.
17 And I really wouldn't want to comment more - any more
18 than that.
19 CROSS-EXAMINATION BY MR MEYER
20 Q. I understand you to say that you are a fourth generation
21 Goolwa resident.
22 A. Yes.
23 Q. Have you, in essence, lived there for the bulk of your
24 life.
25 A. Yes, mainly.
26 Q. Ignoring being away for a few years here and there.
27 A. Yes.
28 Q. Most of the time, you have been at Goolwa.
29 A. Yes.
30 Q. Did you go to school there as a primary school student.
31 A. Yes.
32 Q. You look more than 50. Are you older than 50.
33 A. I am. I am 61.
34 Q. I only ask that question because I understand Sarah
35 Milera is about 49.
36 A. Right.
37 Q. In your recollection of Hindmarsh Island as a child, was
38 it covered with trees.

1 A. No.

2 Q. In an article that was written in The Bulletin, on 28
3 March 1995, Sarah Milera says that she can recall the
4 island being covered with trees.

5 A. Yes.

6 Q. Can you recall the island being covered with trees.

7 A. No.

8 Q. That is, in fact, false, to say that the island was
9 covered with trees, isn't it.

10 A. Yes.

11 Q. In your living memory, it would be false to say the
12 island was covered with trees.

13 A. I would - if I was a young person, for instance, a
14 child - I can only answer this in regard to my own
15 experience. In about 1940, I believe it was, my father
16 took me down to the Goolwa wharf to see some paddle
17 steamers. And, when we got down there, they looked
18 like huge ocean liners, because I was very small and
19 my impression for a long time after that was what
20 happened to those great ships that used to come in,
21 into the Goolwa wharf? And, in fact, they weren't,
22 they were very small paddle steamers. And so I can't
23 answer for Sarah, of course, but maybe that is the
24 answer to that question.

25 Q. By the time you were 15 or 20, were you still living at
26 Goolwa.

27 A. Yes.

28 Q. Still visiting Hindmarsh Island regularly.

29 A. Yes.

30 Q. By that time, paddle steamers wouldn't have looked like
31 ocean liners, would they.

32 A. No.

33 Q. You would have been able to form a view, when you were
34 15 or 20, as to whether Hindmarsh Island was covered
35 with trees.

36 A. Yes.

37 Q. Was it.

38 A. No.

- 1 Q. At the time when you were 15 or 20, given that you are
2 12 years older than Sarah Milera, she would have been 3
3 or between 3 and 8.
4 A. Right.
5 Q. So, at a time of her living memory, Hindmarsh Island
6 wasn't covered with trees, was it.
7 A. No.
8 Q. It would be false to say so.
9 A. Yes.
10 Q. Have you read the article of 28 March 1995, in The
11 Bulletin.
12 A. Yes.
13 Q. That article, in fact, makes some reference to matters
14 that have been discussed with you.
15 A. Right.
16 Q. And you have provided a number of quotations to The
17 Bulletin.
18 A. Yes.
19 Q. Were you disturbed to read that Sarah Milera had said to
20 The Bulletin that she could remember that Hindmarsh
21 Island was covered with trees.
22 A. No, I didn't take any particular notice to that, because
23 in what reference or in what way she meant that. It may
24 have been she was speaking in a form of an allegorical
25 form. It may be she was expressing herself in a
26 particular way.
27 Q. She couldn't be doing that. The article says 'She can
28 recall the island being covered with trees most of which
29 have gone allowing salt levels to be increased.'
30 Nothing allegorical about that.
31 A. No.
32 Q. A statement of fact.
33 A. Yes.
34 Q. And it is wrong, isn't it.
35 A. Yes.
36 Q. Knowing that Sarah Milera had made such a bald
37 statement of fact that was wrong, did it cause you to
38 query any other statements of fact that Sarah Milera

1 made to you.

2 A. No, not at all.

3 Q. Why not.

4 A. You must, when you are dealing with people, you must
5 deal with a level of trust.

6 Q. Sure, but when they come along and tell you something
7 that is so blatantly wrong, doesn't that then put you on
8 notice that your level of trust shouldn't be quite so
9 high.

10 A. I am not quite sure whether that quotation, coming from
11 the press, was actually what she said.

12 Q. Did you ask her.

13 A. No.

14 Q. Why not.

15 A. I had no reason to.

16 Q. Have you talked to her, since 28 March 1995.

17 A. Certainly.

18 Q. It also says and it quotes you, I think, as saying that
19 Sarah Milera is the great granddaughter of King Peter
20 Pulami.

21 A. That's what I understand, yes.

22 Q. Where did you get that information from.

23 A. She gave me the information about the descendants of her
24 line.

25 Q. Did you check it.

26 A. No, I had no reason to. If you gave me your genealogy,
27 I wouldn't check it. I would accept it.

28 Q. You are a historian, aren't you.

29 A. I don't claim that as my profession.

30 Q. No, but isn't it your serious interest.

31 A. My serious interest, yes.

32 Q. Historians check facts, don't they.

33 A. If I am going to publish it, yes.

34 Q. If they are going to rely on it, historians check facts,
35 don't they.

36 A. Yes.

37 Q. You gave facts to Professor Saunders.

38 A. Yes.

- 1 Q. Was one of the facts that you gave to Professor Saunders
2 that Sarah Milera was the great granddaughter of King
3 Peter Pulami.
4 A. No.
5 Q. You gave that fact to The Bulletin.
6 A. In a conversation away, yes, because I believed that
7 would be fact.
8 Q. But you didn't take any effort to check it.
9 A. No, because at that time I had no reason to.
10 Q. If I tell you that Sarah Milera is not the great
11 granddaughter of King Peter Pulami, does that disturb
12 you.
13 A. If you could show me the evidence, yes.
14 Q. What information did Sarah Milera give you about her
15 ancestry.
16 A. It was verbal.
17 Q. Was it you who suggested to her that she was linked to
18 King Peter.
19 A. No, not at all.
20 Q. Not at all.
21 A. No.
22 Q. Have you followed the connection between the Walkers,
23 who you say -
24 A. Yes.
25 Q. She is connected to and King Pulami.
26 A. No.
27 Q. Have you made any attempt to research it within the
28 Goolwa area.
29 A. No.
30 Q. Have you made any attempt to research it at the museum.
31 A. No, not beyond the Walker family, no. There is no
32 reason. I had no reason to do it. I am not publishing
33 anything.
34 Q. And yet you are the Director of Signal Point, which is
35 taking a strong interest in Ngarrindjeri people in this
36 area.
37 A. Yes, I may point out that I did say earlier on that I
38 was not an expert in genealogy.

- 1 Q. But you have placed in your gathering information a
2 good deal of importance on information provided by Sarah
3 Milera, haven't you.
- 4 A. Yes.
- 5 Q. It is very important that the information that Sarah
6 Milera provides to you is accurate, isn't it.
- 7 A. Yes.
- 8 Q. And, if it is inaccurate, it undermines the whole
9 foundation upon which your beliefs are formed.
- 10 A. Not necessarily.
- 11 Q. Who else has provided you with information. Who are
12 your informants, other than Sarah and Doug.
- 13 A. I would say that if I was tracing the line back, and I
14 have no reason to -
- 15 Q. I mean generally in relation to these issues about
16 Hindmarsh Island.
- 17 A. In what way?
- 18 Q. You were putting forward information about matters
19 relating to the development of a bridge and how they
20 affect Aboriginal people at Hindmarsh Island, weren't
21 you.
- 22 A. I didn't say that.
- 23 Q. At all.
- 24 A. No, I didn't say that.
- 25 Q. Ever.
- 26 A. I can't recall that I have ever said anything like that,
27 but I said at the opening that my objection to the
28 bridge is on economic grounds.
- 29 Q. As a member of the council.
- 30 A. Yes.
- 31 Q. If you were assured by the State Government that
32 there will be no expense to the Port Elliot and Goolwa
33 Council for the purposes of construction of a bridge,
34 whether in its initial construction or its on-going
35 maintenance, ie the council is free now and for ever
36 of financial costs in relation to the construction
37 and maintenance of the bridge, I take it you would
38 vote for it being constructed.

- 1 A. Yes, with some other assurances.
- 2 Q. Your answer in evidence-in-chief to Mr Smith was that
3 your only objection to the bridge was economic.
- 4 A. Exactly right.
- 5 Q. I have taken away the economic objection.
- 6 A. No, you haven't.
- 7 Q. Then I will rephrase it. Taking away all economic
8 objections -
- 9 A. Yes.
- 10 Q. To the construction of the bridge, do I take it that you
11 would vote for the bridge to be constructed.
- 12 A. No, I still wouldn't.
- 13 Q. Why not.
- 14 A. It would have to become a State responsibility.
- 15 Q. That is economic, isn't it.
- 16 A. Yes.
- 17 Q. We have taken away all of those economic
18 responsibilities. We will attribute them to the State.
- 19 A. Right.
- 20 COMSR
- 21 Q. You are asked to assume this.
- 22 A. Yes.
- 23 XXN
- 24 Q. Will you vote for it now.
- 25 A. Yes, provided the State take over the responsibility of
26 dealing with the Aboriginal and environmental issues.
27 That would be their responsibility also not the district
28 council's.
- 29 Q. That is not what I am putting to you. You see, that is
30 the qualification you didn't put in your
31 evidence-in-chief. I want to know whether you, as a
32 councillor of the Port Elliot Council, if there were no
33 economic or financial implications, at all -
- 34 A. Yes.
- 35 Q. For the council in relation to the construction and
36 maintenance of the bridge, however you may interpret it,
37 if those objections are taken away, would you vote for
38 the construction of the bridge.

- 1 A. I believe I would, but the case would have to be put and
- 2 I would have to understand all of the details.
- 3 Q. The case has been put.
- 4 A. This is theoretical.
- 5 CONTINUED

1 COMSR

2 Q. Yes. For the purposes of answering that question, you
3 are asked to assume an ideal state of affairs, I think,
4 financially.

5 A. An ideal state of affairs, yes.

6 XXN

7 Q. I wasn't going quite that far. As a council member, you
8 are aware that there has been an environmental impact
9 study.

10 A. Yes.

11 Q. You know all about that environmental impact study.

12 A. Yes.

13 Q. Have you read it.

14 A. Been through it.

15 Q. Been through it.

16 A. Yes.

17 Q. You know that the Conservation Council didn't have any
18 objections to the construction of a bridge when the
19 environmental impact study was done.

20 A. No.

21 Q. You don't know that.

22 A. No.

23 Q. Would you like to check the environmental impact study.

24 A. Yes.

25 Q. Isn't it something that you, as a council member, in
26 considering these matters, should know, or is that
27 another instance of your not very good memory.

28 A. I don't understand why you are referring to my memory.
29 I'm as -

30 Q. You said that you didn't have a very good memory.

31 A. That's right.

32 Q. I am asking you whether you now don't know about the
33 Conservation Council's attitude at the time of the
34 environmental impact study because you have a faulty
35 memory or because you never knew.

36 A. No. I mean, if you are asking me to make a comment out
37 of the EIS, I don't have it in front of me. You

1 obviously are fairly well prepared for this question. I
2 am not. I can't respond that way.

3 Q. Have you ever met with any representative of the
4 engineers who are associated with the construction of
5 the bridge.

6 A. No, because the bridge committee would have been
7 involved with that sort of discussion. I wasn't a
8 member of the council's bridge committee.

9 Q. As the Director of Signal Point, did you receive any
10 correspondence from the engineers relating to the
11 construction of the bridge.

12 A. No.

13 Q. Have you been requested to point out any sites which
14 might be relevant to the construction of the bridge -

15 A. No.

16 Q. By the engineers.

17 A. No.

18 COMSR

19 Q. Was there a planning subcommittee of council which dealt
20 with development issues.

21 A. Yes.

22 Q. Were you on that.

23 A. At the time the bridge was being planned and so on, I
24 wasn't already in council, or the preparation really.

25 XXN

26 Q. Are you married.

27 A. Yes.

28 Q. Is your wife a member of the Friends of Kumarangk.

29 A. I wouldn't know.

30 Q. Have you asked her.

31 A. I would assume she is.

32 Q. Do you go to meetings of the Friends of Kumarangk with
33 your wife.

34 A. No.

35 Q. What, you go separately.

36 A. She doesn't attend.

37 Q. She is a member of the association, but she doesn't
38 attend the meetings.

1 A. I don't - I really don't know whether she is a member.

2 Q. You are not divorced or separated or anything like that.

3 You live together.

4 A. No, but there are people who have separate social lives

5 and, I mean, I don't ask her to account for everything

6 she is a member of, or where she goes.

7 COMSR: Where is this line of questioning going?

8 MR MEYER: The line of questioning is along the

9 line that I want to suggest to Mr Tuckwell that he is

10 nowhere near as independent on the construction of this

11 bridge as he makes out, and that is a matter that is

12 relevant to you in the context of the evidence that has

13 been given by Mr Tuckwell. That is the relevance of it.

14 COMSR: Are you going to put that question?

15 MR MEYER: I am moving towards it.

16 XXN

17 Q. The next question I was going to put to you is: this

18 issue of building a bridge or not building a bridge in

19 Goolwa has been one of the most momentous political

20 issues there has been for Goolwa.

21 A. Yes.

22 Q. And you are telling me that you don't know whether your

23 wife is a member of a group opposed to the building of

24 the bridge.

25 A. It is none of my business.

26 Q. Do you know whether your wife ever receives minutes of

27 meetings of the Friends of Kumarangk.

28 A. No, I'm not aware of that.

29 Q. You answered a question to Mr Smith, who asked whether

30 you received minutes and you said 'No, not personally'.

31 A. No.

32 Q. That suggested that you might have got them in some

33 other way -

34 A. No.

35 Q. Than you yourself receiving them.

36 A. I was assuming - when I responded to that question, I

37 assumed that minutes may have been issued. I wasn't

38 aware of it, so I personally didn't get minutes. I am

- 1 not aware of my wife getting minutes from a - from the
2 friends, if she is a member.
- 3 Q. So minutes of the Friends of Kumarangk haven't come into
4 your household, whether directed to you or otherwise.
- 5 A. No.
- 6 Q. So the qualification that you haven't received them
7 personally, merely means you don't know of receiving
8 minutes at all.
- 9 A. No.
- 10 Q. I take it, as a ward councillor, that you have an
11 interest in keeping abreast of what is going on within
12 your ward.
- 13 A. I try to, in my own incomplete way.
- 14 Q. For that purpose, you have been to a number of meetings
15 of the Friends of Kumarangk.
- 16 A. Yes.
- 17 Q. Been to any meetings of any other group related to the
18 construction of the bridge.
- 19 A. Yes. I went to a public meeting of the Friends of
20 Hindmarsh Island.
- 21 Q. When.
- 22 A. It would have been a year or so ago, in the town hall.
- 23 Q. Any others.
- 24 A. No, I'm not aware of any others.
- 25 Q. Have you sought to find out about any others.
- 26 A. No.
- 27 Q. You must be aware, as councillor, that there is a group
28 which is active in support of the bridge.
- 29 A. Yes.
- 30 Q. Have you made any attempt to liaise with them to find
31 out when they are having meetings and matters of that
32 nature, as a ward councillor.
- 33 A. Yes. I speak to individual members occasionally, but I
34 am not eligible to be a part of that group, and I -
- 35 Q. As a ward councillor, have you sought to go as an
36 observer.
- 37 A. I have said I have attended a meeting.

- 1 Q. Other than that meeting that you have referred to, have
2 you sought, as a ward councillor, to attend any other
3 meeting.
- 4 A. No, I don't seek to go anywhere.
- 5 Q. When did you first become associated with Signal Point.
6 A. 1985.
- 7 Q. Was the project, at least in its planning and
8 development stages, well underway by then.
- 9 A. Yes.
- 10 Q. I think it was a project of the bicentenary
11 arrangements.
- 12 A. Yes.
- 13 Q. There was a committee to develop Signal Point.
14 A. Yes.
- 15 Q. Who was the chairman.
16 A. The working committee, you are referring to?
- 17 Q. I don't know whether there is one, or more than one
18 committee. Who was -
- 19 A. Yes, there was a committee that actually brought the
20 project up to a stage where it was submitted for an
21 application, and then a working committee was formed.
22 The chairman of that was Mr Tom Chapman, who is present
23 with us this morning.
- 24 Q. How long was he chairman.
25 A. Until 1990, I believe.
- 26 Q. By that time, it had been brought from its planning
27 stage to operational.
- 28 A. Yes.
- 29 Q. And you had been appointed its director.
30 A. Yes. I became full-time director in 1989.
- 31 Q. In fact, Tom Chapman was very active in the development
32 of Signal Point, wasn't he.
- 33 A. Yes, he was.
- 34 Q. How long have you known the Chapmans.
35 A. Since 1985, and I served for a while on the Regional
36 Development Corporation Board with Wendy Chapman.
- 37 Q. The Chapmans have owned land on Hindmarsh Island since
38 before 1985, haven't they.

- 1 A. Yes.
- 2 Q. Did you not know them before then.
- 3 A. No, no.
- 4 Q. Even though you lived in the area.
- 5 A. Yes.
- 6 Q. When did the marina start.
- 7 A. I believe that was probably around about 1980, or
- 8 something like that.
- 9 Q. Did you take any interest in that.
- 10 A. Well, like most locals, yes. It was something we knew
- 11 that was going on, yes.
- 12 Q. Did that bring the Chapmans to your notice.
- 13 A. No, not at that time.
- 14 Q. Did you know it was the Chapmans who were developing it.
- 15 A. We knew that that was the name of the people who were
- 16 actually building it, but I wasn't really involved with
- 17 the Chapmans until 1985, when I met Tom Chapman, who was
- 18 the chairman, and then we became quite well known - they
- 19 became quite well known to me.
- 20 Q. Subsequent to that there was a discussion about the
- 21 development or the construction of the bridge, wasn't
- 22 there, for the Hindmarsh Island.
- 23 A. Yes, there was a number of proposals put up from time to
- 24 time, yes.
- 25 Q. That wasn't the first time that there has been
- 26 discussion about the construction of a bridge.
- 27 A. No.
- 28 Q. There had been much discussion over many years, hadn't
- 29 there.
- 30 A. Yes.
- 31 Q. What is the earliest that you can recollect there being
- 32 any discussion about the construction of a bridge at
- 33 Hindmarsh Island.
- 34 A. I suppose it would have been in the 1980s, when it was
- 35 becoming evident that the ferry service was becoming
- 36 overloaded.
- 37 Q. Can I suggest to you that in fact it was a long time
- 38 before then, decades before.

- 1 A. Yes. There are all kinds of projects all over Australia
2 that have some root beginnings in concepts.
- 3 Q. I am not concerned about the rest of Australia. I am
4 only concerned about this problem, and I am suggesting
5 to you that many years ago there were some serious
6 suggestions about building a bridge at Hindmarsh Island.
- 7 A. Yes.
- 8 Q. And you are aware of that.
- 9 A. Yes.
- 10 Q. In fact, it was the subject of publication in the
11 'Advertiser'.
- 12 A. Yes.
- 13 Q. That's right, isn't it.
- 14 A. Yes.
- 15 Q. 30 to 40 years ago.
- 16 A. Yes.
- 17 Q. You have got a cutting of that, haven't you.
- 18 A. Yes.
- 19 Q. Are you able to produce that.
- 20 A. I believe I would be able to. It would be in my file
21 somewhere.
- 22 Q. That is in a cuttings book, isn't it. That newspaper
23 article, at least in this instance, has been provided to
24 you by a Val Lawrence.
- 25 A. Yes, I am aware of Val, yes.
- 26 Q. That's right, isn't it.
- 27 A. Yes, I believe I can recall the cutting, yes.
- 28 Q. And you got it from Val Lawrence.
- 29 A. I believe so, yes.
- 30 Q. That was in association with the National Trust.
- 31 A. Yes.
- 32 Q. There is nothing new, is there, about the notion of
33 building a bridge to Hindmarsh Island.
- 34 A. No, no.
- 35 Q. When did you ever first hear of any suggestion of any
36 form of Aboriginal objection to building a bridge at
37 Hindmarsh Island.

- 1 A. That would have to be related to the Amelia Park - the
2 stopping of the work at Amelia Park.
- 3 Q. When was that.
- 4 A. That would have been 1992-93.
- 5 Q. In fact, later than 1993.
- 6 A. Yes.
- 7 Q. You have been a Goolwa resident for most of your life.
8 You are an active amateur historian, is that right.
- 9 A. Yes.
- 10 Q. You are Chairman of the National Trust. You have taken
11 an interest in Aboriginal matters for many years. There
12 have been proposals around the place to build a bridge
13 to Hindmarsh Island for at least 40 years.
- 14 A. Yes.
- 15 Q. There has been an actual approved proposal since, what,
16 1990 or so.
- 17 A. Yes.
- 18 Q. And the first that you hear of an Aboriginal objection
19 is October 1993.
- 20 A. Yes, that's right.
- 21 Q. One would have thought that you were a person in the
22 community with the interests that you have, that had
23 there been any form of Aboriginal objection, you would
24 have heard about it.
- 25 A. Yes.
- 26 Q. You have said that you met Sarah Milera first, and Doug
27 Milera second. Is that right.
- 28 A. Yes.
- 29 ADJOURNED 1.00 P.M.

- 1 RESUMING 2.27 P.M.
2 Q. Just before the break, I was going to ask you some
3 questions in relation to your first meetings with Doug
4 and Sarah Milera. As I understand your evidence, you
5 first met Douglas Milera at the picnic which took place
6 in October 1993.
7 A. Yes.
8 Q. You'd never met him before that time.
9 A. No.
10 Q. You met Sarah within a few weeks prior to that date.
11 A. Yes.
12 Q. It doesn't matter specifically when, but it's within a
13 month or so of that meeting, is that right.
14 A. Yes.
15 Q. At the time that you met them, they weren't living in
16 Goolwa.
17 A. No.
18 Q. They were living in Murray Bridge or somewhere else.
19 A. Yes.
20 Q. They were visiting Goolwa, Doug for the first time as
21 far as you knew.
22 A. Possibly, yes. I wouldn't know, no.
23 Q. Sarah, to your knowledge, at least on one prior occasion
24 when you'd previously met her.
25 A. Yes.
26 Q. Subsequently they came back to Goolwa to live, at least
27 for a period of time. When did they come back to live
28 there.
29 A. I couldn't exactly tell you when, but it was sometime
30 after that.
31 Q. How much. Was it weeks after or months after.
32 A. I couldn't hazard a guess on that. It was sometime
33 after, all I can say it was sometime after.
34 COMSR
35 Q. What I'm not clear about is they came back to Goolwa.
36 Had they previously lived at Goolwa, do you know.
37 A. Not that I know of.

1 XXN

2 Q. I take it that you had met or known Johnny McHughes.

3 A. Yes.

4 Q. He is an Aboriginal person.

5 A. Yes.

6 Q. How long have you known Johnny McHughes, years.

7 A. Yes, since at least 1947.

8 Q. His family have been long-term Aboriginal residents in
9 Goolwa.

10 A. Yes.

11 Q. In fact, I think the only consistent long-term

12 Aboriginal family in your lifetime living in Goolwa.

13 A. Well, the Godfreys would have been another family. Flo

14 Lush, who was a Ramindjeri lady, lived there all of her

15 life. I think there were a number of Ramindjeri or

16 Ngarrindjeri people there that appeared almost invisible

17 because of their lifestyle, and we weren't conscious of

18 them unless we knew that they were there, but they were

19 there.

20 Q. Does that mean also in appearance, they were not very
21 black.

22 A. No, that's true, but I'm not quite sure, in the original
23 condition, how Ngarrindjeri people really looked. There
24 may have been some change in skin tones, even with the
25 original Ngarrindjeri.

26 Q. Johnny McHughes has given evidence in here that Doug
27 Milera spoke to him in the Corio Hotel and spoke to him,
28 Johnny thought, not realising that he was an Aboriginal
29 person.

30 A. Right.

31 Q. That is a mistake that you could make with Johnny
32 McHughes, isn't it.

33 A. Yes.

34 Q. If you saw him in a street in Adelaide, you mightn't
35 initially say to yourself 'He is an Aboriginal person'.

36 A. If I saw him or if another person saw him?

37 Q. A stranger.

38 A. No, you would, I believe you would have to, you would

1 have to be told that, because John has a very European
2 appearance.

3 Q. If you saw Sarah Milera walking down the street, would
4 you know that she was an Aboriginal person.

5 A. Yes.

6 Q. Because she is darker skinned than Johnny McHughes.

7 A. Yes.

8 Q. Had Doug and Sarah Milera been living in Goolwa for any
9 lengthy period of time prior to your meeting them in

10 November 1993, you would know about it, wouldn't you.

11 A. Yes.

12 Q. After you met Doug Milera at the picnic, where did you
13 next meet him.

14 A. They would have been similar types of functions I guess,
15 I couldn't recall exactly in the order of the number of
16 times I have met him in those earlier periods.

17 Q. Sarah and/or Doug Milera, on various occasions, have
18 made comments like you provided them with lots of
19 information.

20 A. Yes.

21 Q. They have publically acknowledged your help.

22 A. Yes.

23 Q. In relation to Aboriginal matters.

24 A. Yes.

25 Q. Where did you generally meet with the Mileras on
26 occasions when you gave them information and help.

27 A. They generally came to the centre like most people do
28 when they require that sort of information, and that
29 information would have been shared at that time.

30 Q. When you first started talking to them in that way,
31 rather than casually meeting them at a picnic or a
32 function, when you started meeting with them and
33 imparting information to them, did Sarah and Doug have a
34 poor geographical knowledge of Hindmarsh Island and
35 Goolwa.

36 A. Well, I don't know that. I assumed that they would
37 have.

38 Q. Did you have to give them information about the

1 geography of the area and show them various places.

2 A. No.

3 Q. You didn't do that.

4 A. I've never been on Hindmarsh Island with either Doug or
5 Sarah.

6 Q. What about on the Goolwa side.

7 A. That goes without reason, they lived there and I was
8 there.

9 Q. Did you show them around.

10 A. Only to take them to the sites that were there. As a
11 matter of fact it was a joint experience, because they
12 were showing me things and I was showing them things.

13 Q. You were showing them.

14 A. Yes.

15 Q. They didn't know that those places existed.

16 A. No, that's not true.

17 Q. If you were needing to show them, why did they need you
18 to do that.

19 A. Well, because for instance, the cenotaph is not a place
20 where you would actually go to look for information, and
21 that was an obvious one that I could share with them.
22 They, in turn, or Sarah, in turn, showed me which of the
23 sites belonged to her family, or had an association with
24 her family, and then I, on one occasion, took her to, or
25 generally showed her where the Walker, the last Walker
26 camp was, and I used to go there when I was a small boy
27 with my father when we bought fish on the weekends, to
28 show her where that family home had once stood, because
29 it's completely levelled, and it's one of the sites in
30 Walker Park, which the council is named after that
31 family.

32 Q. Have you ever told the Department of Aboriginal Affairs
33 that you could assist in showing people where relevant
34 Aboriginal sites may be.

35 A. No.

36 Q. May somebody else have told the Department of Aboriginal
37 Affairs that you would be a person to be consulted in
38 relation to matters of that nature.

L.F. TUCKWELL XXN (MR MEYER)

- 1 A. I believe there was a letter sent from Dosser to the
2 construction company for the bridge, which actually said
3 that the department, the manager of that department had
4 pointed out that the Director of Signal Point would show
5 them where the sites were, where the camp could be
6 located, and of course that was a nonsense. I don't
7 have that information, nor am I entitled to have that
8 information, but I believe you can get a copy of that
9 letter from Dosser.
- 10 Q. I show to you a letter dated 9 November 1993. It
11 relates to some questions I asked you before lunch.
12 (NOT ANSWERED)
- 13 MR MEYER: I will arrange for the Commission staff
14 to make a copy of it which excludes anything which makes
15 it a difficulty.
- 16 XXN
- 17 Q. I will just move on to another topic. You know Henry
18 Rankine.
- 19 A. Yes.
- 20 Q. How long have you known Henry.
- 21 A. 20 years, perhaps.
- 22 Q. How long have you been able to recognise Henry.
- 23 A. I suppose all of that time.
- 24 Q. If you saw Henry Rankine in a crowd, you'd recognise
25 him.
- 26 A. Depending on where he was in the crowd.
- 27 Q. But I mean if there were a group of Aboriginal men, or a
28 group of any men, and you were five yards away and had
29 your glasses on, if you wear them, you'd recognise
30 Henry.
- 31 A. Quite possibly.
- 32 Q. Surely if you've known a man for 20 years you'd have to
33 know him.
- 34 A. You'd have to show me the circumstances before I could
35 answer that.
- 36 Q. Do you have a problem in answering simple questions.
- 37 A. I have trouble with your simple questions.
- 38 Q. Beg your pardon.

1 A. I have trouble with your simple questions.

2 Q. Well, it's only that you have said that you can't
3 remember seeing Mr Rankine at some meeting in Goolwa,
4 when he was standing on the stage.

5 A. That's not true. I recalled that - once I knew which
6 meeting it was, I recalled seeing him. Now I believe
7 you understand that I did answer that question
8 truthfully at the time, and it was just that I was
9 confused as to which meeting was being referred to.

10 Q. Well, if you were at a meeting and Mr Rankine was at a
11 meeting, and you were close enough to be able to see
12 people and thus identify them by their features,
13 whatever the meeting, you know Mr Rankine well enough to
14 be able to identify him, don't you.

15 A. Yes.

16 Q. So it doesn't matter which meeting we are talking about,
17 you would be able to identify Mr Rankine at any meeting
18 if you saw him.

19 A. Yes, if I had a clear view, yes.

20 Q. In fact, you published a book about Signal Point which
21 specifically refers to Mr Rankine, haven't you.

22 A. Yes.

23 Q. And specifically refers to information relating to
24 Ngarrindjeri people via Henry Rankine.

25 A. Yes.

26 Q. Henry has been very actively involved in Signal Point,
27 hasn't he.

28 A. Yes, I believe from the time when Mr Chapman was
29 chairman of the board of that company, when the
30 production of the films were made that are now shown in
31 there, I was assisting the display people putting some
32 of those displays together.

33 Q. Did you ever discuss with Henry any matters relating to
34 the construction of the bridge at Hindmarsh Island.

35 A. No.

36 Q. Never.

37 A. No.

38 Q. Did you ever take any steps to ascertain whether Henry

L.F. TUCKWELL XXN (MR MEYER)

- 1 had signified that he didn't have any objection to the
2 construction of the bridge at Hindmarsh Island.
3 A. No, I don't believe so.
4 Q. Henry is an eminent person in the Aboriginal community,
5 isn't he.
6 A. Yes.
7 Q. If you were wanting to go and find out, as a person who
8 has a great interest in Aboriginal matters, something
9 which may concern the Aboriginal community, Henry would
10 be one of the first people you'd go and ask, wouldn't
11 he.
12 A. It depends on what the nature of that business was,
13 whether it fell within Henry's area.
14 Q. Other than a matter that concerns Hindmarsh Island and
15 Goolwa, Henry would be one of the the first people you
16 would go and ask.
17 A. Amongst others, yes. I mean you couldn't ask one
18 individual alone, you would have to ask a number of the
19 elders to get a consensus of an opinion, but I hadn't
20 any reason to do that.
21 Q. Do you know a person called Olwyn Barwick.
22 A. Yes.
23 Q. That's a lady, isn't it.
24 A. Pardon?
25 Q. That's not a man, it's a lady, Olwyn Barwick.
26 A. Yes.
27 Q. Who is she.
28 A. She is a lady that lives on Hindmarsh Island.
29 Q. Does she play any active role in relation to this issue
30 of the construction of a bridge.
31 A. I believe she has some interest in the bridge, yes.
32 Q. What interest do you believe she has.
33 A. Well, I think she's a pro ferry person.
34 Q. Have you ever been associated with her in any way in the
35 provision of information in relation to this bridge
36 issue.
37 A. In what way?
38 Q. In any way. You've got more knowledge of this than I

1 have.

2 A. Well, if it was matters of historical background, of
3 that kind of thing, my reference library is open to all
4 people if they want to use it.

5 Q. What if it's in relation to some action to support the
6 banning of building the bridge.

7 A. No, I wouldn't have given any information in that light.
8 I may have, as a private person, expressed some
9 interest, but -

10 Q. Would you have held yourself out as somebody who can be
11 consulted to provide such information.

12 A. I would consult and provide information for anybody on a
13 broad spectrum, both sides of the issue.

14 Q. Would you have held yourself out or permitted yourself
15 to be held out as a person who could provide information
16 to assist people who opposed the building of the bridge.

17 A. No.

18 Q. If someone had included your name in such a document,
19 that would be without your knowledge.

20 A. Exactly right. I know what you're driving at, yes.

21 Q. And without your consent.

22 A. Without my knowledge.

23 Q. Without your consent.

24 A. I don't know whether I would have given consent if I had
25 have been asked, but it was without any knowledge.

26 Q. Looking at the document which I now produce to you.

27 A. Yes, I'm aware of this document. The fact was that it
28 contains my silent number, and I certainly would not
29 have given permission for that.

30 Q. Would you turn to p.2. Your name appears as a person
31 who can give information about Aboriginal heritage
32 issues, is that right.

33 A. Yes.

34 Q. At the top of the page.

35 A. Yes.

36 Q. It appears again as a person who can give information
37 relating to the protection of wetlands for migratory and
38 other birds.

- 1 A. Yes.
- 2 Q. This is a person who can give information about the
3 built heritage, particularly of Goolwa.
- 4 A. Yes.
- 5 Q. Your name is given as a person who can give information
6 in relation to planning policies and processes.
- 7 A. That only proves that I'm a genius, not that I gave
8 permission.
- 9 Q. Can you look at p.1.
- 10 A. Yes.
- 11 Q. That's a document prepared by the Kumarangk Coalition.
- 12 A. Yes.
- 13 Q. That's a coalition of a group of people who oppose the
14 Hindmarsh Island bridge.
- 15 A. Of which I have had nothing to do with.
- 16 Q. I asked you a question.
- 17 A. What was that?
- 18 Q. That was a group that oppose the construction of the
19 Hindmarsh Island bridge.
- 20 A. Right.
- 21 Q. Is that right.
- 22 A. Yes.
- 23 Q. The front page of that goes on to describe that persons
24 who want assistance in preparing information to assist
25 in the banning of the bridge, should consult the persons
26 who are listed on the second page.
- 27 A. That's right.
- 28 Q. That's you.
- 29 A. I don't know how many people in that list are in the
30 same position as I am, that weren't consulted but were
31 regarded as people who could give information, no matter
32 how wrongly that was assumed, and our names appears in
33 this there.
- 34 Q. Why didn't you, when I asked you questions earlier about
35 whether you had any association with those people who
36 are opposing the bridge, why didn't you say `Yes, I did,
37 but my name was wrongly used'.
- 38 A. I would have to have a tremendous recall of memory to be

1 able to recall of all of these details, and indeed you
2 will probably find out, during the course of the rest of
3 your questioning, that I will have similar trouble.

4 Q. You knew of the existence of this document before I
5 produced it to you.

6 A. Yes, because it has my silent number on it. It has
7 given me a great deal of pain and problems, and that's
8 the reason why I remember this particular document, but
9 didn't recall it when when your questions seemed to
10 indicate a direct answer on some other matter, not
11 regarding this piece of paper.

12 Q. I suggest that you've been closely associated with
13 opposition to the Hindmarsh Island bridge, and your wife
14 has been closely associated with it, and you are now
15 attempting to deny that association.

16 A. That may be your opinion.

17 Q. I'm putting it to you as a proposition. Don't worry
18 about what my opinion is, I'm putting it to you as a
19 proposition.

20 A. It's not true.

21 EXHIBIT 188 Document entitled 'Kumarangk Coalition
22 Urgent Action Required' tendered by Mr.
23 Meyer. Admitted.

24 CONTINUED

L.F. TUCKWELL XXN (MR MEYER)

- 1 COMSR: Mr Meyer, where is this line of
2 questioning leading, other than on issues of
3 credibility?
- 4 MR MEYER: That was leading up the credibility line
5 that Mr Tuckwell is having to give evidence before the
6 Commission. And I will make submissions to your Honour,
7 at the end of the day, that your Honour should be
8 careful as to what evidence you do and don't accept.
9 That is all.
- 10 XXN
- 11 Q. Have you ever been to the Centre for Urban Ecology, 83
12 Halifax Street.
- 13 A. Not that I can recall.
- 14 COMSR: Is this some more questions devoted to
15 the same -
- 16 MR MEYER: It is just the address of the Kumarangk
17 Coalition, that's all.
- 18 XXN
- 19 Q. Did you, as the Director of Signal Point, suggest the
20 appointment of Doug and Sarah Milera, as consultants to
21 Signal Point.
- 22 A. Yes.
- 23 Q. That suggestion was accepted by the Management
24 Committee.
- 25 A. Yes.
- 26 Q. Did you have a discussion about the Murray Valley
27 Standard, sometime prior to 12 January 1995, about Doug
28 and Sarah Milera and their association with Signal
29 Point.
- 30 A. No.
- 31 Q. Did you speak with them, at all.
- 32 A. No.
- 33 Q. With the Murray Standard.
- 34 A. No.
- 35 Q. Was the Murray Standard making it up, when they say said
36 'The Director, Frank Tuckwell, said the couple from
37 Murray Bridge had had a lot of contact with the Goolwa
38 community.'

- 1 A. No, I don't recall having that conversation with the
2 Murray Valley Standard. The article appeared in the
3 Victor Harbor Times.
- 4 Q. I will ask the same questions, then, in relation to the
5 Victor Harbor Times.
- 6 A. Right.
- 7 Q. Did you provide information to the Victor Harbor Times -
8 A. Yes.
- 9 Q. About the appointment of the Mileras to Signal Point.
- 10 A. Yes, in response to a phone call, I provided information
11 in that regard. The printing of that information came
12 out wrong. The article was quite in error. And
13 subsequently I wrote a letter to the Times. And you
14 should have a copy of that.
- 15 Q. Did you tell the Times that 'Mrs Milera is a Kumarangk
16 Elder.'
- 17 A. I don't recall using that term.
- 18 Q. And '... her grandfather, King Peter Pulami was
19 Paramount Repulle of the Ngarrindjeri nation.'
- 20 A. I don't recall using that particular phrase. Is that a
21 reprint from the Murray Valley Standard?
- 22 Q. I will show you the document I am looking at. Do you
23 recognise that article.
- 24 A. If this is the one from the Victor Harbor Times.
- 25 Q. That is from the Victor Harbor Times, is it.
- 26 A. Yes.
- 27 Q. Do you recognise that.
- 28 A. It has no publishing details down here.
- 29 Q. I understand that, that's why I asked you, do you
30 recognise it.
- 31 A. No, I don't - if it was from the Victor Harbor Times,
32 but I don't think the Times had a picture in theirs.
33 There was just a plain, separate article.
- 34 Q. So, you don't know where that came from.
- 35 A. No.
- 36 Q. Did you provide the information in that article.
- 37 A. I don't believe so.
- 38 Q. Would it be wrong to say 'The Mileras will be technical

- 1 consultants to management for three Aboriginal displays
2 based around food technology, which will include
3 hunting, weapons, food preparation and utensils.'
- 4 A. That is correct.
- 5 Q. It is correct.
- 6 A. That is correct, yes.
- 7 Q. So, they will be technical consultants to management.
- 8 A. Yes.
- 9 Q. In the next paragraph, it goes on to say 'They have been
10 made possible by a \$6,500 History Trust grant.'
- 11 A. Yes.
- 12 Q. 'And Signal Point has put up \$2,500 into the scheme.'
- 13 A. Yes.
- 14 Q. That suggests to me that technical consultants, the
15 Mileras, are going to be paid. They have been retained
16 and they are going to be paid, because it has been made
17 possible by this \$9,000 that is available.
- 18 A. No, that's not correct.
- 19 Q. Did you provide that information about the money to the
20 newspaper.
- 21 A. Yes.
- 22 Q. Did you ever say to Doug and Sarah Milera that 'Being
23 technical consultants doesn't mean that I am going to
24 pay you.'
- 25 A. No, but it assumes that, when they become members of the
26 committee, they will become members of the committee to
27 actually do that.
- 28 Q. I am distinguishing between being a member of the
29 committee and becoming a technical consultant. See,
30 this doesn't say that they are becoming members of the
31 committee, this says 'They will be technical consultants
32 to management.'
- 33 A. That's right.
- 34 Q. Did you say to the Mileras 'Whilst I am going to appoint
35 you as a consultant to Signal Point, I am not going to
36 pay you.'
- 37 A. That's right. There is such things as unpaid
38 consultants.

- 1 Q. Did you say that to them.
2 A. I think they were aware and I am sure -
3 Q. Will you answer the question. Did you say that to them.
4 A. I don't recall what the exact conversation was, but they
5 - it was an understanding that we had, that they would
6 come on as directors. And they would be the people who
7 would consult and give us technical information on the
8 displays and that simply -
9 Q. Do I take your answer to mean that there was no
10 discussion about money, at all.
11 A. There may have been some suggestion that, if there is
12 expense incurred, then that would be taken care of. If
13 they had to drive a car, say, from Murray Bridge to
14 Goolwa, we couldn't expect them do that for nothing, but
15 that wouldn't be part of a consultancy fee. In fact, I
16 believe there was one occasion when we did actually pay
17 for Sarah and Doug to come down from Murray Bridge to
18 Goolwa to do the first consultancy on the display.
19 Q. In that article, as I read out to you before, you said
20 that Doug and Sarah had had a lot of contact with the
21 Goolwa community. What was your basis for saying that.
22 A. They have had. They did have.
23 Q. In what way.
24 A. They were part of the social fabric of the town in that
25 regard from the Friends of Kumarangk and that kind of
26 interaction that they had with the town.
27 Q. We have established that the Mileras didn't have any
28 contact with Goolwa, to your knowledge, before
29 October/November 1993.
30 A. You are talking about before that?
31 Q. I am only taking your comment about having had a lot of
32 contact with the Goolwa community. Do you mean they had
33 recent contact with the Goolwa community.
34 A. Yes.
35 Q. Obviously they haven't had as much contact with the
36 Goolwa community, for example, as you have.
37 A. No.
38 Q. You have had a lot of contact.

1 A. Yes.

2 Q. Do you know how long Doug had been secretary of the
3 Lower Murray Aboriginal Heritage Committee.

4 A. No.

5 Q. How long have you been the Director of Signal Point.

6 A. Since 1989.

7 Q. Since 1989, have you had contact, as the Director of the
8 Signal Point, with the Lower Murray Aboriginal Heritage
9 Committee.

10 A. On one occasion we applied for permission to display the
11 Aboriginal food display, artefacts which we hold, and
12 that possibly would have been the earliest formal
13 contact we had with the committee.

14 Q. Was that with Doug.

15 A. That was through Doug, yes, he was the secretary of it.

16 Q. So, you had had some dealings with Doug, before November
17 1993.

18 COMSR: I don't think the witness said that. I
19 think he simply said that's the manner in which there
20 was contact.

21 MR MEYER: That is what I am trying to establish.

22 WITNESS: No, that would have been after that
23 date.

24 XXN

25 Q. When were you appointed as Director of Signal Point.

26 A. 1989.

27 Q. Between the time when you were appointed in 1989 and
28 November 1993, did you have any contact with the Lower
29 Murray Aboriginal Heritage Committee.

30 A. No, I don't believe so.

31 COMSR

32 Q. Apart from having no contact, had you heard of them,
33 during that time.

34 A. No, I don't believe so.

35 XXN

36 Q. During the time that you were the Director of Signal
37 Point, Henry Rankine was involved with Signal Point.

38 A. No, that involvement with Henry ended around about late

L.F. TUCKWELL XXN (MR MEYER)

1 1987 when some of the programmes that we actually show
2 in Signal Point feature Henry and we tells us the story
3 of his clan legends and so on. And that is one of the
4 feature productions we have in the centre. And the
5 production team would have worked very closely with
6 Henry and the people of Raukkan, at that stage. And I
7 don't believe there was any contact after that.

8 Q. And, besides those matters, do you have any other
9 matters relating to Aboriginal displays in Signal Point.

10 A. No, not up until fairly recently.

11 Q. You have said that Doug borrowed \$50.00 from you, as I
12 understand it, on two separate occasions, is that right.

13 A. Yes.

14 Q. Did Doug ask you for money on more than the two
15 occasions that you lent him money and there were
16 occasions when you refused.

17 A. On the first occasion it seemed to be the friendly thing
18 to do. He needed to get back. He needed to fill the
19 car up and so on. The second time, the same thing. The
20 third time it obviously became - I was aware of his
21 problem. I became aware of his problem.

22 Q. All I am putting to you is this, that Doug is want to
23 borrow money from people, or obtain money from people
24 and is want to ask, on other occasions, and understands
25 being refused. And that probably happened to you too.

26 A. Possibly, yes.

27 Q. I think you became representative - council
28 representative for the Lower Murray Aboriginal Heritage
29 Committee, on about 8 November 1993.

30 A. Right.

31 Q. Is that right.

32 A. Yes.

33 Q. Were there any other nominations, from amongst the
34 councillors, for that position.

35 A. No.

36 Q. So, you were elected, unopposed, so to speak.

37 A. That's right.

38 Q. Up until that time, I understand your evidence now to be

- 1 you hadn't had any association or contact with the Lower
2 Murray Aboriginal Heritage Committee.
- 3 A. There may have been contact before that. There would
4 have had to have been some reason for me being
5 appointed.
- 6 Q. Have you ever been to Camp Coorong.
- 7 A. Yes.
- 8 Q. When.
- 9 A. Would have been about 12 months ago.
- 10 Q. Can't you remember.
- 11 A. I remember the occasion, but I can't recall the date.
- 12 Q. Did you make a note of it in your diary.
- 13 A. Yes, it would have been in my diary.
- 14 Q. In fact, your diary would assist you quite a bit, in
15 giving evidence, wouldn't it.
- 16 A. Yes.
- 17 Q. Have you got your diary available.
- 18 A. I have got the current one, yes.
- 19 Q. What about last year's.
- 20 A. No.
- 21 Q. Where is that.
- 22 A. That is in Signal Point.
- 23 Q. But it is available. It is not destroyed or anything
24 like that. You could obtain it.
- 25 A. Yes.
- 26 Q. And your 1993 diary, equally as obtainable.
- 27 A. Yes.
- 28 Q. If you had your diaries, would you be able to be more
29 accurate, in giving dates and times that you did things.
- 30 A. I'm sure. I mean, I don't have the advantage of sitting
31 in a witness box trying to quote dates almost accurately
32 every time it was asked, because it is totally
33 impossible.
- 34 Q. I am not implying a criticism at all. That is why I am
35 asking if you have a diary.
- 36 MR MEYER: I ask the witness to produce his
37 diaries. That obviously would be of assistance, in
38 relation to the matters of his evidence.

1 COMSR: Indicating that you might require to
2 examination the witness further?

3 MR MEYER: I hope not, but, if the diaries were
4 available, it would assist in clarifying a lot of
5 matters. Especially if counsel assisting was able to
6 look at them and then verify the mechanical things, like
7 times and dates and things of that nature.

8 XXN

9 Q. Are you able to produce the diaries to Mr Smith.

10 A. Yes, I have no objection to that.

11 Q. May it have been that you went to a meeting at Camp
12 Coorong, on 28 March 1994.

13 A. Quite possibly that was the date, yes.

14 Q. What sort of meeting was that.

15 A. It was a planning meeting that was required by Ann Lucas
16 to get permission or to get authorisation from that
17 group to proceed with her planning before it came into
18 council and I was invited to come over and see that kind
19 of action in place.

20 Q. Who is Ann Lucas.

21 A. She is a - one of my constituents in my ward and she
22 lives on Hindmarsh Island.

23 Q. Whereabouts.

24 A. On the southeastern portion of the island.

25 Q. Did she live in any house which has already been
26 referred to in this Royal Commission.

27 COMSR: The witness may not know what houses
28 have been.

29 MR MEYER: He has given evidence about the Mouth
30 House in his evidence-in-chief.

31 WITNESS: The Mouth House?

32 XXN

33 Q. Yes.

34 A. No, this wasn't to do with the Mouth House. It was to
35 do with a new property called The Swans, or a property
36 called The Swans.

37 Q. Does she own the Mouth House.

38 A. Yes.

- 1 Q. So there was a planning application to do development on
2 Hindmarsh Island, by the lady who owned the Mouth House.
3 A. Yes.
4 Q. Were you in favour of that development.
5 A. Yes, council was in favour of it.
6 Q. I asked you if you were.
7 A. Yes.
8 Q. Were the Mileras present at that meeting.
9 A. No.
10 Q. Were the Mileras, at that time, living in the Mouth
11 House.
12 A. I couldn't be sure of that, I - no, I couldn't tell you.
13 Q. Did the Mileras live in the Mouth House, at some stage,
14 to your knowledge.
15 A. They may have stayed there, yes. I am not quite sure
16 who the tenants were, in that particular house, because
17 they were only very short-term tenants, I believe. It
18 is actually a holiday home, as far as I can determine.
19 All those houses are in the holiday zone. It is a
20 holiday housing zone.
21 Q. Have you ever been inside the Mouth House.
22 COMSR: What is the relevance of that?
23 MR MEYER: We have had evidence about the Mouth
24 House and the geography of the Mouth House and evidence
25 like that.
26 COMSR: Is that a contentious issue?
27 MR MEYER: I don't know. I am interested in what
28 this witness has to say. It has been contentious.
29 WITNESS: I was in the house on one occasion.
30 XXN
31 Q. When was that. And, to help you, I think that you have
32 given evidence about going to the Mouth House, on 9 May.
33 A. Right.
34 Q. When you had a meeting with police. Do you remember
35 giving evidence about that.
36 A. No, I was not at the house, on that occasion.
37 Q. It was somewhere else.
38 A. It was a place I believe is called The Pines.

- 1 Q. Did you go to the Mouth House before that meeting with
2 police or after.
- 3 A. I don't know. It was one of those social occasions.
- 4 Q. Would your diary help you.
- 5 A. No, it wouldn't have been a diary item. It was a social
6 visit.
- 7 Q. There has been evidence that, on the walls of the Mouth
8 House, there were photographs, aerial photographs, of
9 areas around Hindmarsh Island and Goolwa. Do you
10 recollect that.
- 11 A. No.
- 12 CONTINUED

L.F. TUCKWELL XXN (MR MEYER)

- 1 COMSR: We are not going to traverse areas that
2 we have already been over, are we?
- 3 MR MEYER: I hope not. If I haven't got any
4 disagreement with them. I don't think there is a
5 problem with it, because it is material which is in a
6 letter addressed to engineers, and, therefore, is not
7 being used in a limited way. But out of caution -
- 8 COMSR: Yes, I can assure you I will be acting
9 out of caution, too.
- 10 MR MEYER: I am making sure I satisfy any inquiries
11 that Mr Smith has first before we take it any further
12 than that.
- 13 XXN
- 14 Q. The episode of the Aboriginal ladies, as I understand it
15 to be, coming to Signal Point on the occasion of making
16 a copy of the letter that has been discussed this
17 morning - you know what I am talking about.
- 18 A. Yes.
- 19 Q. As I understand it, what was brought in to you was a
20 document on a number of different pieces of paper. Is
21 that right.
- 22 A. No. I only saw one piece of paper with a lot of
23 signatures on it.
- 24 Q. Did you assist in collating the document so that it
25 could be copied in a sensible form.
- 26 A. I can't recall whether I did the photocopying or not.
27 This is a bit of a problem with remembering the exact
28 day - details of what happened.
- 29 Q. What I am suggesting to you is that there was several
30 pieces of paper that needed to be cut and shut, so to
31 speak, so they were put together in sensible sequence
32 and then photocopied, and that you assisted in carrying
33 out that task.
- 34 A. Well, I may have done if they suggested that this should
35 go here and that should go there.
- 36 Q. Did you keep a copy.
- 37 A. No.

- 1 COMSR: The witness has only said so far 'I may
2 have done'.
3 Q. Can you recall whether or not you did do it.
4 A. To perhaps tidy this up, ultimately, it is my
5 responsibility if that photocopy was made in Signal
6 Point. So I will assume responsibility for doing it.
7 XXN
8 Q. That wasn't what I was concerned about. I am not
9 concerned about whether it was copied in Signal Point or
10 not. All I want is some information, firstly, as to
11 whether you assisted in putting the thing together, and
12 secondly, whether you kept a copy.
13 A. No.
14 Q. Do you know whether any group associated with opposition
15 to construction of the bridge has met or had meetings at
16 Signal Point.
17 A. No.
18 Q. You say they haven't, or you don't know.
19 A. They haven't. I wouldn't allow the centre to be used
20 for that, because it is a non-political - the charter of
21 the centre is that it must be non-political -
22 Q. What about after hours.
23 A. After hours - the Rate Payers Association, for instance,
24 is a public body, an incorporated public body, has right
25 of access to the centre after hours, along with other
26 bodies like the Lions Club, and the environment group,
27 the history society - all have access to the centre
28 after hours.
29 Q. Friends of Kumarangk.
30 A. No.
31 Q. Never had meetings there.
32 A. No.
33 MR MEYER: I don't need the assistance from the
34 gallery in the answering of questions. It is the second
35 or third time we have had help for the answers.
36 COMSR: I wasn't aware of it.
37 MR MEYER: Perhaps because I am midway in between.

1 XXN

2 Q. The Rate Payers Association has.

3 A. Yes.

4 Q. Who is the Chairman of the Rate Payers Association.

5 A. The current one?

6 Q. Yes.

7 A. Mr Bill Longworth.

8 Q. Does he live in Goolwa.

9 A. No.

10 Q. Where does he live. I don't mean his actual address,
11 just generally.

12 A. I think he lives on Hindmarsh Island, but his business,
13 I think, is both in town and in another place.

14 Q. `In town' you mean in Adelaide or in town in Goolwa.

15 A. In Goolwa. He has an office in Goolwa.

16 COMSR: How is this detail going to assist me at
17 all?

18 MR MEYER: Because you will have it put to you that
19 in fact Mr Longworth has been a very active opponent to
20 the bridge, and again I will put that Mr Tuckwell is
21 associated with people who are opposed to the bridge.
22 The following questions relate to that.

23 COMSR: Can we put it to Mr Tuckwell shortly?
24 Can we ask him straight out whether he is associated
25 with groups and persons who are opposed to the
26 construction of the bridge.

27 MR MEYER: He has said he is not. That is why I am
28 cross-examining him about it. If he had said he was, I
29 could understand what we were doing.

30 XXN

31 Q. Are you a member of the executive of the Rate Payers
32 Association.

33 A. No.

34 Q. Have you been.

35 A. No.

36 Q. Never.

37 A. Never. They do issue minutes and they have got a roll
38 book, and that information is quite easily obtainable.

- 1 Q. Does that association have an executive.
2 A. Yes.
3 Q. You kept notes or minutes of the meeting of 21 April
4 1994.
5 A. Yes.
6 Q. As I read those notes or minutes, there are references
7 only to archaeological sites.
8 A. Broadly, yes.
9 Q. No reference to any other basis or objection in respect
10 of the construction of the bridge from the Aboriginal
11 point of view. Is that right.
12 A. That's right.
13 Q. When you went to the meeting on 9 May, the occasion when
14 the police were giving their briefing, was Mr Wooley
15 there.
16 A. I don't think so.
17 Q. Do you know Mr Wooley.
18 A. I'm aware of him, yes.
19 Q. Would you recognise him.
20 A. I think so, yes. I don't think I saw him there.
21 Q. He is not in the hearing room today, is he.
22 A. I don't think so, no.
23 Q. You are right. I can tell you he is not.
24 COMSR: The witness's evidence is, isn't it,
25 that he first heard of any issue of women's business at
26 the time it became a public issue?
27 MR MEYER: I don't know when that date may be
28 defined. That is why I am asking Mr Tuckwell these
29 questions.
30 XXN
31 Q. Was Dr Draper present on 9 May.
32 A. He may have been. Once again, I -
33 Q. I want to take you back to the article of 28 May 1995.
34 I show you a photostat of what is a copy of 'The
35 Bulletin', 28 March 1995. Do you recognise that
36 document.
37 A. Yes.

- 1 Q. That is a copy of apparently p.20 and p.21. Is that
2 right.
- 3 A. Right.
- 4 Q. On p.20 it shows a photograph, part of which appears on
5 p.21.
- 6 A. Right.
- 7 Q. The caption on p.21, next to the photograph says
8 `Hindmarsh Island custodian, Sarah Milera, and local
9 councillor, Frank Tuckwell'.
- 10 A. Right.
- 11 Q. Is it in fact you with Sarah Milera in the picture.
- 12 A. Yes.
- 13 Q. Did the journalist or author of the article, Robert
14 Mayne, attend at Goolwa.
- 15 A. Yes.
- 16 Q. Did you meet with him.
- 17 A. Yes.
- 18 Q. Did you meet with him in company with Sarah.
- 19 A. Yes. He requested it.
- 20 Q. I presume he arranged for you to go and have your
21 photograph taken.
- 22 A. Yes.
- 23 Q. Together with Sarah, did you provide information to Mr
24 Mayne so that he could write this article.
- 25 A. Yes, some.
- 26 Q. Did you say to Mr Mayne words to the effect `Frank
27 Tuckwell, a white counsellor on Goolwa Council, which
28 encompasses the site, says that almost all white
29 Australians cannot understand the importance of these
30 Aboriginal beliefs or the cultural and historical
31 framework on which they are based.'
- 32 A. Yes.
- 33 Q. Did you say words to that effect to Mr Mayne.
- 34 A. Yes.
- 35 Q. You said that to him despite the fact that it is your
36 belief that the bridge should be built, except for these
37 financial issues.

- 1 A. We are talking about sites. We may not be talking about
2 sites where the bridge is going to be built. That is a
3 general statement about - that could be a general
4 statement on Aboriginal sites anywhere in Australia.
- 5 Q. The caption for this article is 'The great divide', 'The
6 controversy over the Hindmarsh Island Bridge highlights
7 the gulf between white law and native tradition'.
- 8 COMSR: But that caption wasn't there at the
9 time of this discussion, was it, My Meyer?
- 10 MR MEYER: That is absolutely correct.
11 XXN
- 12 Q. The discussion that you were having with the journalist
13 was in the context of the building of the Hindmarsh
14 Island Bridge, wasn't it.
- 15 A. No. From my recollection of that particular discussion,
16 it was the great rift that is occurring between white
17 Australians and black Australians is because white
18 Australians don't understand fully the attachment that
19 Aboriginal people have for their land, that their spirit
20 lays on the land, that they draw their life from the
21 land, and that was what I was trying to get out in that
22 article, that there are those of us who live by one law
23 of the land, and then there are other - the citizens who
24 have to live by two laws of the land. I was trying to
25 demonstrate there how iniquitous it is for one race of
26 our people, or one branch of our people in this nation
27 to have to be subject to two sets of laws, while the
28 rest of us have one. That is the spirit of that
29 argument - that is the spirit of that article, and that
30 is the reason why I spoke in those terms.
- 31 Q. But that is not to be related to the specific issue of
32 Hindmarsh Island Bridge.
- 33 A. Not particularly. That is a broad appeal to understand
34 Aboriginal people and what they are going through.
- 35 Q. If someone reads that in the context of Hindmarsh Island
36 Bridge, you say that doesn't fairly express your view.
- 37 A. No, because we have problems with this (INDICATES HOLY
38 BIBLE) and how we approach even our own scriptures.

1 Q. I am just trying to understand what your view is,
2 because that remark immediately follows upon the remark
3 about Sarah Milera relating to the Hindmarsh Island
4 Bridge, so the context of the article, I read it as your
5 saying, because of these difficulties, you cannot
6 support the Hindmarsh Island Bridge. Because it goes on
7 in the next column to say `Tuckwell is more than just a
8 local councillor, embroiled in the row over a concrete
9 bridge which will now probably never be built, and for
10 which there was never any real financial justification.
11 He also runs the Signal Point River Murray Display
12 Centre', and it goes on to describe matters relating to
13 the Ngarrindjeri nation, and it is all in that context.
14 But you say that is wrong. That is not how you put it
15 to Mr Mayne.

16 A. No, I still say the spirit of the conversation I had
17 with him was my concern that black Australians have to
18 live by two sets of laws, while the rest of us live with
19 one, and the bridge is just the issue that tests that
20 particular belief that I have.

21 Q. There was a reference in here somewhere, I thought, to
22 the suggestion that the River Murray Mouth had been
23 closed in pre-settlement occasions. Do you remember
24 that.

25 COMSR: In where?

26 MR MEYER: In this article.

27 COMSR: Said to be ascribed to the witness, that
28 statement?

29 MR MEYER: No, to the Mileras.

30 XXN

31 Q. Do you remember anything of that nature.

32 A. I don't recall it, but if you say so, it must be there.

33 Q. On p.1 it says `Meanwhile, the drought has narrowed the
34 nearby Murray Mouth, so much that it might close up
35 occasionally this year. The local Aboriginal people can
36 remember this happening from time to time over the
37 thousands of years their ancestors have been there, and
38 like everything else that happens locally, it has a

1 symbolic meaning'. Were you involved in any discussion
2 of that nature with Mr Mayne.

3 A. No.

4 Q. Was Doug present at the time you had the interview with
5 Sarah and -

6 A. No.

7 Q. So it was just Sarah.

8 A. Yes.

9 Q. Did Sarah say anything like that to Robert Mayne.

10 A. I wouldn't know, because what happened in the course of
11 that interview was that the interview took place over a
12 range of areas, and that is only one photograph that was
13 taken. There were a number of photographs taken in a
14 lot of different places, and the interview ranged over
15 far more subjects than that. To put that conversation
16 into its proper context, you would have to see the rest
17 of his notes, because, like everything that we see in
18 the short version, it is never the same as the original.

19 EXHIBIT 189 Article from 'The Bulletin' entitled
20 'The Great Divide' of 28 March
21 1995 tendered by Mr Meyer. Admitted.

22 Q. In that article, there is a reference to Sarah saying
23 that she is the custodian of Hindmarsh Island. Were you
24 present when that was said to Robert Mayne.

25 A. Yes, I believe I did hear her say that.

26 Q. Do you know - when was the first time you heard that
27 suggestion.

28 A. Well, I believe we would have come to that conclusion
29 anyway. It doesn't need to be expressed because I
30 believe under the Act, the Aboriginal Heritage Act 1988,
31 the Minister designates custodianship to the Heritage
32 Committee in the area where those are, so that Doug,
33 Sarah and all the other committee members would have
34 been custodians under the Act.

35 Q. Doug didn't say that he was the custodian.

36 A. But he wasn't interviewed.

37 Q. No, at other times Doug hasn't said that, has he.

38 A. Yes.

- 1 Q. In answer to my question, when's the first time that you
2 heard Sarah mention that she was the custodian of the
3 island.
4 A. The island?
5 Q. Hindmarsh Island.
6 A. I don't believe I've heard Sarah actually say that at
7 other times.
8 Q. Other than than in that interview.
9 A. Yes.
10 Q. Would you look at Exhibit 114. Have you seen that
11 document before.
12 A. No.
13 Q. That appears to be firstly a press release by Sarah
14 Milera, and secondly a letter from Doug Milera as the
15 Secretary of the Lower Murray Aboriginal Heritage
16 Committee, doesn't it.
17 A. So it appears, yes.
18 Q. Mr Smith asked you some questions about documents being
19 prepared by the Friends of Kumarangk Organisation for
20 the Mileras, or for Doug as Secretary of the Lower
21 Murray Aboriginal Heritage Committee, didn't he.
22 A. Yes. The question was asked, yes.
23 Q. I put to you that that's a document which was so
24 prepared by Mr Owen in fact. Are you able to assist us
25 with that.
26 A. No, I have no knowledge of this document.
27 Q. Are you familiar with the style.
28 A. Well, I'd have to study it to -
29 Q. Would you do so.
30 COMSR: Where will it take me?
31 MR MEYER: I hope for the witness to do it in
32 answer to the document, compared to documents that he
33 has seen.
34 COMSR: Do you mean the literary style.
35 MR MEYER: Typeface appearance, setout, matters of
36 that nature.
37 COMSR: Compare it with whose document?
38 XXN

L.F. TUCKWELL XXN (MR MEYER)

1 Q. Compare it, for example, to the flier, because your name
2 was wrongly in it. It's of like style.

3 COMSR: Why is that any more a matter for the
4 witness?

5 MR MEYER: Hopefully it's more within his knowledge
6 than it is within mine, and because Mr Tuckwell was
7 involved -

8 WITNESS: I was not involved with this document.

9 MR MEYER: - In these general events in Goolwa.

10 WITNESS: I have not been involved with these
11 sorts of documents. I have seen them, but I have never
12 been involved with them.

13 XXN

14 Q. I didn't say you were involved in this document, I was
15 answering the Royal Commissioner that you were involved
16 in these matters with the bridge at Hindmarsh Island. I
17 didn't say that you were involved in the documents - so
18 have my clients, the Chapmans, been involved. All I am
19 putting to you, with your knowledge of the matters, you
20 are in a position to give a comment or opinion in
21 relation to the preparation of the document.

22 A. I can't help you with these because I couldn't - I have
23 no knowledge of these documents or who composed them.

24 Q. I asked you this before lunch about the article in The
25 Advertiser 30 or 40 years ago, are you able to produce
26 that cutting book at the same time as you produce the
27 diary.

28 A. Mrs Laurence asked me sometime about this, and I can't
29 find the particular clipping, but it can be easily
30 located in the State Library, there wouldn't be any
31 problem of actually getting a copy of that. I have seen
32 it.

33 Q. Are you able to give us a date that would restrict the
34 area of searching.

35 A. According to Val, it would have been in the 1930s,
36 somewhere there. If I have to define that, I'm afraid I
37 had have to be very vague on that, but a good reference
38 from the library should be able to pick it out quite

1 easily.

2 COMSR: Are we going on to matters that haven't
3 been fully covered, are we?

4 MR MEYER: It's the same letter that I've been
5 trying to sort out so that we don't offend anything.
6 What I want to put to Mr Tuckwell, and Mr Smith will ask
7 you to make a suppression order in relation to the
8 matters in sub-para.C, and I won't read them out, but I
9 will tender the document and my friend will ask for a
10 suppression order, but what I wish to put to this
11 witness is that -

12 COMSR: Is it his document, first of all?

13 MR MEYER: No it's a document from Ian Carter,
14 Director of Operations, Department of State Aboriginal
15 Affairs, addressed to Connell Wagner Pty Ltd, but it
16 makes specific reference to the Director of Signal
17 Point, and the it's the reference to the Director of
18 Signal Point that I wish to ask the question about.

19 XXN

20 Q. What is said in the letter is a reference to a
21 Aboriginal site, and the last sentence on p.1, which is
22 not objectionable, says `These areas can be identified
23 by the Director of the Signal Point Interpretation
24 Centre'. Do you have any knowledge of any suggestion
25 that you, in 1993, being the director, are able to
26 identify Aboriginal sites.

27 A. Absolutely not.

28 Q. Were you consulted about that.

29 A. I rejected that letter when it was shown to me by one of
30 the employees, and that letter carried no authority. I
31 have no authority to point out sites, as a member of
32 council I have no authority to point out those sites.
33 In fact, I have no knowledge of those sites apart from
34 knowing that in the broad area, those sites exist.

35 Q. Given the description of the letter that I've given to
36 her Honour, you are familiar with it.

37 A. Yes, it was shown to me.

38 MR MEYER: I tender the letter. I'm happy for a

L.F. TUCKWELL XXN (MR MEYER)
(MRS SHAW)

1 suppression order in relation to sub-para.C.

2 COMSR: To what end?

3 MR MEYER: Someone from the State Aboriginal
4 Affairs Department will come along.

5 EXHIBIT 190 Letter of 9 November 1993 tendered by Mr
6 Meyer. Admitted.

7 COMSR: I make an order suppressing the order
8 from publication, and restricting it to counsel
9 representing the parties here.

10 CROSS-EXAMINATION BY MRS SHAW

11 Q. You've said that Exhibit 189, its contents in so far as
12 you've spoken out, are not a product of any view you
13 have about the bridge, but perhaps more accurately
14 express your views about Aboriginal problems and their
15 interrelates with whites and so on, and you said 'Their
16 spirit lies in the land, their life is in the land'.

17 A. Yes.

18 Q. Is that something that you are quite passionate about as
19 a result of all your reading.

20 A. Yes.

21 Q. You said that you are the, is it the chairman of the
22 local history trust.

23 A. Yes, Chairman of the National Trust, Goolwa Branch.

24 Q. For how long have you been involved in National Trust.

25 A. Probably be about 15 years, I guess.

26 Q. There is this Aboriginal display at Signal Point that
27 you've had an involvement in.

28 A. Yes.

29 Q. How long have you been involved in that.

30 A. The putting together of the display?

31 Q. Yes.

32 A. The display is almost complete. It's been about eight
33 to nine months in preparation, so I guess from concept,
34 when we wrote the concept for the display until the time
35 it hits the floor later on this month, it would have
36 been probably a full 12 months.

37 Q. But your interest in Aboriginal issues and their
38 heritage, is that a longstanding interest.

1 A. Yes, it is.

2 Q. For how long would you say you have felt as you do about
3 Aboriginal issues.

4 A. I guess it comes from childhood. Like Mr Jolly earlier,
5 we grew up in a community that was both black and white.
6 We were fortunate to live up in a community that was
7 well balanced and accepted one another, and so that that
8 had been latent within me for a number of years.

9 Q. As a result of that, had you made it your business to
10 acquire knowledge along the way about the heritage of
11 the Aboriginal people of the area.

12 A. As much as I could as a white person.

13 Q. I mean you refer to, I think, the Arthur Walker name on
14 the memorial.

15 A. Yes.

16 Q. That was something that you'd been familiar with all
17 your life.

18 A. Yes.

19 Q. Or since the war, obviously, and you spoke, or you're
20 reported as saying in the article in the Bulletin that
21 you could talk about the Ngarrindjeri history, the
22 Tendi, the clans and so on.

23 A. Yes.

24 Q. When had you acquired that knowledge.

25 A. From the time that Professor Jenkin had written his book
26 'Conquest of the Ngarrindjeri', and I have followed that
27 text as an example for applying that knowledge to
28 whatever job that I was doing.

29 Q. When had you read Graham Jenkin's book.

30 A. It would have been when it was first released, and that
31 probably would have been about 10 years ago, when I
32 become seriously involved in Signal Point on a full-time
33 basis, and I realised that I would have to develop more
34 knowledge and try to understand the situation in regards
35 to Aboriginal culture, so that I could be more fully
36 informed when we developed displays. However, my
37 connection with the Ngarrindjeri people is through my
38 relatives. I have Ngarrindjeri relatives, and so I have

1 that attachment to the race.

2 Q. Was it the case that you had sought to follow through
3 the ancestry of people like the Walkers at Goolwa well
4 before Sarah and Doug came on the scene.

5 A. Yes. In fact in 1990, I petitioned council to make a
6 park 'Walker Reserve' in the place where I remembered
7 that the Walker family lived, and they were the last
8 semitraditional people who lived by a place called
9 Armfield Slip, which is a part of Signal Point's other
10 precincts, and I remember going there as a small boy
11 with my father to buy fish on the Saturday mornings, and
12 the memory of the Walker family was very strong from my
13 father who informed me about Arthur Walker, who was a
14 young Ngarrindjeri man who went away to the first world
15 war and fought on Gallipoli, and later went on France
16 and fell there, so I was very conscious of that
17 connection at the Goolwa cenotaph, and so when I
18 petitioned council in 1990, council graciously accepted
19 the petition and named the park after the Walker family.

20 Q. But when you were preparing the information for the
21 petition, or as a result of reading Jenkin's book, did
22 you follow through the ancestry of the Walker family in
23 the Ngarrindjeri nation.

24 A. As far as I could go.

25 Q. Just can you tell us how far that was.

26 A. That would only go back as far as Reuben Walker, because
27 when you get into - I find that when you get into
28 Aboriginal genealogy, you have to get into a specialist
29 field, because the relationships are not like European
30 relationships, they are very complex, and where somebody
31 - where we understand cousins, brothers and sisters,
32 uncles and aunts and so on, and grandparents and so on,
33 the relationship is different within the Ngarrindjeri
34 world than it is in the white or European communities
35 and so, in that regard, I couldn't sort of enter into
36 that field, but I could accept the testimony of those
37 people who actually claim that descent.

38 Q. You said that after Doug and Sarah came down to Goolwa,

1 you would see Sarah, and possibly Doug, at least once a
2 week at Signal Point.

3 A. Yes, that's right.

4 Q. Was Sarah very interested in, I think you used the word
5 `rediscovering' her own history.

6 A. Yes. When I first met her, she talked to me about the
7 Walker family, and I responded, because I'd just
8 completed a fairly exhaustive research on Arthur,
9 because I wanted to develop a display in the centre that
10 gives testimony to Ngarrindjeri servicemen who went away
11 and fought for this country, and so I thought because
12 Arthur was a good example, because he was on Gallipoli
13 and then died before he came home, that I would do that
14 research, and so I got all his service records and all
15 of that, and I was able to share those with Sarah.

16 Q. She wasn't aware of the Walker family having lived in
17 that area before you pointed out Arthur.

18 A. No.

19 Q. Is that so.

20 A. That's right. She was discovering what perhaps I would
21 if I went to my ancestral home.

22 Q. If you went back to England.

23 A. Yes.

24 Q. When she rediscovered the fact that her family had had
25 ties with that area, did she want you to help her as to
26 her links with the Walker family.

27 A. Yes. She indicated that she would like any material
28 that I had, and I was able to go through my files and
29 copy the material that I had and give it to her, but
30 that was basically on Arthur Walker, and Ruben.

31 Q. Did you tell her what you knew about the Ngarrindjeri
32 people generally, about their Tendi and so on.

33 A. No, I didn't think I could teach a professional, or I
34 couldn't teach a person of that race something about
35 their own race. I assumed that they would have known
36 that.

37 Q. Well, did you consider that she did have a link to King
38 Pulami. From what you knew of the Walkers, did you

- 1 yourself think that the Walkers were linked to King
2 Pulami.
- 3 A. From the information that Sarah gave about her own
4 people, and the fact that the Walkers were connected to
5 her own family line, it seemed to make good sense that
6 Pulami would have been the direct line down into her
7 family tree.
- 8 Q. How did she tell you the link was made.
- 9 A. Through her mother.
- 10 Q. What was the link through her mother.
- 11 A. Through the Koolmatric line.
- 12 Q. Can you tell us exactly what that link was.
- 13 A. No, not offhand.
- 14 Q. How did she express it.
- 15 A. That her mother was a direct descendant from King Pulami
16 through the Koolmatric family.
- 17 Q. I thought it was through the Walker family.
- 18 A. Yes, well, Koolmatric/Walkers are the same family.
19 Walker is the anglicised version of the same name. They
20 would have chosen a English name from a property or a
21 family that lived about them, and so the Koolmatrics in
22 Goolwa possibly would have adopted the Walker family
23 name, for instance, because they lived next-door to the
24 Walkers, or on that property.
- 25 CONTINUED

- 1 Q. So, you understood Reuben and Arthur Walker were, in
2 fact, Koolmatrics.
- 3 A. That is my understanding, yes.
- 4 Q. Is that an understanding you had always had.
- 5 A. No.
- 6 Q. Where did that come from.
- 7 A. I understand that from Sarah's - from the information
8 that Sarah had.
- 9 Q. What did she have.
- 10 A. That Mrs Walker was a Koolmatric.
- 11 Q. Which Mrs Walker.
- 12 A. That would be Mrs Reuben Walker.
- 13 Q. What information exactly did Sarah have that indicated
14 that.
- 15 A. She had a - there was a birth certificate made for her,
16 I think it was her grandmother and that - on that I
17 think indicated her mother - her mother's name. I
18 believe that - without looking at it again, I believe
19 that was the way it was.
- 20 Q. Did she show that to you, did she.
- 21 A. Yes.
- 22 Q. Is that all she had.
- 23 A. That's all, yes.
- 24 Q. Have you got a copy of that.
- 25 A. I would have, somewhere in my files, but I think I put
26 it back in the Walker file, because that was something I
27 didn't have.
- 28 Q. I take it you have no problem to showing us that.
- 29 A. No, not at all.
- 30 Q. You don't mind arranging that with Ms Anderson.
- 31 A. Will do.
- 32 Q. Did Sarah tell you that she went and got this birth
33 certificate trying to trace her own lineage.
- 34 A. Yes, I think she said that she had - what she was doing
35 was trying to establish where exactly she was in the
36 family line and this particular piece of paper had come
37 from that search. And I am not quite sure where that
38 search actually was or who she spoke to. I had no

- 1 interest in that, but I was sort of looking forward to
2 more documentation on that. Whether or not that is
3 forthcoming, at this stage, I don't know.
- 4 Q. Did she say to you that this was something she had only
5 commenced doing in more recent times. That is, trying
6 to trace her lineage.
- 7 A. She said that it was reinforcing the belief that she had
8 and I just left it at that. I didn't question her any
9 more on that.
- 10 Q. I just want to ask you a few questions about the visit
11 to Signal Point, in May 1994. You have already been
12 asked questions about the letter that was brought, at
13 that time, even though you say you weren't on the
14 Friends of Kumarangk Committee. You were no doubt
15 aware, as everyone in Goolwa was, I suspect, that the
16 Government deadline was fast approaching in May. That
17 is, that building was going to commence.
- 18 A. Right.
- 19 Q. That so.
- 20 A. Yes.
- 21 Q. It was fast approaching, I think at about 12 May, was it
22 due to begin.
- 23 A. Something like that, yes.
- 24 Q. So, there was a lot of activity going on.
- 25 A. Yes.
- 26 Q. In Goolwa.
- 27 A. Yes.
- 28 Q. A lot of meetings.
- 29 A. Yes.
- 30 Q. And so on, and you remember Sarah coming to Signal
31 Point.
- 32 A. Yes.
- 33 Q. With a document.
- 34 A. Yes.
- 35 Q. Just before this deadline -
- 36 A. Yes.
- 37 Q. Was approaching and, when she came, if I suggested, in
38 fact, she was with only one other Aboriginal lady, would

- 1 that fit with your memory.
- 2 A. It may account for the trouble I had, trying to recall
3 the earlier question, because it -
- 4 Q. But, now that I have reminded you that this was just a
5 few days before the deadline, and suggested to you that,
6 in fact, Sarah came with only one other Aboriginal lady,
7 who stayed outside of your office, does that refresh
8 your memory, as to the events.
- 9 A. No, I'm sorry, no, I can't, I can't -
- 10 Q. But, in any event, you know Sarah came into your office,
11 with the document.
- 12 A. Yes.
- 13 Q. And you said to us earlier that you precised it for her.
14 She wanted your opinion on it.
- 15 A. The piece of paper I saw, there seems to be a suggestion
16 that there was several pieces of paper. That is not my
17 recollection. My recollection was a piece of paper,
18 with a lot of signatures on it. And I accept
19 responsibility for photocopying it and I really don't
20 want to be evasive here. If I did photocopy it, I did,
21 but I really don't remember actually physically doing
22 That. And, if it had been put together, in some formal
23 way, and I may have done that, I don't know, obviously I
24 was to - it was taped up, or I don't know exactly how
25 that would have been done, to fit the size of the
26 photocopier, obviously.
- 27 Q. Yes, I was going to ask you about that.
- 28 A. Yes.
- 29 Q. Do you think that that is what might have happened.
30 That, in fact, there were two documents or three pieces
31 of paper, but, to get them all on to the one sheet, for
32 the purpose of forwarding on, that you arranged them on
33 the photocopier, so they would all fit on to the one
34 sheet.
- 35 A. That may have been the case, but I don't actually recall
36 more than one piece of paper.
- 37 Q. Was it the case that, in fact, if I suggest to you, on
38 my instructions about what happened at Signal Point,

- 1 that, indeed, you were in the office with Sarah, for a
2 good half hour.
- 3 A. I wouldn't have been able to spend that much time, at
4 that hour of the evening.
- 5 Q. I am suggesting to you it was after 4 o'clock.
- 6 A. Yes.
- 7 Q. That, in fact, you were out there with Sarah for quite
8 sometime, going through this photocopying process. Do
9 you agree that that might well be the case.
- 10 A. I would find that hard to - I would be - find it hard to
11 understand that, because, knowing the routine we have to
12 go through and the way we are staffed, I doubt whether I
13 would have been able to spend that much time with her.
- 14 Q. But you knew, from what Sarah told you, that these were
15 the signatures of a number of Aboriginal women.
- 16 A. Yes.
- 17 Q. And you knew that this related to the bridge, the
18 attempt to stop the bridge.
- 19 A. I assumed that the document had something to do with
20 it, because of signatures on the document. But, once
21 again, -
- 22 Q. And this would be the time when it was occurring.
- 23 A. That's right. And I could only suggest that I only saw
24 that document with the signatures on it.
- 25 Q. And you told us that you could remember there was a lot
26 of detail about their belief on the document. I take it
27 you are there referring to the Ngarrindjeri beliefs.
- 28 A. Yes, I am sure that it was a sort of a rambly document.
- 29 Q. That referred to more than one topic, would that be
30 right.
- 31 A. Quite possibly. And, once again, that - I wish I had of
32 taken more attention, at the time. It just appeared, on
33 that sheet of paper, that there was more names on the
34 paper than there was actual detail.
- 35 Q. But you have actually said you briefly precised it, you
36 read enough, so that you were able to deduce that it was
37 about Ngarrindjeri beliefs.
- 38 A. Yes, if I can recall a phrase on it, it would have been

- 1 something like 'the need to protect this site', or
2 something of that nature.
- 3 Q. 'Island' or 'Kumarangk'.
- 4 A. It quite possibly would have been. I don't know, but,
5 in the terms that it had been - it looked to be a fairly
6 rough document, that's why I didn't pay much attention
7 to it.
- 8 Q. And, when you read it, for the purposes of giving Sarah
9 your opinion, it appeared to you to be in a rambling
10 writing style.
- 11 A. Yes, but, once again, the opinion that I gave her was
12 that it looked all right. I am not quite sure what I
13 was supposed to have done with it, but there are times
14 when, obviously, my wife will tell you that I don't pay
15 much attention to -
- 16 Q. But Sarah, at that stage, had shown a fair amount of
17 confidence in you, hadn't she.
- 18 A. Yes.
- 19 Q. Because you had made it plain to her that you did know a
20 lot about the Ngarrindjeri people.
- 21 A. Yes, as a white person, yes.
- 22 Q. As a white person and that you had great respect for
23 their beliefs.
- 24 A. Yes.
- 25 Q. In relation to the land.
- 26 A. Yes.
- 27 Q. Is that so and it didn't really surprise you that she
28 would offer you a letter like this with their beliefs in
29 it for your opinion as to how it presented, in those
30 circumstances.
- 31 A. Not at all, because, in my capacity as a councillor, I
32 have a lot of confidences that are given to me by
33 people. Those confidences have to be held in very close
34 care. And I would see private things that no-one else
35 would be able to be shown from ordinary members of the
36 community, because of the respect that I guess long-time
37 involvement with the community, people see me as that
38 kind of person. And, so, this was just another one of

- 1 those documents that were coming to me, for the same
2 reason.
- 3 Q. When Sarah gave it to you, she didn't say anything about
4 suggesting that there was a need for you to keep it
5 confidential, what was in it, when you read it.
- 6 A. I don't recall that sort of conversation, no.
- 7 Q. But do you remember that, in fact, it referred to the
8 beliefs of Aboriginal women, as opposed to the beliefs
9 of Aboriginal men.
- 10 A. No, I don't - I don't believe that was the drift of the
11 text. If there was more than one piece of paper, it
12 quite possibly may have, but, as I say, I only actually
13 from my memory recall only seeing one piece of paper
14 with a lot of signatures on it. That obviously
15 indicated, if it was more than one piece of paper, that
16 that was the last piece of paper that I was looking at.
- 17 Q. So, certainly you can remember it having detail about
18 Aboriginal beliefs in relation to Hindmarsh Island, but
19 further than that, you are very vague.
- 20 A. That's right.
- 21 Q. It could very well have been about women's beliefs, but
22 you can't tell us, at this time, is that so.
- 23 A. Yes, it could - it could possibly, I am not -
- 24 Q. When Sarah came in, you knew, after speaking to her,
25 that she wanted to fax it to the Minister, bearing in
26 mind the date fast approaching for the commencement of
27 the building of the bridge. She explained that to you
28 as being the reason she wanted to copy it and fax it
29 off.
- 30 A. In the context of the or the way that the letter was
31 presented to me to briefly look at and obviously the
32 photocopying was needed to keep a copy for their
33 purposes, the next question probably would have been,
34 but I don't recall this, if it was asked was `Can you
35 fax it away?' And, of course, we can't, because Signal
36 Point doesn't contain a fax. We have access to the
37 council's fax, which is two blocks down the street. And
38 that is the reason why we -

L.F. TUCKWELL XXN (MS SHAW)

- 1 COMSR: Yes, we have already had this evidence,
2 haven't we, Mrs Shaw?
- 3 MS SHAW: Yes, I don't know that I have actually
4 heard that before.
- 5 XXN
- 6 Q. But you say that the council's fax is something that you
7 had access to.
- 8 A. Not directly, no, the way that we use it is that,
9 because of the requirement of council, only official
10 documents from Signal Point can actually be sent through
11 it and that is presented to the duty person on the desk.
- 12 Q. Is there another fax machine at Encounter Coast Business
13 Supplies.
- 14 A. I guess there would be.
- 15 Q. Did you, yourself, take the document and fax it to the
16 Minister.
- 17 A. Not at 4 o'clock in the afternoon.
- 18 Q. No, at any time take the documents and fax it to the
19 Minister.
- 20 A. No.
- 21 Q. Are you quite sure about that.
- 22 A. Yes, I am positive.
- 23 Q. I will give you time to think about it. Are you quite
24 sure that you didn't fax a copy of the document or part
25 of it to the Minister.
- 26 A. No, I am pretty sure that I didn't. No, I would have -
27 I believe I would recall that.
- 28 Q. You haven't recalled a lot of other things. Initially
29 you didn't recall that Sarah Milera brought it in, but
30 you obviously recall it now. Have a think about it.
- 31 A. I would suggest that, if we talk long enough, one's
32 memory can be stimulated, but, no, I don't recall - I
33 don't recall sending a fax in that nature for Sarah
34 Milera from that office.
- 35 Q. You mean, the council office.
- 36 A. Yes.
- 37 Q. But you are obviously not sure, is that right.
- 38 A. No, it is certainly - I certainly wouldn't have sent it

1 from the council office, because that would have been an
2 unofficial document and I - that's - that's not the way
3 the office works.

4 Q. What about from Encounter Coast Businesses Supplies,
5 have you ever faxed a copy from there.

6 A. I don't recall faxing it. I have faxed a document from
7 there, on one occasion, but it wasn't that document.

8 Q. What was it.

9 A. That was a request to Vic Milera - sorry, Vic Wilson in
10 regard to a planning issue and whether the Lower Murray
11 Aboriginal Heritage Committee was still, in fact, in
12 existence.

13 Q. When was that faxed.

14 A. That would have been sometime last year.

15 Q. 1995.

16 A. Yes, it could have been, yes.

17 Q. Or 1994.

18 A. It would have been 1995, because, at the time that Doug
19 Milera had - it was quite obvious that Doug was no
20 longer the secretary, I was required to clarify the
21 situation as to where planning issues should be referred
22 in regard to any Hindmarsh Island development. When
23 Doug was secretary it was a matter of just mailing him,
24 because we had his address, but when Doug - it was quite
25 obvious Doug was no longer involved with the Lower
26 Murray Aboriginal Heritage Committee, I was required to
27 find out where that - where that authority lay. So, I
28 faxed Vic Wilson, asking him whether it was he that I
29 had to refer those sorts of matters to.

30 Q. But is it the fact of the matter that, at this point in
31 time, you can't recall, one way or the other, whether
32 you faxed that document from Encounter Coast Business
33 Supplies.

34 COMSR: Which document?

35 XXN

36 Q. The document that Sarah Milera showed you.

37 A. No -

38 COMSR: With the signatures.

1 XXN

2 Q. With the signatures.

3 A. No, I can't recall that. It is highly unlikely it was
4 that hour of the night and it was that document.

5 Q. Just to be clear on something, when you have described
6 the letter or the document that you read as being in a
7 rambling style, even though that is what its style was,
8 it read in a way that you could understand it, didn't
9 it. It didn't need you to rephrase it, so that it could
10 be understood.

11 A. Certainly the sheet of paper that I actually saw -

12 Q. What, the part that was on that.

13 A. Yes.

14 Q. It certainly read lucidly.

15 A. It was like a couple of phrases in that regard and then
16 the signatures appeared below it.

17 Q. Yes, but they read quite clearly. You could read it
18 through and understand the sense, that it made sense.

19 A. Yes, the only thing that I can't recall is actually -

20 Q. The details of it.

21 A. What the detail was, but certainly the - I think - the
22 phrase - I believe was one of the phrases was - that was
23 on it was 'an appeal to save those heritage sites'.

24 COMSR: Do we need to go into that?

25 A. But I can't say actually that that was Kumarangk, but it
26 could possibly have been. I mean, at this time.

27 XXN

28 Q. I suggest you knew very well it related to Hindmarsh
29 Island. You knew very well that's why Sarah was there.

30 A. No, I don't know that, but it is quite obvious that that
31 could have been the case, because -

32 Q. You said it was a letter of protest, some sort of
33 appeal. Was there any other protest that Sarah Milera
34 was involved in, at that time, other than Hindmarsh
35 Island.

36 A. No, I guess they all related to Hindmarsh Island, no
37 matter whose protest there were and there were plenty of
38 them going on. I mean, it wasn't only Sarah Milera and

- 1 Kumarangk. I mean, there were a number of protests on,
2 at the time. And I - how many faxes went off to Mr
3 Tickner, I wouldn't know, But -
4 Q. No, I am talking about Sarah Milera.
5 A. Right.
6 Q. Giving you a fax and you telling us that it related to a
7 protest and an appeal and you suggesting to us that you
8 didn't twig that it related to Hindmarsh Island.
9 A. At the time it - I mean, now it is quite obvious that,
10 if you look back on it, it could quite possibly have
11 been bearing -
12 CONTINUED

L.F. TUCKWELL XXN (MRS SHAW)
(MR KENNY)

- 1 Q. It couldn't have been anything else, could it.
- 2 A. But at that time, what would it refer to? I mean, it
- 3 could have been any sort of protest on any of the sites,
- 4 both on the Goolwa side and the Hindmarsh Island side.
- 5 I am not disputing that it wasn't about Hindmarsh
- 6 Island. You might be quite right.
- 7 Q. What I am putting to you is that you don't want to
- 8 admit, for some reason, in this commission, that you
- 9 were well aware that this document that Sarah gave to
- 10 you was a letter to the Minister in relation to
- 11 Hindmarsh Island. Isn't that right.
- 12 A. What can I say? If the logic of that is brought to its
- 13 conclusion, it must have been, but I am just saying to
- 14 you I was not aware of that.
- 15 Q. As a man with all this interest in Aboriginal heritage,
- 16 the Ngarrindjeri nation, Sarah Milera, that didn't click
- 17 with you until today. Is that what you are suggesting.
- 18 A. No, not at all - yes, quite - yes, that's what I am
- 19 saying. I'm sorry, but I'm following the logic. It's
- 20 very difficult.
- 21 CROSS-EXAMINATION BY MR KENNY
- 22 Q. You have told us, I think, that Doug Milera came into
- 23 Signal Point once, or did you say twice a week. Do you
- 24 recall.
- 25 A. On an average, once a week, yes.
- 26 Q. Over what period of time.
- 27 A. Over a fair period of time.
- 28 Q. What, six months or a year.
- 29 A. It was an extended period of time, I guess, initially.
- 30 It could have been six months, it could have been twelve
- 31 months, but then they sort of dropped off as they moved
- 32 around and they had problems.
- 33 Q. When he came to Signal Point, would you see him and
- 34 speak to him.
- 35 A. Yes.
- 36 Q. So you would say you got to know him fairly well.
- 37 A. Yes.
- 38 Q. You spent a lot of time talking to him.

1 A. Yes.

2 Q. You have talked about Doug borrowing money off of you.

3 A. Yes.

4 Q. And the fact that when you discovered that he had a
5 drinking problem you stopped giving him money, is that
6 correct.

7 A. Yes.

8 Q. But he continued to ask you for money, is that correct.

9 A. On one occasion, yes. I guess when the first knock-back
10 come, he didn't ask again.

11 Q. Did he ask other people, that you are aware of, for
12 money.

13 A. Yes.

14 Q. Did that happen very often.

15 A. I'm not sure of the frequency, but I know that he had
16 borrowed from at least two other people.

17 Q. Are you aware if those other people ever got repaid.

18 A. Not to my knowledge, no.

19 Q. You talked about the protest when the STAR force turned
20 up with the dogs at Goolwa. Do you recall that.

21 A. Yes.

22 Q. I take it that was the protest on about 28 October 1993,
23 when they initially stopped work on the bridge.

24 A. That's right.

25 Q. Did you see that protest.

26 A. Yes. I was present at that and I photographed it and
27 observed it.

28 Q. Did you have any concerns at that stage about the police
29 attitude at that time.

30 A. Yes, I was concerned, and I raised a question in council
31 at a subsequent meeting as to the reason why the STAR
32 force was present with the dog squad, seeing that the
33 people who were protesting were our own citizens - the
34 citizens of the town, plus the Ngarrindjeri people of
35 the area, and none of them, to me, were people who would
36 have given much trouble in regard to a struggle.

37 Q. Is it fair to say it looked like a large police
38 over-reaction to you.

- 1 A. I don't - I think it was a miscalculation by the police
2 force. It may have been warranted in the city where
3 possibly - but in Goolwa, I would have thought that that
4 measure was extreme. That was the reason why I raised
5 the question in council, and subsequently had a visit
6 from a police officer from Christies to -
- 7 Q. Was that Morrison. Do you recall his name.
- 8 OBJECTION Mr Abbott objects on the ground of
9 relevance.
- 10 A. No, no, I can't recall his name, but he is a rank
11 officer.
- 12 MR KENNY: Yes, it is, I assure you. On my
13 instructions it has relevance on another matter that is
14 not immediately obvious at this stage, and I don't
15 intend to detail it. As for relevance, other things -
- 16 COMSR: I think it is fair to say a degree of
17 latitude has been given.
- 18 Q. Just so we are clear about this, you are saying that the
19 precautions which the police had in hand seemed
20 excessive to any potential likelihood of trouble. Is
21 that what you are saying.
- 22 A. Yes.
- 23 Q. You are not suggesting that in fact any problem occurred
24 as between the police and the protesters, are you.
- 25 A. No, certainly not.
- 26 XXN
- 27 Q. Indeed, your concerns about the police presence, is it
28 fair to say their attitude as well, prompted you to go
29 along to the meeting at - I think you referred to the
30 place as - The Pines, with the police.
- 31 A. That is correct.
- 32 Q. That was on 9 May 1994.
- 33 A. That's correct.
- 34 Q. In your evidence, you also made mention that when
35 dealing with Aboriginal people, you need to take time
36 and it takes time for them to reach a decision.
- 37 A. That's true.
- 38 Q. What makes you say that.

- 1 A. It is my observation, and I believe it is quite
2 generally found, that their decision-making process is
3 not like the traditional method of decision-making that
4 white people have. For instance, when we make a
5 decision as a council, we make the decision in the
6 chamber on the evidence presented to us. We make the
7 decision and the decision is then carried forward. But
8 within the Ngarrindjeri community the process is
9 reversed. The people who make the decisions are not the
10 people who represent them. The evidence is brought in,
11 those people then go back to their people and a decision
12 is made over a period of time. The representatives then
13 come back and bring the decision with them. So it is
14 the reverse of the way that we make decisions. So that
15 sets up a delay in time, and that's quite often
16 misunderstood by white people as being either a lack of
17 interest or an inability to make decisions, and in fact
18 that is not true.
- 19 Q. I take you base that on your meetings, through the
20 council, with Aboriginal groups.
- 21 A. That's correct.
- 22 Q. Since the ban has been placed on the bridge, has any
23 Aboriginal person suggested to you that there was any
24 fabrication of any Aboriginal business.
- 25 A. No.
- 26 Q. And in that same time period has any Aboriginal person
27 expressed to you their support for the women's business.
- 28 A. Aboriginal person?
- 29 Q. Yes, Aboriginal person.
- 30 A. The only Aboriginal person I have had contact with
31 recently would have been Sarah and Doug Milera.
- 32 Q. I note in your meetings since the middle of 1994, you
33 have had dealings with the Lower Murray Heritage
34 Committee people.
- 35 A. Yes.
- 36 Q. Have any of them expressed to you their support for the
37 women's business.

- 1 A. Yes. The thread through those notes indicate that that
2 process of decision-making that I mentioned is in there
3 and -
- 4 OBJECTION Mr Abbott objects.
- 5 MR ABBOTT: The question is 'Have any of them?' The
6 answer is yes or no. And then 'Who are they?' This
7 answer is not responsive to the question.
- 8 MR KENNY: I am happy with the answer. I have no
9 complaint. If I need anything further I will follow it
10 up with a further question.
- 11 COMSR: These are notes that I have in evidence?
- 12 MR KENNY: Yes.
- 13 XXN
- 14 Q. You are referring to notes that were earlier tendered in
15 evidence, the handwritten notes that have been tendered.
16 Tell us what was said in those notes.
- 17 A. The thread of those notes show that the Aboriginal men
18 were reluctant to make decisions, particularly in
19 relation to Hindmarsh Island. In fact, I think
20 representative Matt Rigney suggests that, and that also
21 indicates the way that I have just described the
22 decision-making process was that they said that,
23 although they were the community's leaders, they had to
24 go back to their people for the decision to be made
25 before they could come back to our council. So also
26 that thread is in those notes.
- 27 COMSR
- 28 Q. Has any Aboriginal person directly come to you and said
29 that they support the claim of women's business in
30 respect of Hindmarsh Island. I think that was the
31 question that was put.
- 32 A. No, and I don't think it was actually necessary to
33 actually express that to me.
- 34 Q. There has been no occasion when that has occurred that
35 you can recall.
- 36 A. No.
- 37 XXN
- 38 Q. In your evidence in-chief you also said that you saw the

L.F. TUCKWELL XXN (MR KENNY)

1 Channel 10 reporting of the interview between Chris
2 Kenny and Doug Milera. Is that correct.

3 A. That's correct.

4 Q. You said that Doug appeared, I think if I remember
5 correctly, to be a shadow of himself.

6 A. Yes, that's correct.

7 Q. Can you tell us what you meant by that.

8 A. In the long - the association that I have had with Doug,
9 Doug appears to be a character who is very outgoing, who
10 is very much a strong personality in themselves, but in
11 that interview, it didn't seem as though he was there,
12 and his responses tended to be puppet-like, which was
13 unusual for Doug, and I don't know - I couldn't advance
14 the reasons why Doug actually reacted like that, except
15 that he was on his drinking spree once again.

16 Q. Had you observed him on a drinking spree before.

17 A. On one occasion, and that was the time when he came to
18 borrow some money off me to get himself - as he said, to
19 borrow some money to get some petrol to go back to
20 Murray Bridge, and he had obviously been drinking at
21 that stage, and that was when I stopped loaning him
22 money.

23 MR KENNY: I don't wish to take up the commission's
24 time, but I would like to show this witness the raw
25 footage of that interview with Chris Kenny. I don't
26 wish to do it in public. I don't wish to sit through it
27 myself, let alone anyone else. I don't think anyone
28 else has a desire to, but I am enquiring -

29 COMSR: How much further do you think it would
30 take this witness than what he has already said?

31 MR KENNY: It is debatable. I am debating it in my
32 own mind as I actually request it. This is the only
33 person we have had give evidence so far that can really
34 say that he had much contact over a long period of time
35 with Doug Milera. We have had a lot of other people
36 express opinions on his state in that interview,
37 including Mr Milera himself.

L.F. TUCKWELL XXN (MR KENNY)

1 Perhaps what I might do is ask that I reserve my
2 rights in relation to that, and also the tape recorded
3 telephone conversations with the land owner, Kym Denver.
4 If I reserve the right to perhaps ask that this witness
5 be allowed to view the video tape and listen to the
6 audio tape to see if he can add anything further to his
7 comments.

8 It may not be necessary. If Mr Milera gives
9 evidence, then I think it will become essentially
10 irrelevant, and I will not progress it further. If he
11 doesn't, then I may seek to raise this point again.
12 Perhaps if I could leave it at that.

13 COMSR: I don't want to leave it too long, but
14 you just wish to mull over the situation, I take it?

15 MR KENNY: It really depends on what Mr Milera
16 does. We have had this witness's opinion, but only on a
17 short segment some time ago. To be fair, I think we
18 should allow him to listen to the tapes and observe the
19 TV, simply to explore whether he can assist us further.
20 I am not saying he can or he cannot, or whether indeed
21 it will be useful. I would like to simply reserve that
22 question with relation to this witness.

23 COMSR: All right.

24 CONTINUED

L.F. TUCKWELL XXN (MR KENNY)

1 MR SMITH: Mr Kenny's own clients would probably do
2 a better job than that.

3 COMSR: You might be in a position to inform us
4 now just of how many of your clients we might expect to
5 be giving evidence, or have you not yet been able to
6 contact them to obtain instructions.

7 MR KENNY: I can assure you that in the last week,
8 I think I have spoken to all of my clients, I may be
9 wrong, there might be one I've missed, I would have to
10 double check, but I have certainly been in very close
11 contact with my clients recently, and it's a difficult
12 thing for my clients, if I can say that, this witness
13 has told us about the decision making processes of the
14 Aboriginal people. Now my clients have had what may
15 appear to some to be a reasonably long period of time to
16 decide whether they wish to give evidence or not, or
17 what course of action they will undertake. Now perhaps
18 at this stage I could say that I've had some indications
19 from some of them that I don't wish to speak about at
20 the present time, because we have planned in fact a
21 further meeting to discuss that position with respect to
22 the Royal Commission, and I don't wish to mislead your
23 Honour in any way just by saying some of them will
24 be here, and some of them won't, and then have them
25 change their mind at a later date. It is very much up
26 to them what attitude they take, and when I have final
27 instructions on that, I will certainly let counsel
28 assisting know.

29 COMSR: Have you finished your questioning?

30 MR KENNY: Yes.

31 COMSR: Subject to what Mr Kenny has indicated,
32 I think we can release Mr Tuckwell at this stage. Do
33 you have any questions?

34 MRS SHAW: I'm wondering whether Ms Anderson can
35 liaise with Mr Tuckwell about documents referred to in
36 the evidence.

37 COMSR: Can the witness be released.

38 MR SMITH: Subject to that.

1 NO FURTHER QUESTIONS

2 WITNESS RELEASED

3 MR SMITH: The second witness, we may be able to
4 short cut the second witness to some extent, Mr Hook.
5 What I have in mind doing is having Mr Hook acknowledge
6 his statement, tender that, acknowledge the bundle of
7 planning documents that go with it, tender those, issue
8 those to my learned friends and Mr Hook can return to
9 the witness box, and it will to some extent be
10 necessary. Could we at least do that with Mr Hook while
11 people consider their position? To some extent his
12 evidence is formal, but some parts are important which
13 need elaboration. Could we go so far with him?

R.G. HOOK XN (MR SMITH)

1 MR SMITH CALLS

2 RODNEY GEORGE HOOK SWORN

3 EXAMINATION BY MR SMITH

4 Q. Thank you for your patience. I think it's the case, is
5 it not, that you, in October of 1981, were Manager of
6 the Golden Grove Development, and then shifted, in
7 October 1981, to become Manager of Central Branch,
8 Department of Environment and Planning.

9 A. Yes, that is correct. October 1981 I became Manager,
10 Central Branch, and then June 1984, Manager, Assessments
11 Branch within that department.

12 Q. You're actually a qualified civil engineer, aren't you.

13 A. Correct.

14 Q. Indeed, since in particular 1981, you've been involved
15 in planning, in a sense, have you not.

16 A. Planning of environmental assessment activities.

17 Q. I think in particular you were involved in the
18 applications relating to the developments on Hindmarsh
19 Island, and in particular the bridge, is that correct.

20 A. Yes. The applications that were for the initial
21 development of the marina on Hindmarsh Island, which
22 date back through 1980, 1981, 1982, I had involvement in
23 that as my capacity as Manager, Central Branch. The
24 later applications that involved the bridge and the
25 environmental impact statement processed through
26 1989/1990, I was involved in those in my capacity as
27 Manager, Assessments Branch.

28 Q. I think in connection with that, those applications,
29 you've provided a statement to this enquiry to which are
30 attached a number of documents.

31 A. Yes, that is correct.

32 Q. Looking at this statement which I produce to you, would
33 you have a look at that and confirm that it's your
34 statement in connection with the long history of these
35 applications.

36 A. Yes, that is correct. That's my statement which I've
37 signed.

38 Q. I think there's a minor typing error on p.4, is there

R.G. HOOK XN (MR SMITH)

- 1 not, where we have included, 'On 16 March 1992, Binalong
2 raised a concern concerning vehicle access'. Should
3 that read 1982.
- 4 A. I believe so, 1982.
- 5 Q. I think that's probably our fault.
- 6 MR SMITH: Perhaps we can make a correction on
7 that, on the original, whilst Mr Hook is in the box.
- 8 COMSR: Right.
- 9 EXHIBIT 191 Statement of Mr Hook tendered by Mr
10 Smith. Admitted.
- 11 XN
- 12 Q. Looking at the document produced, that was your
13 curriculum vitae as produced to the commission, is it
14 not.
- 15 A. Yes, that's correct.
- 16 CURRICULUM VITAE ADMITTED AS PART OF EXHIBIT 192.
- 17 Q. Looking at this bundle produced to you of 43 documents,
18 and the index on the front, perhaps I will ask you to
19 accept my word that the documents included there conform
20 with the index, but have a look at the index for a
21 start; I think that's a correct list of all the
22 documents that you've referred to in the statement, is
23 it not.
- 24 A. I'm happy to provide that confirmation.
- 25 Q. To some extent you're reliant on me for that. (NOT
26 ANSWERED)
- 27 MR SMITH: I tender that bundle of documents with
28 it's index. XN.
- 29 Q. So the Commission has the full original documents, would
30 you just look at each one of these three original
31 documents and identify them for us.
- 32 A. Yes. The documents that comprise part of the
33 environmental impact statement process were firstly a
34 draft environmental impact statement prepared by
35 Binalong Pty Ltd in response to guidelines issued by the
36 department. That document was released in November
37 1989, and that is this document (INDICATES).
- 38 Q. You confirm that that's document number 22.

R.G. HOOK XN (MR SMITH)

1 A. That is correct.

2 MR SMITH: Perhaps you should have the original so
3 that that could form part of the bundle of documents,
4 depending on what you propose.

5 COMSR: Is that a duplicate of the one that's
6 just been tendered?

7 MR SMITH: You have extracts of that in that bundle
8 of documents rather than a full document, so perhaps
9 giving it a separate number might be the safest course.

10 A. The second document in the sequence of events is
11 entitled 'A Supplement on a Draft Environmental Impact
12 Statement'. Again this document is prepared by Binalong
13 Pty Ltd. This, in effect, is the opponents' response to
14 comments made during the public exhibition of the draft
15 environmental impact statement, and they are comments
16 made by members of the public during that process, and
17 also comments provided by government agencies, and this
18 is the document that's referred to as the 'supplement'
19 on the draft environmental impact statement, which is
20 document numbered 27.

21 MR SMITH: I tender that document also.

22 COMSR: Are the environmental impact statement
23 and the supplement tendered as two separate exhibits?

24 MR SMITH: Yes, two separate ones.

25 COMSR: They don't form part of the bundle of
26 documents?

27 MR SMITH: They do, all of these three documents
28 form part of this copy bundle you've got, but not in
29 toto. I suggest you mark each one of these separately,
30 so that the first one is draft environmental impact
31 study November 1989, document 22, that was the first one
32 you had.

33 COMSR: But the bundle of documents hasn't as
34 yet gone in, the bundle of 43 documents.

35 EXHIBIT 192 Bundle of some 43 documents tendered by
36 Mr Smith. Admitted.

37 EXHIBIT 193 Environmental impact statement tendered
38 by Mr Smith. Admitted.

R.G. HOOK XN (MR SMITH)

1 EXHIBIT 194 Supplement to the environmental impact
2 statement tendered by Mr Smith.

3 Admitted.

4 Q. The next document then.

5 A. The third document in the series that comprises the
6 environmental impact statement process is, in effect,
7 then the assessment report for the proposed Hindmarsh
8 Island bridge marina extensions and waterfront
9 development. This document has been prepared by what
10 was then the Major Projects and Assessment Branch of the
11 Department of Environment and Planning. It's a document
12 produced in March 1990 and this is, in effect, the
13 department's assessment of the project and the
14 documentation that had been prepared previously by the
15 opponent.

16 Q. Is that document 29.

17 A. That is document 29.

18 Exhibit 195 Assessment report for the proposed
19 Hindmarsh Island bridge marina
20 extensions and waterfront development
21 tendered by Mr Smith. Admitted.

22 COMSR: In respect of the bundle of 43
23 documents, Exhibit 192, one of those documents which is
24 document number 17 I believe.

25 MR SMITH: Yes.

26 COMSR: I propose to make a suppression order in
27 respect of that document, because it contains somewhat
28 more detail than perhaps the other. Had you picked that
29 one up? It's a document dated 29 September 1988.

30 MR SMITH: We agree with that. Mr Hook doesn't
31 need to address this, but the document plainly does
32 allude to particular sites and gives some code of
33 identification.

34 COMSR: It is proposed that that particular
35 document be suppressed, and that distribution be
36 restricted to counsel and legal representatives
37 appearing for the various parties.

1 COMSR

2 Q. Are you able to say whether there are any other
3 documents here that have any degree of particularity in
4 them other than that.

5 A. There are other documents that refer to Aboriginal
6 heritage issues advice from Aboriginal Heritage Branch
7 to the Assessments Branch.

8 Q. Which for other reasons might be considered
9 confidential, is that what you're getting at.

10 A. I wouldn't have thought there'd be any concern from a
11 departmental perspective about any of the comments set
12 out therein.

13 MR SMITH: We have not identified any others.

14 I would have thought that some further explanation
15 of the planning process might be necessary from Mr Hook,
16 but could he be released for the time being so that
17 counsel can absorb his statement in conjunction with the
18 documents. Subject to my own view about whether he
19 ought to be recalled just to give you an overview of the
20 planning process at least, so that you can find your way
21 through that documentation much more easily, that may
22 have to happen. Could he be released for the time being
23 to potentially return?

24 COMSR: Yes, if required by any of the parties.

25 On that basis you're released on the understanding you
26 may be required at some stage.

27 WITNESS STANDS DOWN

28 ADJOURNED 4.40 P.M. TO FRIDAY, 6 OCTOBER 1995 AT 11.30 A.M.

S.J. JACOBS XN (MR SMITH)

1 COMMISSIONER STEVENS

2

3 HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

4

5 FRIDAY, 6 OCTOBER 1995

6

7 RESUMING 11.35 A.M.

8 MR SMITH CALLS

9 SAMUEL JOSHUA JACOBS SWORN

10 EXAMINATION BY MR SMITH

11 Q. I think on 21 December 1993, you were instructed by the
12 Crown Solicitor to make an independent assessment of
13 relevant facts relating to the proposed bridge linking
14 the mainland of Goolwa to Hindmarsh Island, were you
15 not.

16 A. Yes.

17 Q. In the course of carrying out that brief, you had
18 occasion to look at certain government files and
19 interview a number of people who had a relevant interest
20 in the construction of the bridge, is that correct.

21 A. I certainly was provided with a range of government
22 files. I was not, as I understood my assignment,
23 expected to take evidence or hear submissions, but I did
24 indicate that I may wish to speak to some people to if I
25 needed further explanation of matters that appeared in
26 the files, and I had authority to do that.

27 Q. I think in connection with this enquiry, you've provided
28 a statement to the Commission and, in so far as your
29 statement refers specifically to documents, you have
30 also identified a number of documents relevant to your
31 statement, is that correct.

32 A. Yes.

33 Q. Looking at this statement produced to you, do you
34 recognise that as the statement provided to this
35 Commission.

36 A. Yes. I've perused that statement and acknowledged it.

37 Q. Also, this bundle of documents are copies of documents
38 referred to by you in the statement.

S.J. JACOBS XN (MR SMITH)

1 A. Yes. Those are, as I recall it, all documents which I
2 saw at the time of my investigation on various
3 government files.

4 EXHIBIT 196 Statement and bundle of letters attached
5 thereto tendered by Mr Smith. Admitted

6 Q. I think you have a copy of that statement in front of
7 you.

8 A. Yes, I do.

9 Q. Would you please tell us, then, the Terms of Reference
10 which were part of your brief to make this
11 independent assessment.

12 A. Yes. Might I refer to my statement for that? I haven't
13 committed them to memory.

14 COMSR

15 Q. Yes.

16 A. My Terms of Reference were, firstly, to review all
17 relevant South Australian Government files and other
18 documents to enable a full report to be provided on the
19 existing arrangements for the proposed Goolwa/Hindmarsh
20 Island bridge, and/or the proposed marina development on
21 Hindmarsh Island, involving the Government of South
22 Australia and Binalong Pty Ltd, Westpac Bank
23 Incorporation and Built Environs Pty Ltd, who were the
24 contractors for the bridge, and any other party or
25 parties. That was one term of reference. Next was to
26 report on the financial exposure of the State and other
27 relevant matters arising from such arrangements.
28 Finally, to report on options open to the government for
29 the resolution of the present impasse and in the broad
30 interests of the people of South Australia, and the
31 financial implication of such options. I would like to
32 emphasise in that that it was no part of my role to
33 assess the merits of any decision that had been taken,
34 or indeed the merits of any opposition to that decision.
35 It was a purely fact finding exercise, I assume for the
36 benefit of a new government, to enable them to decide
37 what they should do in the circumstances which faced
38 them, but I gave them no advice or expressed no opinion

S.J. JACOBS XN (MR SMITH)

1 as to that. It was their decision.

2 XN

3 Q. Could you tell us, then, from when you undertook this
4 brief you, as it were, took into account or alerted
5 yourself to the circumstances that were prevailing in
6 relation to this matter as in December of 1993.

7 A. Yes. The background, as I discovered on perusal of the
8 files, was that work on the bridge had in fact
9 commenced, I think in about October of 1993. My
10 recollection is that the contract had, in fact, been let
11 in September of that year following the calling of
12 tenders, I think, in May 1993, but after the work
13 commenced and it was common knowledge, there were
14 protests and pickets on the construction site, and the
15 work was stopped, as I understand, by the minister. By
16 reason of the protests, money was made available for
17 some further archaeological work to be done in order to,
18 I assume, address the opposition that was then being
19 publically expressed. So that was the situation, I
20 think, which the government confronted when it came to
21 power as to how it would deal with that opposition. It
22 was shortly after the election that I was a consultant
23 in the matter. I can give a little bit more of the
24 background as I uncovered it. The actual decision to
25 build the bridge had been publicised, I think, in August
26 1991 by the then Premier, Mr Bannon, but there were
27 various delays, which I think I need not go into, they
28 are not relevant to this enquiry in any way, by reason
29 of which the contract was not let until almost two years
30 after that.

31 Q. I think just prior to you embarking on carrying out the
32 terms of your brief, on 9 November 1993 the Department
33 of State Aboriginal Affairs gave construction of the
34 bridge the all-clear, is that correct.

35 A. That was something that I discovered in the course of my
36 investigation.

37 Q. I think in your statement you also make the point that,
38 in the course of your investigation, you discovered a

S.J. JACOBS XN (MR SMITH)

1 fact which was not well publicised in relation to who
2 first motivated the construction of the bridge.

3 A. Yes. It appeared from the documents which I examined
4 quite clearly that a stipulation that a bridge should be
5 built was a stipulation first propounded by the
6 government as a condition of giving planning approval to
7 further development. In other words, they said that
8 they would not give planning approval for any further
9 development on the island unless and until a bridge was
10 built. I think that was a decision taken by the then
11 minister who, from memory, I think was Mr Gavin
12 Keneally, so that in order to get planning approval,
13 there would have to be a bridge. Do you want me to go
14 on with the background? I can give you more of it.

15 Q. Yes, thank you.

16 A. At that stage, the government said it wasn't going to
17 build the bridge, it would not pay for it, although it
18 would defray a part of the cost represented by the
19 savings on the ferry if the bridge was built. At that
20 stage, the developers said 'Well, if that's the price of
21 planning consent, we'll build the bridge', but then
22 there were supervening events which are not relevant, I
23 think, to this enquiry, but they were linked indeed with
24 the financial arrangements which were contemplated by
25 the developers, which involved the ill-fated State Bank
26 group, and the upshot was that it was the government who
27 then said that they would take responsibility for the up
28 up-front cost of the bridge. It was not - and this has
29 not been generally understood - it was not, the
30 documents make quite clear, to be the developers'
31 original option; they would have been content originally
32 with augmented ferry communication, but they had to
33 agree to the bridge in order to get planning approval.

34 Q. Could I take you to the structure of your enquiry and
35 review.

36 A. Yes.

37 Q. How did you set about it.

38 A. I sat down, in a rather lonely state, in an office which

S.J. JACOBS XN (MR SMITH)

1 the government provided to me, with a whole bundle of
2 documents, and proceeded to find my way through them.

3 Q. Were you required to interview people.

4 A. No, I was not required to interview them but, in fact, I
5 did. It became clear to me that I would have to
6 interview some people in order to address my Terms of
7 Reference. I did receive some unsolicited submissions,
8 mainly by people who wanted to speak to me about the
9 merits or otherwise of the proposal. I simply
10 acknowledged those submissions saying that it was not
11 within my Terms of Reference to express any opinion upon
12 the merits. I did not advertise or call for submissions
13 but, as I said a little earlier, I did myself take the
14 initiative in seeking explanations from some people
15 arising from my perusal of the files. I recall that I
16 had some discussions with an officer of the Department
17 of Transport, I think that's what it was called, I don't
18 now remember his name, on a matter quite unrelated to
19 the terms of this enquiry, and I did interview some
20 other people in relation to other Terms of Reference.
21 There's a reference in my Terms of Reference, for
22 example, to the Westpac Banking Corporation, and I had
23 to talk to them in order to get some picture of the
24 financial implication, which is a part of my Terms of
25 Reference.

26 Q. I think, in particular focusing now on this enquiry, you
27 met and spoke with Dr Neale Draper of the Department of
28 State Aboriginal affairs.

29 A. Yes, I did. I don't now accurately recall whether I saw
30 him at his request, or whether I asked to see him. My
31 belief is, but I would not swear to it, that he asked to
32 see me, but I can say that if he had not asked to see
33 me, I would have asked to see him by reason of the
34 contents of letters that were on the files which I
35 thought called for some explanation.

36 Q. At least at that juncture in your enquiry, did you take
37 the view that the focus of trouble - not exactly
38 trouble, but problems, was the Aboriginal interests.

S.J. JACOBS XN (MR SMITH)

- 1 A. Well certainly that was one of the sources of trouble,
2 but there was also other opposition which, on the
3 information available to me, appeared to be union
4 oriented. I think that some unions had black-banned the
5 site and were helping to maintain the pickets, but
6 certainly there was Aboriginal opposition.
- 7 Q. I think as a result of speaking with Dr Neale Draper,
8 you also conferred with two members of the Lower Murray
9 Aboriginal Heritage Committee.
- 10 A. Yes, I did. I had long discussions with Dr Draper,
11 going through the files that I had, some involved his
12 department, but in the course of those discussions, he
13 did tell me that he thought there was some Aboriginals
14 who would like to speak to me, and he thought that they
15 had something of interest to tell me. My recollection
16 is that he didn't tell me what it was or what he thought
17 it was, but in view of the extent of the Aboriginal
18 opposition, although I was not generally, as I say,
19 receiving evidence or hearing submissions, I thought it
20 was appropriate, as requested by Dr Draper, to meet with
21 the two members of the Aboriginal community, and I did
22 so. They came to see me together, and spoke with me for
23 a couple of hours.
- 24 Q. I think also you travelled down to the island with an
25 officer of the Department of Transport.
- 26 A. Yes, I did. That was merely a familiarisation trip so
27 that I could have a better picture of the original
28 material that I was examining.
- 29 Q. Could I ask you now to focus on the documentation that
30 you had at your disposal, or which you identified which
31 related to the Aboriginal opposition to the bridge.
- 32 A. Yes. I think the first document in point of time, as I
33 recall it, was the Environmental Impact Assessment and
34 assessment reports which flowed from the original
35 Environmental Impact Statement. They did refer to the
36 Ngarrindjeri people as the relevant community and
37 indeed, as I recall it, the planning approval identified
38 the Ngarrindjeri people as those who would be

S.J. JACOBS XN (MR SMITH)

1 appropriate to consult whenever necessary in the course
2 of carrying out the work for which planning approval had
3 been given.

4 Q. You said earlier, just to take you away from that topic
5 for a moment, that you would have sought out Dr Draper
6 to speak to him had he not sought you out.

7 A. Yes.

8 Q. Why would you have done that.

9 A. Because of the range of correspondence on the files
10 which emanated from the Aboriginal Heritage Branch, and
11 which culminated in the letter of 9 November 1993,
12 stating that so far as the Department of State
13 Aboriginal Affairs was concerned, there was no objection
14 to the bridge proceeding and, in light of those letters,
15 that seemed to me to call for some explanation of the
16 present trouble. When I say `the present trouble', the
17 trouble that had emerged after construction began.

18 CONTINUED

- 1 Q. By 'trouble' you are there confining yourself to
2 opposition from Aboriginal communities.
- 3 A. Yes.
- 4 Q. Being inconsistent somewhat with the documentation you
5 had seen.
- 6 A. Yes.
- 7 Q. The documentation that you mention is, looking at the
8 bundle which is Exhibit 196, you have a copy of that
9 bundle I think attached to your statement.
- 10 A. Yes.
- 11 Q. You made mention, first of all, to the assessment
12 report.
- 13 A. Yes.
- 14 Q. Which, of course, is not attached there.
- 15 A. Yes.
- 16 Q. Then your statement refers to a complaint to the
17 Ombudsman by Henry Rankine, I think, is that correct.
- 18 A. Yes, that was a letter that came to my notice on the
19 files and it was a letter dated 6 December 1993. And I
20 found it of interest, because Mr Rankine was the person
21 who had been referred to in the environmental impact
22 statement as the person with whom there had been some
23 consultation at the time that statement was prepared.
24 But there was now a complaint from him to the Ombudsman,
25 as set out in that letter.
- 26 Q. Then I think there were a number of letters in the files
27 which you had before you, the files which you examined,
28 which chronological, if you like, in some sense, various
29 complaints and clearances that were given with respect
30 to the bridge.
- 31 A. Yes.
- 32 Q. Relative to Aboriginal interests.
- 33 A. Yes.
- 34 Q. I think the first letter you refer to is the 12 April
35 1990 letter.
- 36 A. Yes.
- 37 Q. From the Aboriginal Heritage Branch.
- 38 A. Yes, I might say, Commissioner, just to put it into

S.J. JACOBS XN (MR SMITH)

1 context, that the substance of the complaint that Mr
2 Rankine was making to the Ombudsman in the letter of 6
3 December was that 'The Department of State Aboriginal
4 Affairs did not survey' - these were the words he used
5 in the letter - 'did not survey the area in order to
6 establish the existence or not of any sacred sites prior
7 to the contract being signed.' So that it was a letter
8 that referred to sacred sites, yes. Yes, the first
9 letter in point of time that I discovered was a letter
10 of 12 April 1990 from the Manager of the Aboriginal
11 Heritage Branch of the Department of Environment and
12 Planning, which informed the developers, and again I
13 quote from the letter, that 'No Aboriginal sites of
14 archaeological or anthropological significance will be
15 affected by the development.'

16 Q. Then the next.

17 A. Then the next in point of time that I discovered on the
18 files was a letter of 8 May 1992, again from the Manager
19 of the Aboriginal Heritage Branch, this time to the
20 engineering consultants for the bridge construction. A
21 letter which was written following upon a decision that
22 apparently was taken to realign the approaches to the
23 bridge. I have forgotten the street of the first
24 original proposed alignment, but I remember that the
25 change was to Brooking Street.

26 Q. From Crystal Street.

27 A. From Crystal Street, yes. And it was in consequence of
28 that change that the letter of 8 May 1992 informed the
29 engineering consultants that there was no known
30 archaeological objection to the realignment of the
31 bridge, that is, to Brooking Street. The next letter in
32 point of time on file was of 20 October 1993. And this,
33 of course, was written at a time after the protests
34 against the commencement of the work had begun and that
35 was a letter from an Aboriginal officer of the
36 Department of State Aboriginal Affairs, Mr Wilbur
37 Wilson, who wrote to an officer of the Planning and
38 Urban Development Department, and again I quote from the

S.J. JACOBS XN (MR SMITH)

- 1 letter, stating that 'Members of the Lower Murray
2 Aboriginal communities have expressed concern of the
3 potential impact of the Hindmarsh Island bridge on
4 Aboriginal sites on the island.' And the letter asks
5 that these concerns be addressed in the proposed
6 supplementary development plan. The letter in terms
7 does appear to contemplate that the bridge would be
8 built, but expressed anxiety about Aboriginal sites on
9 the island. The next letter in point of time was a
10 letter dated 25 October 1993 from Douglas Milera who
11 wrote to the Goolwa Council on behalf of the Lower
12 Murray Aboriginal Committee explaining, and again I
13 quote - or complaining, and again I quote from the
14 letter that 'There has been no consultation with us on
15 the proposed bridge at Goolwa and we find that this is a
16 breach of the Aboriginal Heritage Act of South
17 Australia. It is well-documented that there are
18 Aboriginal sites on the proposed development area.'
19 That is all part of the quotation from the letter. So,
20 again, that was a letter raising concerns about
21 Aboriginal sites. On I think the same - the letter I
22 think of the same date, 25 October 1993, from - I will
23 just refresh my memory, if I may, about the authorship
24 of this letter. This I think was from Victor Wilson,
25 who is the - who wrote it as the Chairperson of the
26 Lower Murray Aboriginal Heritage Committee. And that
27 was a letter written both to State and Federal Ministers
28 again expressing concern about the construction of the
29 bridge and referring, in particular, to archaeological
30 sites and the proximity of the bridge to Aboriginal
31 sites which were sensitive.
- 32 Q. And the final document was the letter -
33 A. Then, yes, the letter of 9 November 1993 was the final
34 document. And that was a document written after further
35 archaeological investigation had been done as a matter
36 of urgency following the protests and the picketing of
37 the site. And the letter - I won't read the whole of
38 it, unless you wish me to, Commissioner - but it is a

S.J. JACOBS XN (MR SMITH)

- 1 letter addressed again to the consultants, the engineers
2 who were in charge of the construction. And it
3 identified the investigations that had been taking place
4 in some areas of archaeological sensitivity, but then
5 concluded as follows 'With respect to the requirements
6 of the South Australian Aboriginal Heritage Act there
7 are no objections to the bridge construction project
8 proceeding subject to the above conditions and the
9 further requirement that any suspected discovery of
10 Aboriginal sites, objects or remains during the course
11 of the project should be reported without delay to this
12 Department and work in the vicinity of such discovery
13 halted subject to this consultation.' So, again, it
14 gave the green light to the project, but did indicate
15 that there were some significant archaeological sites
16 which would need to be protected as they emerged in the
17 course of construction.
- 18 Q. With that specific documentary background focused upon,
19 you spoke with Dr Neale Draper.
- 20 A. Yes, I did, because, on the face of it, in the light of
21 the green light that had been given by the Department,
22 it was not immediately apparent to me why there was
23 continued dissatisfaction.
- 24 Q. Your interview with Dr Draper took place in your room.
- 25 A. Yes.
- 26 Q. That you had been allocated.
- 27 A. Yes it did. And did, in fact, on a number of occasions.
28 I think he saw me at least twice. I think the second
29 time I think at his request when he wanted to do some
30 further research before he saw me again.
- 31 Q. So, in all, you would have spent how long with Dr
32 Draper.
- 33 A. Some hours. Four or five hours, I would have thought,
34 in all. I must say, I think that he did more of the
35 talking than I did, which was unusual.
- 36 Q. Could you tell us, I imagine that you, not exactly
37 confronted, but drew Dr Draper's attention to the state
38 of affairs as the documents had indicated to you.

1 A. Yes, I didn't confront him in a confrontationist sense,
2 but, of course, I was perplexed by the turn of events in
3 the light of the correspondence that had emanated from
4 the Department. So, in that sense, I did confront him
5 with this and asked 'What is it all about?' And he gave
6 me a number of reasons and at some length. I think I
7 can summarise them, as I have done in my statement, but
8 perhaps I should repeat it. He confessed to
9 inadequacies, particularly in the Aboriginal Heritage
10 Branch, in somewhat earlier times. That is the
11 Aboriginal Heritage Branch, which was then a branch of
12 the Department of Environment and Urban Planning. And
13 to inadequacies in the Department of Aboriginal Affairs.
14 He was critical, in other words, of the department for
15 which he was working. He said in apparent defence of
16 the opposition that had emerged that - and by way, I
17 suppose, of some partial explanation of the letters -
18 that there had been inadequate consultation between the
19 archaeological and anthropological consultants whose
20 services were available to the various departments. He
21 said, and I think I could understand why he said it, but
22 he said that the structure and provisions of the
23 Aboriginal Heritage Act of 1988 were unsatisfactory and
24 perplexing and were not really working. And he said
25 that the officers with whom he worked had difficulty in
26 understanding and applying them. And he said finally
27 that there had been inadequate departmental resources of
28 money and personnel. He said quite bluntly that the
29 letter should not have been written in the light of what
30 he then believed to be matters of significance to the
31 Aboriginal community. He said that 'We fell down on our
32 job', in effect, and the letter shouldn't have been
33 written. And that is how he - that is the explanation
34 that he gave me. And he did tell me in relation to what
35 appeared to be the archaeological sensitivity of the
36 area that, so far as the Department was concerned, there
37 had been no complaint. They had no complaint against
38 the developers whom he said had dealt in a sensitive and

S.J. JACOBS XN (MR SMITH)

- 1 co-operative fashion with Aboriginal sites on the
2 island. But I have to say that, when I put that to the
3 representatives of the Aboriginal community who asked to
4 see me, they while not emphatically disagreeing, they
5 were not prepared to concede that.
- 6 Q. This conversation or this series of conversations with
7 Dr Draper took place, when. Your brief was in late
8 December, wasn't it.
- 9 A. I got my brief almost on Christmas eve. I think that I
10 got the files I think before the New Year, but I really
11 didn't start any detailed examination until probably
12 very early in January and I worked daily and I
13 eventually reported early in February and I was, in
14 fact, ready to report a little earlier than that. I
15 can't fix a date. About the middle of January is the
16 best I can say.
- 17 Q. Did Dr Draper indicate to you or give you any detail of
18 how significant the island was, from the Aboriginal
19 perspective, in this interview.
- 20 A. No, I don't recall him giving me - making any specific
21 claim on behalf of the Aborigines. Although he did, as
22 I recall, indicate to me that he thought that they had
23 something interesting of some importance to tell me, but
24 he didn't tell me what it was. But he did urge me to
25 see them and hear from them direct what they wanted to
26 tell me. But how much of it he knew, I don't really
27 know.
- 28 Q. I think you took up that suggestion.
- 29 A. Yes, I did.
- 30 Q. And was it within a short time that you saw George
31 Trevorrow and Doug Milera.
- 32 A. Yes, an appointment was made and George Trevorrow and
33 Douglas Milera came to see me, on their own.
- 34 Q. Would that be in January 1994.
- 35 A. Yes, it would have been about in mid January 1994.
- 36 Q. Can you tell us about the interview. Who of the two did
37 most of the talking or of the three of you.
- 38 A. Keep it down to two, at the moment.

1 Q. Yes.

2 A. Of the two who came to see me, George Trevorrow appeared
3 to be the spokesperson. Douglas Milera did participate,
4 but only in a very limited way and it was George who did
5 most of the talking. I suppose the short answer to your
6 question is George and I did the talking.

7 Q. Tell us, did George convey to you then -

8 A. Yes, he did.

9 Q. The significance of the island.

10 A. Yes.

11 Q. From an Aboriginal perspective.

12 A. Yes, he told me that the area in which the bridge was to
13 be built, that is the Goolwa frontage and the island,
14 had some spiritual significance to the Aboriginal
15 community. He said that the bridge would change the
16 visual and physical character of the locality by linking
17 the bridge to the mainland. Commissioner, I am not
18 putting his precise words, at this stage. This is the
19 substance of what he told me, as I understood it.

20 Q. By linking the island to the mainland.

21 A. Yes, it would change the visual and physical character
22 of the locality and that the character of the island as
23 an island would be lost by reason of its linkage to the
24 mainland. And he said that that was really an
25 unacceptable affront to the spiritual identity which the
26 Aboriginal community has with the land of its forebears.
27 In other words, I think it is well-known in part of the
28 Aboriginal culture the way in which they identify with
29 the land. That this had always been an island and it
30 would visually, physically cease to have the character
31 of the island that they identified in a spiritual way.

32 CONTINUED

S.J. JACOBS XN (MR SMITH)

1 In addition, of course, he did say that there were site
2 works associated with the construction of the bridge on
3 the mainland, which were likely to intrude into
4 Aboriginal sites of archaeological significance,
5 something of which I was aware from the previous
6 correspondence, but there was nothing whatever in the
7 documentation before me of any - no hint of any
8 objection based upon the spiritual significance of the
9 island as an island, and the effect of the visual and
10 physical intrusion of the bridge upon that Aboriginal
11 perception, and that was a view which, so far as I could
12 ascertain, and I feel fairly confident about it, had not
13 previously been raised on behalf of the Aboriginal
14 communities.

15 Q. You make mention in your statement of a passing
16 reference -

17 A. Yes, there was a passing reference in the environmental
18 impact statement to the visual impact of the bridge in
19 aesthetic terms as affecting the island setting, but
20 nothing whatever to suggest at that time that it was of
21 any particular concern to the Aboriginal communities.

22 Q. I think you then raised with Trevorrow -

23 A. Yes, I talked - I must say, it was a very amicable and a
24 very friendly discussion, and, having gained, as best I
25 could, an understanding of what they were putting to me,
26 I then said to them - and I suppose this was addressed
27 perhaps to both of them - `Well, this is the first time
28 you've raised this objection. Why haven't you raised it
29 before?' And I referred them to the letters, pointing
30 out that even in the letters all the objections up to
31 that time, and quite recently, had concentrated on the
32 archaeological significance of the area, without any
33 reference to the claim that was now being made to me. I
34 said `Why haven't you raised it before?' Their answer
35 was to the effect that they thought that they would be
36 further consulted about the construction of the bridge,
37 and would have had an opportunity to raise it then. I
38 pointed out to them that, according to the environmental

S.J. JACOBS XN (MR SMITH)

1 impact statement, Henry Rankine had been consulted and
2 apparently saw no problems. I do remember these were
3 the exact words that were used, although, I can't now
4 accurately recall whether it was Doug or George who used
5 them, but they said 'Leave Henry out of this'. And I
6 said 'Why?' And I think it was George who said 'Because
7 he wears two hats. He wasn't speaking for the
8 Ngarrindjeri people. He was speaking for Point McLeay'.
9 I then drew their attention to the fact that it was as
10 early as October in 1991 that Mr Bannon announced
11 publicly, in quite a big press announcement, that the
12 bridge would be built. So that it had been in the
13 public arena for some two years, and I expressed some
14 surprise that this claim now advanced to me had not been
15 raised, more particularly because, I have to say, it
16 seemed to me to be certainly a comprehensible and
17 understandable claim, but again they really had no
18 answer to that, except that they thought that they
19 should have been consulted. It wasn't for them to air
20 their grievances until they were consulted. As to the
21 claim itself, I asked them about the barrage, as to
22 whether that was a similar affront to the spiritual
23 identity of the land. Their answer was that the
24 proposed location of the bridge at the closest point to
25 the mainland was the significant intrusion upon the
26 character of the island as an island, and that was their
27 explanation.

28 Q. It is clear from what you have earlier said that Dr
29 Draper did not convey any such information to you about -

30 A. No. No, he did not.

31 Q. Nor did he mention, can I ask you, topics such as the
32 importance of the meeting of the waters, or any secret
33 matters such as that.

34 A. No, there was nothing of that at all.

35 Q. George Trevorrow and Douglas Milera did not convey, or
36 did they, any such information to you about women's
37 business.

S.J. JACOBS XN (MR SMITH)

- 1 A. No, there was not the slightest hint or suggestion of
2 anything of that nature made to me by Dr Draper or by Mr
3 Trevorrow or by Mr Milera.
- 4 Q. It was no part, I think, of your instructions from the
5 Crown to really assess the merits of this late claim.
- 6 A. No. No, I did not. I wasn't there to express any
7 opinion upon its merits or upon its validity. I simply
8 assumed in my report - I assumed in favour of the two
9 aborigines who consulted me that - I said `Assuming the
10 claim is genuine, although it had not been raised
11 before, it was for the government to assess its weight
12 in considering what options were open to them in the
13 light of the impasse that had developed, but I expressed
14 no views about its validity beyond pointing out, which
15 was obvious, that it had never been raised before.
- 16 Q. I think then you had completed your task and submitted
17 your report to the government on 3 February 1994.
- 18 A. Yes.
- 19 Q. Or to the Crown Solicitor in particular.
- 20 A. Yes, that's correct. I did report this claim to the
21 government for its assessment.
- 22 Q. Part of your report set out, in effect, what you have
23 told us.
- 24 A. Yes.
- 25 Q. But your report dealt -
- 26 A. Yes. What I have said, commissioner - there was a
27 discrete part of my report headed `Aboriginal Issues'.
28 What I have said really is a summary of that part of my
29 report. Perhaps more than a summary, it is really is a -
- 30 Q. I think you had some contact with Professor Cheryl
31 Saunders subsequent to these events.
- 32 A. Yes, I did. I cannot accurately tell you when it was,
33 except that it was during the course of her visit here
34 in pursuance of the inquiry which she had been
35 instructed to undertake. She telephoned me at my home
36 one evening. I can't recall what day of the week it
37 was, and we had quite a long telephone discussion for
38 about half an hour. Again, I can't recall accurately

S.J. JACOBS XN (MR SMITH)

1 all that was said, but there was very little discussion
2 about Aboriginal issues, as such. Although, I did, I
3 think, explain to her briefly what I have been talking
4 about to you, commissioner, as to the claim that had
5 been made to me. She appeared to be more interested in
6 those parts of my report which have no relevance to that
7 inquiry, dealing with the options that were open to the
8 government and the financial implications of those
9 various options. She needed to gain some understanding
10 of those, and I suppose this was a short-cut for her to
11 gain some understanding of those by speaking to me. She
12 told me that she was going to visit the island, and that
13 she would communicate with me again on her return. But
14 she did not do so. For what reason I know not.

15 Q. Did you seek to communicate with her again.

16 A. I don't think so. My hesitation is because I have a
17 vague recollection - but it is no more than that - that
18 I may have rung the hotel where she was staying and had
19 been told that she had left, but I can't swear to that.

20 COMSR

21 Q. In any event, you didn't speak to her subsequently.

22 A. I didn't speak to her. I just had the one discussion
23 with her for about half an hour over the telephone, and
24 mainly upon topics unrelated to the terms of this
25 commission's inquiry.

26 XN

27 Q. It was therefore obvious, was it, that she had a copy of
28 your report to the Crown Solicitor when she spoke to
29 you.

30 A. I understand she had. I understand that had been
31 provided to her. Although my report had not been, and
32 indeed still has not been, made public, I understand she
33 had been provided with a copy of that report.

34 Q. Looking at Exhibit 17, the report of Cheryl Saunders,
35 could you turn to p.31 of the report.

36 A. Yes.

S.J. JACOBS XN (MR SMITH)

1 Q. You see there paragraph 3.1.3 headed 'Significance of
2 the area as a whole'.

3 A. Yes, I do.

4 Q. You are given a mention there, are you not.

5 A. Yes.

6 Q. I think you would like to make some point in relation to
7 that.

8 A. Yes. I don't know how this came about, but I will read
9 out what the professor has said in this part of her
10 report. She said 'The final aspect of significance of
11 the area, identified also by Mr S.J. Jacobs in his
12 report to the current government, as potentially the
13 most serious, involves the secret knowledge of women'.
14 That is the end of the quote. That is, I have to say,
15 absolutely incorrect. There was nothing whatever in my
16 report or, indeed, in anything I said to her involving
17 any knowledge whatever about the secret knowledge of
18 women, and, indeed, Professor Saunders, I have to say,
19 very properly, in subsequent proceedings before the
20 Federal Court, acknowledged to O'Loughlin J that she was
21 wrong about that. That appears in O'Loughlin J's
22 judgment, that she said that she was simply mistaken to
23 attribute to me any knowledge of the women's business at
24 all. How she came to write that, I do not know. I must
25 confess, I was a bit cross when my attention was drawn
26 to it, because it was simply incorrect.

27 MR ABBOTT: I would like to ask some questions, but
28 I submit I should go last on the basis that those who
29 are most interested perhaps in an adverse sense should
30 go first. I understand Mr Tilmouth would wish to ask
31 questions on behalf of Mr Milera and Mr Trevorrow.

32 MR TILMOUTH: Not on behalf of Mr Milera, of course.
33 Unfortunately, I haven't been able to take instructions
34 in relation to this. I didn't anticipate that Mr Jacobs
35 would be referring to George Trevorrow. I only received
36 the statement, like everybody else, earlier today. It
37 is not that I haven't tried, however. You may have
38 noticed I came in late. I was actually trying to

S.J. JACOBS XN (MR SMITH)

1 contact him.

2 COMSR: Yes, I heard from Mr Kenny there are
3 difficulties.

4 MR TILMOUTH: Yes, but he has been ill. He has been
5 in hospital. I understand the difficulties. I don't
6 want to delay this witness or the commission. It is
7 just a practical difficulty. I haven't been able to get
8 instructions at this stage. I wouldn't anticipate, if
9 there were to be cross-examination, it would be very
10 long. While I am on my feet, may I raise one issue?

11 COMSR: Is that to do with Mr Jacobs?

12 MR TILMOUTH: Yes, it is. There has been evidence
13 relating to the report to the government on 3 February,
14 and I understand from Mr Jacobs that there was a
15 separate section in that report.

16 COMSR: You wish to cross-examine Mr Jacobs?

17 MR TILMOUTH: No. What I was asking was that I
18 understand the confidentiality of that report for
19 commercial reasons. I am not wishing to embark upon
20 that. But given that this matter was apparently pointed
21 out by Mr Jacobs to the government, I wonder if it would
22 be reasonable to ask whether that section of the report
23 could be released, if it didn't otherwise compromise any
24 commercial situation with respect to the matter.

25 COMSR: Released to counsel for their perusal,
26 is that right?

27 MR TILMOUTH: In some proper way. I am not suggesting
28 wide public dissemination. But it does seem important
29 that this matter was apparently relayed. As I
30 understood Mr Jacobs, he was talking about the concerns
31 that had been expressed by Mr Trevorrow in particular in
32 the conversation he had.

33 COMSR: Perhaps it would be advisable to ask Mr
34 Jacobs.

35 Q. In that part of the report, is there any reference to
36 matters that concern the Terms of Reference of this
37 commission.

S.J. JACOBS XN (MR SMITH)
XXN (MR STEELE)

1 A. What I have said is wholly - I have in effect given the
2 contents of that part of the report. I mean, I headed
3 it - I said it was a discrete part of the report. It
4 was - whatever the paragraph was, I have got it here.
5 It said `Aboriginal issues', and I simply related in
6 that part of the report what I have told you, and
7 alerted the government to the fact of this claim having
8 been made, and said that it would have to be assessed.
9 It is not for me to say whether it should be released, I
10 am afraid, but I can, I think, give this assurance to
11 you, and indeed to counsel, that there is nothing in
12 that part of the report that I have omitted in my
13 evidence to you.

14 MR TILMOUTH: I am very content with that assurance.

15 MR ABBOTT: I still submit that counsel for Dr
16 Draper should go before me, if he wishes to ask any
17 questions.

18 MR STEELE: I am quite happy to do that.

19 CROSS-EXAMINATION BY MR STEELE

20 Q. Mr Jacobs, is it your recollection that you spoke to Dr
21 Draper, in a sense, consulting with him rather than
22 arranging a consultation in early 1994.

23 A. I am not quite sure that I understand the question. I
24 certainly spoke to him, but I said I'm not sure whether
25 he asked to see me or not. I am not sure who took the
26 initiative, in other words. But I did say if he hadn't
27 taken the initiative, I would have.

28 Q. That really wasn't my question, but I will go back to
29 that question. If I suggested to you that you
30 telephoned him on 23 December, you would be content with
31 that.

32 A. That may well be right, yes.

33 Q. My question really was that, apart from making that
34 arrangement, is it your recollection that the
35 consultation that refers to meeting took place in early
36 1994, or may it have been in the week between Christmas
37 and New Year.

38 A. I don't really remember.

- 1 Q. Did Dr Draper speak to you of a survey conducted by him
- 2 on Hindmarsh Island.
- 3 A. Yes, I understood that he had, if not himself, at least
- 4 been party to the survey that was undertaken, following
- 5 the protests in late October and early November.
- 6 CONTINUED

S.J. JACOBS XXN (MR STEELE)

- 1 Q. Your understanding is, isn't it, that there was a survey
2 conducted on Hindmarsh Island at some point between the
3 protests in October and the letter to which you referred
4 on 9 November.
- 5 A. My recollection is that the primary area of attention
6 had been on the mainland side, on the approaches to the
7 bridge, but I think that that I was told that, in
8 addition, some areas of archaeological significance had
9 been located near the causeway on the island side of the
10 channel.
- 11 Q. Did you have any understanding that Dr Draper had, at
12 the time that he spoke to you, conducted a survey on
13 Hindmarsh Island.
- 14 A. On the island itself?
- 15 Q. Yes.
- 16 A. No.
- 17 Q. In your statement, p.1 of your statement, you refer to
18 further investigatory archaeological work being done by
19 Dr Neale Draper, with the sum of \$20,000 allocated for
20 that purpose.
- 21 A. Yes.
- 22 Q. What was your understanding of that survey work. When
23 was it done and where was it done.
- 24 A. My understanding of it was that it was done primarily on
25 the mainland in the vicinity of the approaches to the
26 bridge, and not only the actual area of the approach,
27 but adjoining areas as well, on the foreshore.
- 28 Q. What was your understanding as to when that was done.
- 29 A. Where?
- 30 Q. When.
- 31 A. Some time prior to the letter of 9 November, which
32 appeared to indicate what the results of that survey had
33 been.
- 34 Q. It was for that reason that you thought that the
35 complaint by Mr Rankine and the complaint by the Lower
36 Murray Aboriginal Heritage Committee that there had been
37 no consultation were not fair complaints.
- 38 A. I never said that they were not fair complaints, I have

S.J. JACOBS XXN (MR STEELE)

- 1 never said that. All I have said was that the letters
2 are inconsistent with the complaints that were now being
3 made.
- 4 Q. You're quite right. I was referring to the passage at
5 p.4 of your report, at .5, where you said, in speaking
6 of the grievance, 'Which I found were not supported by
7 the other documents on departmental files'.
- 8 A. That's right.
- 9 Q. Did Dr Draper ever indicate to you that the \$20,000 sum
10 allocated for survey work was for survey work which
11 commenced at the end of November 1993, and some several
12 weeks after the letter of 9 November 1993.
- 13 A. No, I understood that there was a further sum of money
14 being sought for further survey work. I have, in the
15 back of my mind, a figure of \$30,000 being mentioned,
16 but I don't recall precisely in what context.
- 17 Q. At the time that you saw Dr Draper, you understood that
18 the survey was incomplete.
- 19 A. Yes, and indeed the letter of 9 November indicated that
20 there may be further areas of sensitivity located which
21 would have to be addressed as the work proceeded.
- 22 Q. Did, for example, Dr Draper, say to you that one of the
23 problems he saw with the letters from the department, in
24 particular the letter of 9 November 1993, was that those
25 letters had been sent before the survey, for which the
26 \$20,000 was allocated, had been undertaken, let alone
27 completed.
- 28 A. No, I don't think, I did not understand him to say that.
29 He did say to me, quite explicitly, 'The letter should
30 not have been written', and I think he used the word
31 that they were premature. I don't know that he went
32 into any more detail than that.
- 33 Q. Can you recall now whether he referred specifically to
34 the letter of 9 November 1993 as the premature letter or
35 a premature letter.
- 36 A. No, but I think it was probably that letter.
- 37 Q. It was Dr Draper who suggested to you that Mr Trevorrow
38 and Mr Milera were keen to see you, wasn't it. You

S.J. JACOBS XXN (MR STEELE)

1 didn't instigate that.

2 A. I didn't instigate it, indeed I didn't even know who
3 they were. He simply said that there were two
4 representatives of the Aboriginal community who would
5 like to see me.

6 Q. He put it in the context that they wanted to see you.

7 A. Yes, they wanted to see me. I made an exception to my
8 general policy in their favour. I did not receive
9 evidence as such from anybody else.

10 Q. If I suggested to you that you saw them on 12 January
11 1994, you'd be content with that.

12 A. Yes.

13 Q. At the time that Dr Draper made that suggestion, he said
14 to you that they had something of importance to say to
15 you.

16 A. I'm not sure whether he used those words, but he
17 certainly gave me to understand that he thought I would
18 be interested in what they had to say, as indeed I was.

19 Q. At the time that you had your discussions with Dr
20 Draper, did you make notes of those discussions.

21 A. I think not, but I can't be certain of it.

22 Q. At the time that you saw Mr Trevorrow and Mr Milera, did
23 you make notes of those discussions.

24 A. Not in the course of the discussion, no, but my
25 recollection is that I made a memorandum of the
26 substance of what they told me while - not so much while
27 it was fresh in my mind, but in the course of my
28 discussion with them, I wanted to understand clearly
29 what the spiritual significance was, and I think that I
30 put to them forms of words which they either assented to
31 or didn't assent to, and I think I made a note of that
32 to preserve the agreed form of words in my own mind.

33 Q. Let's go back to the very beginning. When you had your
34 first discussion with Dr Draper, whether it was
35 instigated by you or him, your view was that you needed
36 to speak to him for an explanation of that department's
37 documents.

38 A. I'm not sure when I first spoke to him whether I had

S.J. JACOBS XXN (MR STEELE)
(MR ABBOTT)

- 1 seen all the documents. In fact, I'm certain that I
2 hadn't seen all the documents at that time.
- 3 Q. You said at the beginning of your evidence that you
4 would have sought out Dr Draper because of the range of
5 correspondence which emanated from the Heritage
6 Department which culminated in the letter of 9 November.
- 7 A. Yes.
- 8 Q. So I take it from that that you must have seen at least
9 something at the time that you first spoke to him.
- 10 A. You mean when I first spoke to him on 23 December?
- 11 Q. Yes, not consequently.
- 12 A. It would appear so, but my recollection is that I didn't
13 get the files until about that time, and it may even be
14 that when I was first instructed to do this, that
15 officers of the Crown Solicitor's or the Premier's
16 Department may well have told me that Dr Draper wanted
17 to see me, I don't know. I can't really recall that at
18 all, but I think it's highly unlikely, in fact I'm
19 almost certain that I had not seen all the documents to
20 which I have now referred before Christmas.
- 21 Q. In the time that you spent with Dr Draper, the four or
22 five hours in which you spoke, was a significant part of
23 that taken up going through the Dossier documents and
24 getting an explanation as you needed on individual
25 documents.
- 26 A. Yes, it was, and he did a good deal of the talking and
27 was, you know, at some pains to explain to me how it
28 came about that, in effect, so many mistakes had been
29 made over the years by the department, and how the
30 interests of the Aboriginals appeared to have been
31 adversely affected by the way in which the department
32 had conducted its affairs.
- 33 CROSS-EXAMINATION BY MR ABBOTT
- 34 Q. You mentioned to my learned friend, Mr Steele, that in
35 relation to the interview with Trevorrow and Milera, you
36 prepared a memo. Can you tell us where that memo is
37 likely to be found. Do you have a copy of it.
- 38 A. No, it was only a very rough note which was subsequently

S.J. JACOBS XXN (MR ABBOTT)

- 1 incorporated into my report. If you like - I have
2 retained a few papers relating to my enquiry at home,
3 but I doubt that I retained all my scribbled notes.
- 4 Q. A handwritten memo that you wrote doubt.
- 5 A. Yes, it was just because, as I explained to Mr Steele, I
6 wanted to make certain that I understood what they were
7 saying to me, and I was putting to them a form of words,
8 which represented my understanding, to see whether I had
9 got it right, whether they assented to it.
- 10 Q. Could you turn to p.5 of your statement.
- 11 A. Yes.
- 12 Q. You've emphasised that this is, in essence, your summary
13 of the discussion, but I'd like to ask you whether or
14 not some of the words that you have said in this
15 statement, your summary, were in fact, if not uttered by
16 George Trevorrow, then at least assented to by him as
17 part of the formula that you were putting to him. The
18 first relevant sentence is that you said that `George
19 Trevorrow told me the land had some spiritual
20 significance'. Were the words `spiritual significance'
21 George's words, or yours, or perhaps both.
- 22 A. I can't be certain. I think that if those words were
23 used by either of them, they would have been used by
24 Doug rather than by George.
- 25 Q. They are not your words, then, in the sense that that
26 was not a phrase first raised by you.
- 27 A. I'm sure the word `spiritual' was used, that `we have a
28 spiritual identity with the land', I'm sure that that
29 was an expression that one or other of them used.
- 30 Q. Those words, `spiritual identity with the land', you
31 have paraphrased by the expression `spiritual
32 significance'.
- 33 A. Yes.
- 34 Q. You say that George Trevorrow -
- 35 A. I paraphrased it there, but I've used those very words
36 further down, `It would be an affront to the spiritual
37 identity that the Aboriginal community has with the land
38 of its forebears'.

- 1 Q. George Trevorrow said that the bridge would change the
2 visual aspect and physical character of the locality.
3 Were they his words.
- 4 A. I think I would have to say that that's my paraphrase.
5 These were the sorts of things that I put to him, is
6 that what you mean, and he would have said yes.
- 7 Q. But, in essence, you clearly came away from that meeting
8 with the view that what George Trevorrow told you was
9 the linking of the island to the mainland by means of a
10 bridge would, in the opinion of Trevorrow at least, and
11 probably Trevorrow and Milera, change the visual aspect
12 of what you could see, because I assume that arose out
13 of there being a bridge that you could look at and see
14 the island linked to the mainland. It would change the
15 physical character, and do you mean by that what they
16 were asserting was that it would stop the island being
17 an island completely cut off, and therefore island-like.
- 18 A. It would change its character as an island, and they
19 identified with that area as being an island.
- 20 Q. They identified with that area as being an island, and
21 they identified the necessity that it remain an island.
- 22 A. It was part of their heritage and the importance of land
23 in their culture.
- 24 Q. In essence, was that, I don't say the wider aspect of
25 the spiritual significance, but was that the particular
26 aspect of spiritual significance that the meeting
27 focused on.
- 28 A. Yes, the only aspect of it.
- 29 Q. That was nothing to do with women's business.
- 30 A. Nothing whatsoever.
- 31 Q. Or secret sacred business.
- 32 A. No, nothing whatsoever, no mention of any such matter.
- 33 Q. Did you mention the barrages.
- 34 A. Yes, I did. I put to them that `Didn't that have the
35 same effect of destroying the character of the island as
36 an island', and I think I gave their answer, `Not in the
37 same way', because the bridge was proposed to be built
38 at the closest point to the mainland, and it was that

- 1 particular locality which they regarded as being
2 important.
- 3 Q. You said at the bottom of p.5 `Their response was words
4 to the effect that the bridge at the proposed location
5 had more visual impact than the barrage'.
- 6 A. Yes, they certainly said it was a greater intrusion, and
7 therefore a more effective separation.
- 8 Q. More effective -
- 9 A. Separation of the island from the mainland.
- 10 Q. You used the word `barrage', were you only asking about
11 the Goolwa barrage or were you aware of the other and
12 larger barrages.
- 13 A. I think I only asked about the Goolwa. I was aware of
14 the Mundoo and Tauwitchere barrages.
- 15 Q. But it was really the one around the corner of the
16 bridge that you were concerned about, the Goolwa
17 barrage.
- 18 A. That was the other main sort of link to the mainland.
- 19 Q. You used the words `they said' or `they put forward' to
20 you the bridge was a more effective separation. I think
21 you mean link.
- 22 A. Yes, a more effective - it was a -
23 CONTINUED

S.J. JACOBS XXN (MR ABBOTT)

- 1 Q. Visually a greater intrusion of the link.
2 A. It was an obvious separation of the island from the
3 mainland by reason of the more obvious linking of the
4 bridge to the mainland, not a separation. I am sorry, I
5 gave a misleading answer.
6 Q. A more obvious link and, therefore, to use your words,
7 have more visual impact -
8 A. Yes.
9 Q. Than the barrage.
10 A. Yes.
11 Q. You were asked some questions about Dr Neale Draper and
12 your discussions with him.
13 A. Yes.
14 Q. Did you ask Dr Draper what he had spent the \$20,000 on
15 and how he had spent it.
16 OBJECTION Mr Steele objects.
17 A. No, I think the answer to the question is no, I didn't.
18 COMSR: I think that that overcomes your
19 objection, does it?
20 MR STEELE: Nonetheless, it is an objectionable
21 question.
22 MR ABBOTT: I don't think it is, but I won't carry
23 it any further in this context.
24 COMSR: I don't have to rule on the merits of it
25 and I will hear any argument given the answer.
26 XXN
27 Q. You mentioned your discussions with or telephone call
28 with Professor Cheryl Saunders.
29 A. Yes.
30 Q. You mentioned that occupied approximately half an hour
31 and that there was not much of a discussion on the
32 Aboriginal issues which formed s.25 of your report.
33 A. Para.25.
34 Q. Or para.25.
35 A. Yes.
36 Q. And that the main discussion was, as I discerned your
37 answer, on the financial implications and the other
38 options there were. And she was obviously interested in

1 finding out, because that was part of her charter, just
2 what the financial implications were if certain orders
3 were made by Mr Tickner. In that context of it being
4 half an hour, about how much time was occupied by her
5 asking you about Aboriginal issues as distinct from
6 financial issues.

7 A. I wouldn't quantify it, but the main purpose of her
8 call, as I understood it, was to enable her to get a
9 better perception of the other issues.

10 Q. You have mentioned that O'Loughlin J referred to
11 Professor Saunders's comment in her report, at p.31.

12 A. Yes.

13 Q. You read out the sentence. You didn't add the footnote
14 which she gave as support for the comment that she
15 attributes to you.

16 A. Yes.

17 Q. You are able to tell us, of course, it is para.25, which
18 is the paragraph of your report.

19 A. Yes, and I have checked the reference that she gave and
20 there is - it does not support in any way the statement
21 that she made.

22 Q. Let me read to you part of the cross-examination of her
23 on this topic. I take it you haven't read it. You
24 haven't read the cross-examination.

25 A. No, I have read his Honour's judgment, or some of it.

26 Q. Mr Meyer, who was counsel for the Chapmans, asked
27 Professor Saunders 'Why then in that part of your report
28 did you say that he did', that is 'he' meaning you 'did
29 refer to secret knowledge of women?' And Professor
30 Saunders answered 'I'm really not meaning to say that.
31 It is a very infelicitously phrased sentence. I think I
32 was extrapolating from the part of his report where he
33 refers to allegations which I think were made to him
34 about the wider geographical significance of the area.'
35 The answer continues, but just pausing there, have you
36 told us everything that was said to you about the 'wider
37 geographical significance of the area'.

38 A. Those are her words, not mine, but the geographical

S.J. JACOBS XXN (MR ABBOTT)

1 significance of the area to the Aboriginal community was
2 that of which I have described.

3 Q. She went on to -

4 A. I wouldn't call it - it is a matter of geography, but
5 the stance to the Aboriginal community was not merely a
6 geographical significance.

7 Q. She went on to say 'And I am saying that - and he I
8 think says something about these - maybe more serious,
9 more something, it is a fairly oblique reference. I
10 also had a telephone discussion with Mr Jacobs. And I
11 cannot remember now much of the telephone discussion - I
12 am sort of inserting into my understanding of what he
13 meant there either.' I know that either she wasn't
14 making complete sense, or else she was misreported, but
15 I think the effect of that answer was that she inferred
16 from what you were saying in your report, at para.25,
17 the comment that she attributed to you at para.3.1.3 of
18 her eventual report. If that was the exercise that she
19 conducted, do you tell us that there was nothing in the
20 telephone discussion that you had which would, in your
21 view, have given her grounds to make any extrapolation
22 or assertion to produce this result in para.3.1.3 of her
23 report.

24 A. Nothing whatever. I had no - I don't even know when she
25 spoke to me on the telephone whether she herself had
26 been told about the - what has come to be called the
27 secret women's business. I don't know whether she knew
28 about it herself or whether she learnt about it when she
29 went to the island following that discussion. But
30 certainly if - it may be that, you know, when she did
31 receive information about that and then looked at my
32 report that she somehow put 2 and 2 together and made 5.

33 Q. Do you have the copy of your report with you, the
34 para.25 of your report to the Government.

35 A. Do I have it now?

36 Q. Yes.

37 A. I don't know if I have got a clean copy. I think I have
38 got my settled copy here.

S.J. JACOBS XXN (MR ABBOTT)

1 Q. I don't want you to produce it, I merely want you to
2 look at it as I read to you something that Professor
3 Saunders said about your report.

4 A. Yes.

5 Q. Professor Saunders went on to say in justification for
6 the comment in her eventual report attributed to you she
7 went on to say 'There is a passage in the Jacobs report
8 where he talks about the', and then she continues 'sort
9 of the detailed discussions he had about the
10 significance of particular sites and then refers to a
11 statement that I think seemed to have been made to him
12 towards the end of his discussions with the Aboriginal
13 men. I think that there was also some wider
14 geographical significance.' Did you have any
15 discussions with the Aboriginal men about the
16 'significance of particular sites.'

17 A. Not particular in the sense that I could identify them
18 physically, but they did, in the course of the
19 discussions, refer to the archaeological areas of
20 significance.

21 Q. In general terms there being archaeological sites.

22 A. Yes, and the rough location of them on the approaches to
23 the bridge and I think on the causeway and, indeed, on
24 the island, itself.

25 Q. Professor Saunders went on to say 'I think what I have
26 done is sort of transposed my own understanding of what
27 the men were hinting at.' Did you ever come to the view
28 That the men, in the course of their discussions with
29 you, were even hinting at secret knowledge of women.

30 A. No, I did not. Indeed, I thought that the claim that
31 they made to me, standing on its own, was a claim that
32 could be readily understood.

33 Q. And, to be fair to Professor Saunders, I will read out
34 the whole of this section of her answer. Professor
35 Saunders's complete answer on this aspect was 'I think
36 what I have done is sort of transposed my own
37 understanding of what the men were hinting at. Namely,
38 that it was - there was wider geographical significance,

S.J. JACOBS XXN (MR ABBOTT)

1 because of the women's issue. That's what I was trying
2 to convey.' It is obvious that, from what you have
3 said, but I put it to you, there was no hint of any
4 women's issue.

5 A. None whatever. I think as I said a moment ago, I am
6 afraid she has put 2 and 2 together and made 5. She has
7 drawn - she has made a - she has drawn, in the light of
8 what she has subsequently learnt, she has read into my
9 report things that were never there.

10 Q. And made inferences that were, in your view,
11 unwarranted.

12 A. From my report, yes.

13 ADJOURNED 1.07 P.M.

- 1 RESUMING 2.17 P.M.
2 WITNESS S.J. JACOBS CROSS-EXAMINATION BY MR ABBOTT
3 CONTINUING
4 Q. Exhibit 16 is what we have referred to as the Draper
5 report of 29 April 1994 and I want to show you Exhibit
6 16, because I don't want to read out a section of it to
7 the public. So, could you look at Exhibit 16, now
8 before you. Were you aware or have you recently become
9 aware of the existence of Exhibit 16, the Dr Draper
10 report of April 1994.
11 A. `Recently' is the key word. I think probably the day
12 before yesterday.
13 Q. In your statement, at p.6, which you have given to this
14 Commission.
15 A. Yes.
16 Q. You say `I point out that Dr Neale Draper did not convey
17 to me any information about the island being culturally
18 significant because of the "meeting of the waters".'
19 You put that in quotes.
20 A. Yes.
21 Q. Where did that expression come from, `meeting of the
22 waters'.
23 A. That was put to me by counsel assisting the
24 Commission.
25 Q. I apprehend then that it came from Exhibit 16, Dr
26 Draper's report, and I would just like to show you that.
27 A. That is your apprehension and I suppose it is probably
28 right, but I don't know.
29 Q. I want to show you the matter in full and that is the
30 remaining matter I have to put to you. If you look at
31 Exhibit 16, p.4, para.3.3, it is entitled `The Goolwa
32 channel. The meeting of the waters.'
33 A. Yes, I see that.
34 Q. Could you just read to yourself that para.3.3, all of
35 that section.
36 A. Yes, I have read it.
37 Q. Did Dr Draper tell you anything of those matters.
38 A. No.

1 CROSS-EXAMINATION BY MR MEYER

2 Q. I just wish to put several questions to you in relation
3 to p.4 of your statement where you deal with Dr Draper.
4 Did you receive copies of the report prepared by Vanessa
5 Edmonds and Mr Lucas in the papers that you looked at.

6 A. I can't tell you. I think that I was provided with a
7 report. Those names don't ring a bell with me, but I
8 think I was provided with some report of a - of some
9 fairly early report of anthropological studies that had
10 been done.

11 Q. Did you understand that Dr Draper had been working in
12 the Aboriginal Heritage Branch for some years when you
13 saw him.

14 A. I don't know whether I had any perception of that at
15 all. I understood him to be either the head of or a
16 senior officer of the branch.

17 Q. I would ask you to assume that in late 1989 or early
18 1990 Vanessa Edmonds carried out a detailed
19 archaeological survey of the bridge site and provided a
20 copy of her report to George Trevorrow, amongst other
21 people.

22 A. Yes.

23 Q. Did George make any mention of the provision of that
24 report to him.

25 A. Yes, I think he did. It was in archaeological terms,
26 yes.

27 Q. Did Dr Draper make any reference to advising Vanessa
28 Edmonds who she should or shouldn't contact in relation
29 to preparing her report.

30 A. I don't recall any discussion with Dr Draper about that.
31 I am not saying it didn't occur, but I don't recall it.

32 Q. As I understand it, Vanessa Edmonds was an archaeologist
33 and, in relation to Mr Lucas, I am instructed that he is
34 an anthropologist.

35 A. Yes.

36 Q. And he prepared a report in late 1989/early 1990.

37 A. Yes.

38 Q. And I am instructed that he provided a copy of his

1 report to Henry Rankine, Tom Trevorrow and a Mr Robert
2 Day, amongst others. Was there any mention of the fact,
3 by George Trevorrow, that Mr Lucas's report had been
4 disseminated amongst those people.

5 A. No, not that it had been disseminated, but I think he
6 did mention that there was an anthropological report in
7 existence, as I said a moment ago.

8 CONTINUED

S.J. JACOBS XXN (MR MEYER)

- 1 Q. As I understand the thrust of the matters put to you by
2 Messrs Trevorrow and Milera, and I am looking at the
3 bottom of p.5 of your statement, the location of the
4 bridge was creating a significant visual impact, and
5 that was of importance to both of those gentlemen.
- 6 A. Yes, but not only the visual impact. It was its effect
7 as a link between the island and the mainland.
- 8 Q. In respect of the initial impact, did either of them
9 enlarge on what was the problem or difficulty with that
10 visual impact.
- 11 A. Only it's the way in which it changed the locality in
12 which they say their people identified.
- 13 Q. In a letter that was sent to the Department of
14 Environment and Planning, which is part of Exhibit 192,
15 document 33, from the witness, Mr Hook, there is a
16 description of environmental disadvantage. The second
17 to last paragraph of what is said to be background notes
18 says 'The bridge itself will be a massive visual
19 intrusion in the midst of the historic waterfront area
20 of Goolwa and will destroy the presently uninterrupted
21 views from this main tourist focus of the best reaches
22 of the river'. Is that the type of complaint that was
23 being addressed to you by Messrs Trevorrow and Milera.
- 24 A. Not in essence, no.
- 25 Q. What was the difference between that approach and the
26 visual approach which is referred to in your statement.
- 27 A. They did complain about the visual approach, but that
28 was not the main burden of their complaint.
- 29 Q. You were seeing Dr Draper in mid January, or
30 thereabouts.
- 31 A. Yes.
- 32 Q. In your bundle of documents, there is a letter from the
33 Department of State Aboriginal Affairs, dated 9
34 November. It is the last document in the bundle of
35 letters.
- 36 A. 9 November, yes.
- 37 Q. Immediately prior to that, I understand that Dr Draper

S.J. JACOBS XXN (MR MEYER)

1 had in fact been at Goolwa and had expressed the view
2 that work could proceed.

3 OBJECTION Mr Steele objects.

4 MR STEELE: If something is being put to the witness
5 attributable to my client, it should be put in a way
6 that is comprehensible and a proper foundation laid. I
7 object to that form.

8 COMSR: I think you should find the reference.

9 MR MEYER: Yes, I will deal with that.

10 QUESTION WITHDRAWN

11 XXN

12 Q. On 2 November, Dr Draper informed Tom Chapman that there
13 were no difficulties in proceeding with the excavation
14 and use of the borrow pit area, which was the area that
15 was going to be excavated for the purposes of supplying
16 materials for the bridge. Did Dr Draper make any
17 mention to you that he had given such clearance.

18 A. No, not that I recall.

19 Q. I am puzzled by Dr Draper suggesting in January that
20 approval shouldn't have been given, when Dr Draper, in
21 November, appears to be the person responsible for
22 giving approvals. Is that the impression that you had,
23 that he was responsible.

24 A. I can understand you being puzzled about that. But I am
25 - I don't think that I ever knew precisely what part Dr
26 Draper himself had taken in the field inspections which
27 are referred to in the letter, 9 November 1993. I was
28 never, I think, told explicitly upon whose authority
29 that letter was written, if indeed the field inspections
30 had been conducted by Dr Draper. There might well be an
31 inference that it was written on his authority, but I
32 never drew that inference myself.

33 Q. Did you understand Dr Draper to be the senior
34 archaeologist referred to in the first sentence of that
35 letter of 9 November.

36 OBJECTION Mr Steele objects on the ground witness
37 has already answered question.

S.J. JACOBS XXN (MR MEYER)

1 A. As I say, I am not sure that I understood that it was Dr
2 Draper himself, or what part Dr Draper had played,
3 except that I knew he had played some part because it
4 was - I had understood from him that he had sought the
5 additional funds so that the work could be done, but who
6 precisely did it, I don't think I knew.

7 Q. Did you inquire of him what role he had played prior to
8 9 November in relation to any field studies or work
9 done.

10 A. I knew he had been involved.

11 Q. Did you in fact discuss the 9 November letter 1993 with
12 Dr Draper.

13 A. Certainly.

14 Q. Is that a letter which he says is one of those that
15 should not have been written.

16 A. It is.

17 Q. He said that in January 1994.

18 A. Yes.

19 MR TILMOUTH RESERVES THE RIGHT TO CROSS-EXAMINE WITNESS
20 AFTER OBTAINING INSTRUCTIONS.

21 COMSR: You are released subject to the
22 possibility that you may be required when Mr Tilmouth
23 has further instructions.

24 WITNESS: I understand that.

25 NO RE-EXAMINATION

26 NO FURTHER QUESTIONS

27 WITNESS RELEASED

1 WITNESS R.J. HOOK, EXAMINATION BY MR SMITH CONTINUING

2 Q. Mr Hook, I think you have your statement, Exhibit 191,
3 in front of you.

4 A. Yes, I do.

5 Q. The first part of your statement helps us with the
6 changes to names of certain departments. It is a key
7 into the documentation and an explanation of the
8 different labels, if I can call it that, that appear on
9 a lot of the documents. Is that right.

10 A. That's correct. It seems to be an ongoing role in
11 government.

12 Q. Could you then just summarise what you have set out for
13 us there to give us an overview of what we need to know
14 to take a grip on the documents that have been tendered
15 through you in Exhibit 192.

16 A. Certainly, if I can. The initial development proposal
17 involving Binalong on Hindmarsh Island was a proposal
18 that was lodged back in 1980. At that stage, the name
19 of the department was, I think, Department of Housing
20 and Urban Affairs, and subsequently changed to
21 Department of Urban and Regional Affairs. The State
22 Planning Authority was the relevant authority
23 administering provisions under the then Planning and
24 Development Act. It was the State Planning Authority
25 that gave their consent for a change of use for the
26 original development to proceed, and that consent was
27 granted in, I think, May 1981. There was then a
28 transition period which involved the Department of Urban
29 and Regional Affairs then joining with the then
30 Department for the Environment, and that then led to the
31 creation of the Department of Environment and Planning.
32 The repeal of the Planning and Development Act in
33 November 1992 and its replacement with the Planning Act,
34 and the constitution of an advisory committee on
35 planning to replace or take over from the State Planning
36 Authority, the responsibility for planning policy
37 matters and changes to the development plan, and the
38 constitution of the South Australian Planning

R.J. HOOK XN (MR SMITH)

1 Commission, which took over the role of the State
2 Planning Authority in deciding development applications,
3 and then we have the South Australian Planning
4 Commission in December 1992 making a decision to grant
5 consent to the first stage of the development previously
6 approved as a change of use by the State Planning
7 Authority.

8 Q. The application for this development and the way it was
9 handled, in your view, falls into two broad areas: the
10 early application for the marina and how that was
11 handled; and then in 1988, a fresh application or a
12 follow-up application for another extension of the
13 development.

14 A. Yes, that is correct. The first stage was the
15 application of April 1980, which, as I mentioned, was
16 really to be dealt with by the then State Planning
17 Authority. That was for a first stage marina
18 development and some associated buildings on Hindmarsh
19 Island. That didn't involve any - it wasn't a
20 particularly extensive development. It didn't involve
21 any discussion or debate or inclusion about a bridge as
22 a part of that proposal, and that was granted consent in
23 the early 1980s through a few stages, and that
24 development proceeded during the 1980s.

25 Q. We will come back to that in a moment. Then the second
26 stage which eventually embraced the bridge was 1988
27 onward, is that so.

28 A. That is correct.

29 Q. Could you just review that for us to give us -

30 A. Yes. The second stage, which was around 1988, was at a
31 time when there were a number of developers or a number
32 of people who had property on Hindmarsh Island who were
33 looking to put forward development proposals. There was
34 a resistance at that time from the Department of
35 Environment and Planning and, indeed, the Highways
36 Department, to any major or extensive development on
37 Hindmarsh Island that did not take account of the access
38 limitations, and set out to address that issue. We had

R.J. HOOK XN (MR SMITH)

- 1 a council at that stage which was very keen to see the
2 access issue to Hindmarsh Island addressed, and so there
3 were developers and council who were actively seeking to
4 put forward proposals for development of a bridge or
5 addressing the access problems to Hindmarsh Island.
6 Binalong were one of those developers. Binalong, in
7 late 1988, started to make application for extending
8 their development through the planning process, and
9 there was some work on a supplementary development plan
10 at that stage, and I think during 1989, that led to a
11 proposal being put forward by Binalong that they would
12 actually propose to construct a bridge to Hindmarsh
13 Island as a part of an approval for a major extension to
14 their marina development, and that the initial
15 arrangements for that would be Binalong paying for and
16 constructing the bridge and seeking reimbursement for
17 half the cost of that bridge, or \$3 million, from the
18 State Government after the bridge had been completed.
19 That was presented as a proposal and that was submitted
20 to cabinet for advice, as whether in principal, they
21 were interested in that proposal and the advice was,
22 yes, that is something the government would be
23 interested in, subject to the proposal being assessed
24 through an environmental impact statement, and that is
25 what commenced the environment impact statement process
26 and the assessment process through 1989 and 1990.
- 27 Q. Before we get onto it in detail, the environmental
28 impact statement process involves what steps.
- 29 A. The requirement for an environmental impact statement is
30 a decision made by the Minister responsible for the
31 process. At this stage it was the Minister for
32 Environment and Planning. That is at the Minister's
33 discretion. That Minister, at that stage, formalised
34 the requirement for an environmental impact statement.
35 The Department of Environment and Planning, that
36 administers the process on behalf of the Minister,
37 issues guidelines for an environmental impact statement.
38 That wasn't a statutory requirement. It was practice.

R.J. HOOK XN (MR SMITH)

1 The steps in the process are for the developer or the
2 proponent to produce a draft environmental impact
3 statement, responding to those guidelines. That
4 document is placed on public exhibition, and during that
5 period comments are sought from the public, and are also
6 solicited from government agencies, and any other party
7 that the assessments branch considered may have a view
8 that was relevant to that process. All those comments,
9 including public comments, were referred through to the
10 proponent, and the proponent is asked to provide a
11 written response to those public comments. The response
12 comes in the form of a document referred to as a
13 supplement to the EIS. That is publicly released. Then
14 the next stage is for the Department of Environment and
15 Planning to prepare its assessment report on the
16 proposal. That report is also published. There is,
17 therefore, three published reports in that sequence
18 prior to a decision being made: The draft EIS, which is
19 the proponent's report; a supplement, which is the
20 proponent's response to submissions; and the assessment
21 report prepared by the department. They're the
22 documents that form the decision-making process, which
23 in this case was a decision to be made by the government
24 on advice from cabinet and executive council.

25 Q. In this particular case, in April 1990 there was a
26 decision taken by the government, in effect, to grant
27 approval.

28 A. That's correct.

29 Q. Subject to a number of conditions.

30 A. That's correct.

31 Q. I will come back to that in a moment. They are, broadly
32 speaking, the two stages that this developer went
33 through to obtain consent to his development, and the
34 bridge was included, not so much in his development, but
35 in the proposal. Is that right.

36 A. The bridge was included in the second stage of the
37 proponent's development proposal, and it was an integral
38 part of that second stage. When it was presented and

R.J. HOOK XN (MR SMITH)

1 assessed in the EIS, the bridge was to be constructed by
2 the proponent. The only government involvement was some
3 reimbursement of funds.

4 Q. That changed, did it not, later in the process.

5 A. That did change. The consent that was granted
6 originally in April 1990, was varied on a number of
7 occasions. There were a couple of changes that were
8 made to that consent. I think the first one was to
9 remove the requirement for evidence of funding, and
10 contractual arrangements to be in place for the bridge
11 before titles could issue for stage 1. There was
12 another change that deleted the requirements for a bond
13 to be established by the developer, which was again an
14 original condition. Then there were later changes, I
15 think, moving through into 1992, as a result of
16 arrangements that were then being negotiated with the
17 government, which changed the financial terms and the
18 responsibility for the construction of the bridge.

19 CONTINUED

- 1 Q. Can I take you back, then, so that you can just take us
2 through the documents, to p.2 of your statement, the
3 application itself for development approval by Binalong
4 Pty Ltd, and that is set out, is it not, in document
5 number one, and you've got a copy of the documents.
6 A. I have a copy of the documents.
7 Q. So document number one of Exhibit 192 is Binalong's
8 application to the Department of Housing and Urban
9 Affairs.
10 A. That is correct.
11 Q. Now that application is an application, is it not, for
12 merely a change of use, is that right.
13 A. Yes, change of use, use of the land for the purposes of
14 a marina. There is no detail of building layouts or
15 elevations attached to that.
16 Q. I take it that was because there was a difficulty, or
17 not so much a difficulty, but Hindmarsh Island was not
18 to be used for that purpose on the current regime, is
19 that it.
20 A. All applications were judged by the relevant planning
21 authority having regard to policies in place in the
22 development plan at the time of this application. The
23 land was designated rural, I believe, and that would
24 have been a significant decision that the State Planning
25 Authority had to make to support this application which
26 was, in fact, for a change of use.
27 Q. Upon receiving the application of 30 April 1980, certain
28 processes take place, do they not.
29 A. Yes. The process is then followed through, which is
30 still pretty much the process that would be followed
31 with any application today; once it's received, copies
32 of it are made and are sent to a number of agencies
33 which would have a view on that application, and those
34 comments are sought before it's put to the authority for
35 decision. There are also public consultation
36 requirements today which weren't quite as prominent back
37 in 1980.
38 Q. Document number two, then, agenda item 4.2.2 dated 9

R.J. HOOK XN (MR SMITH)

1 September 1980, is what exactly.

2 A. Once the comments are received from agencies, it's the
3 responsibility of the department administering the
4 planning process to bring those comments together, and
5 to prepare a planning report for the decision making
6 authority. That document two is the report presented to
7 the State Planning Authority in September, and the
8 recommendation and indeed the decision of the State
9 Planning Authority at that stage was to defer its
10 decision, pending some further evaluation of the policy
11 implications of this application.

12 Q. The deferral is communicated to the developer by a
13 letter there dated 23 September 1980, document number
14 three.

15 A. That's correct.

16 Q. Do you know why it was deferred.

17 A. Well again, I think it relates to what I mentioned
18 previously, that the application was contrary to the
19 policy framework, and there was some further
20 investigations of that being carried out within the
21 department, and the authority was keen to have the
22 benefit of those additional policy investigations.

23 Q. Documents four and five are, in effect, the documents
24 amounting to the approval of the State Planning
25 Authority of the application of April 1980, is that
26 right.

27 A. That is correct. These documents are now the new agenda
28 item written to the State Planning Authority for its
29 meeting in March 1981, and the outcome of the State
30 Planning Authority's decision.

31 Q. The approval for the use of the land for the purpose of
32 the marina was subject to conditions, is that right.

33 A. Yes, subject to 11 conditions.

34 Q. Then the applicant was required to respond to each of
35 the conditions to the satisfaction of the authority, is
36 that right.

37 A. That's correct.

38 Q. Then I think the next matter that you make a point of in

R.J. HOOK XN (MR SMITH)

1 your statement at p.4 is that on 16 March 1982, the
2 developer alerted the State Planning Authority to
3 problems of vehicular access to the island, is that
4 right.

5 A. Yes, that's correct.

6 Q. Is it usual for a developer to do something like that in
7 the course of an application such as this.

8 A. Probably the best answer I think would be not unusual.
9 It's not unusual for developers of major projects to
10 identify that there are difficulties that they are
11 experiencing that require attention of government
12 agencies, and that they should be dealt with by the
13 government of the day.

14 Q. By this time, then, was the access problem, vehicular
15 access to the island, was that exercising the minds of
16 some of the relevant authorities in any event.

17 A. Yes, it was an issue even at this stage.

18 Q. So we're talking about in March 1982, it was an issue
19 not only with the developer, but with government
20 agencies and planning agencies.

21 A. That's correct, yes.

22 COMSR

23 Q. Was that because of other potential developments.

24 A. I'm not aware that there was the pressure of other
25 development proposals at that time that there were in
26 the later 1980s.

27 XN

28 Q. This application, and we're still dealing with the
29 initial application in April 1980, predated the
30 establishment of the Aboriginal Heritage Branch, did it
31 not.

32 A. That's correct.

33 Q. So, in that period, that is the period leading up to the
34 establishment of the Aboriginal Heritage Branch, how
35 were Aboriginal heritage matters addressed.

36 A. My appreciation is that if Aboriginal heritage matters
37 were deemed to be an issue, that the consultation in
38 those days would have been with the museum, and advice

1 would have been sought from the museum.

2 Q. As you made clear at the bottom of p.4 of your
3 statement, it was in late 1981 that the Department of
4 Environment and Planning was constituted, and the
5 Planning Act was being drafted to take over from the
6 then Planning and Development Act.

7 A. That is correct.

8 Q. Therefore, document number seven was born, wasn't it,
9 being a letter from the State Planning Authority to the
10 Department of Environment and Planning dated 29 April
11 1982, advising the department of this application.

12 A. That's correct.

13 Q. The letter sets it out, but there was support for the
14 development of the marina subject to a number of
15 conditions.

16 A. Well, this is providing advice that, by this time, the
17 State Planning Authority had, in fact, made that
18 decision, and that the conditions had been identified
19 and there was an ongoing process of compliance with
20 those conditions that had to be addressed on an ongoing
21 basis by the authority.

22 Q. During this transitional period, what role did the
23 Department of Environment and Planning retain.

24 A. The Department of Environment and Planning took over
25 from the Department of, I think it was Urban and
26 Regional Affairs immediately prior to the change, and
27 had the role of the administration of the planning
28 process originally under the Planning and Development
29 Act up until November 1982 and, from November 1982, the
30 administration of the process was set out in the
31 Planning Act.

32 Q. Now in the new Department of Environment and Planning,
33 as had been the case in the previous department, there
34 was an assessments branch, was there not.

35 A. The previous department was mainly set up on sectors,
36 and there were sector managers and the main processing
37 of the original application had been administered by a
38 sector manager. The Department of Environment and

R.J. HOOK XN (MR SMITH)

- 1 Planning introduced branches. There was a central
2 branch that dealt with the planning aspects of the
3 proposal, and there was an assessments branch which was
4 set up in the Department of Environment and Planning
5 from its first days of formation, and that brought into
6 the planning process the assessments branch from the
7 former Department for the Environment. It was heading
8 towards the stage where the Planning Act would, for the
9 first time in State Legislation, specify requirements
10 for environmental impact assessment procedures as part
11 of the planning process.
- 12 Q. Turning to document number eight, would you describe
13 that document.
- 14 A. Document number eight is a minute -
- 15 Q. Sorry, it's July 1982, is that right.
- 16 A. July 1982, yes. That is a document written by an
17 officer from the assessments branch. As I mentioned,
18 these were officers who came from the Department for the
19 Environment, and were set up as a branch within the
20 development management division, or the planning
21 division of the newly established Department of
22 Environment and Planning. This officer was writing,
23 through her branch manager, drawing attention to the
24 fact that this development proposal was in existence,
25 there were still aspects that needed to be addressed and
26 raising some concern that perhaps the environmental
27 issues hadn't been adequately addressed in the initial
28 assessment before the State Planning Authority.
- 29 Q. There was a decision taken to require the developer to
30 submit a notice of intent, is that right.
- 31 A. Yes. That was a standard procedure for requiring more
32 information of an environmental nature on a development
33 application, that a developer is asked to provide that
34 response in the form of a notice of intent.
- 35 Q. Turning to document number nine, which is a letter dated
36 16 July 1982, addressed to Mr Chapman from the
37 Department of Environment and Planning, that encloses
38 the notice of intent, does it not.

R.J. HOOK XN (MR SMITH)

1 A. That's correct.

2 Q. Can you tell us what the notice of intent exactly is.

3 A. It's a format that was used, and again I refer to the
4 fact that this was prior to the operation of the
5 Planning Act, and hence environmental assessment was
6 done under Cabinet directives and guidelines that exist
7 without them having a formal legislative framework. A
8 notice of intent, though, was a form of documentation
9 which was used in environmental assessment practices
10 around the country where developers were asked to
11 provided information on the existing environment, which
12 was the site of the development proposal, and to
13 describe their development proposal and to provide some
14 preliminary information on the assessment of the effects
15 of that proposal.

16 Q. Then document number 10. (NOT ANSWERED)

17 COMSR: Are we going to go through each of the
18 documents?

19 MR SMITH: Yes, we are, quickly and efficiently, I
20 hope.

21 XN

22 Q. Well if you could, rather than me holding you up in the
23 process and ask you questions, could you take us
24 quickly, document by document, to what is the 1988
25 stage, which is the second stage of this developer's
26 proposals.

27 A. Okay, if I can do that. We have identified the fact
28 that there were some concerns raised by the assessments
29 branch with the adequacy of the environmental
30 assessment. A notice of intent was provided, a response
31 was obtained from the developer on that, and that
32 information was then assessed by the assessments branch
33 by reference back to the sector manager or the officer
34 in the central branch who was dealing with the
35 application and, in essence, following that
36 environmental assessment, the advice was that the
37 assessments branch was then satisfied, and that then
38 enabled the advice to be presented to the Planning

R.J. HOOK XN (MR SMITH)

1 Commission which, by December 1982, had been brought
2 into existence, and the Planning Commission received its
3 agenda item. This is now document number 13 and, on
4 that agenda item, the Commission then granted consent
5 for stage one of the development to proceed, and advice
6 to that effect was provided to Mr Chapman in document 14
7 in January 1983.

8 Q. There was one condition, if you like, that had to be
9 satisfied, that's addressed in documents 15 and 16,
10 namely the application under the Water Resources Act.

11 A. One of the conditions of the original consent granted
12 back in 1981 that was carried through and addressed in
13 1984.

14 Q. So you summarise that, don't you then, at about .3 of
15 p.7, namely that, 'In summary, the State Planning
16 Authority's approval for the use of the land for a
17 marina was given in 1981, the Planning Commission
18 granted consent for stage one in December 1982, and the
19 conditions attached to that approval were complied with
20 and stage one proceeded.'

21 A. That's correct.

22 Q. That brings us then to 1988, which was the second broad
23 stage, was it not.

24 A. Yes, that's correct.

25 Q. The developer, in late 1988, raised with you the fact
26 that the development was to be extended, that there was
27 going to be a new proposal, is that right.

28 A. Yes.

29 Q. Stages one to six of the marina proposal, and the
30 question of access re-emerged, that is vehicular access
31 to the island re-emerged.

32 A. The question of vehicular access re-emerged, and also
33 the compliance with the policy documentation in the
34 development plan at that stage resurfaced.

35 Q. Could you, without me slowing you down, at p.7 of your
36 statement onward, would you take us through the steps,
37 referring to the documents where necessary.

38 A. Yes. There was initial endeavours, through the planning

R.J. HOOK XN (MR SMITH)

1 process, to have a Supplementary Development Plan
2 prepared that might provide the framework for this
3 development proposal. That was running into difficulty
4 in that the planning authorities were unlikely to rezone
5 the land, or to come up with any support in a planning
6 policy document for a major development on Hindmarsh
7 Island, unless the access issue was addressed. So from
8 1988 leading through to 1989, and I have already
9 mentioned there were, through this period, then, a
10 number of proposals being put forward by different
11 developers - a council who was very keen to see this
12 access issue addressed and, in fact, you know, people
13 talking about having a bridge built and maybe a toll as
14 a means of funding it and so on - and it was in that
15 context that the Binalong Development, their proposal
16 offering to construct a bridge subject to reimbursement
17 of 50% of the cost, it was in that context that this
18 proposal was put forward.

19 Q. Can I interrupt you there for a minute. By this time,
20 the Aboriginal Heritage Branch had been established.

21 A. There was an Aboriginal Heritage Branch in the
22 Department of Environment and Planning at this stage.

23 Q. Document 17 is, I think, the first document, if you
24 like, from that branch, is that right, in connection
25 with this matter.

26 A. That's correct.

27 Q. Document 17 is what, precisely.

28 A. Document 17 is advice from the then manager of the
29 branch, Bob Ware, to an officer in the planning
30 division, and that was specifically in relation to the
31 supplementary development planning process which was
32 being talked about in late 1988, and providing comments
33 on Aboriginal heritage matters in relation to the SDP.

34 CONTINUED

1 Q. In particular, to Hindmarsh Island.

2 A. Yes.

3 Q. The supplementary development plan was considering
4 rezoning parts of Hindmarsh Island for living or tourist
5 development purposes.

6 A. That's correct.

7 Q. The requirements or advice from the Aboriginal Heritage
8 Branch were relevant in the sense that that was taken
9 account of by those responsible for approving the
10 supplementary development plan, is that right.

11 A. They were taken account of by those processing the
12 supplementary development plan. That supplementary
13 development plan never proceeded very far through the
14 process, because it floundered on the limitations on
15 access.

16 Q. What happened in relation to the supplementary
17 development plan, what was the next step then.

18 A. The supplementary development plan really didn't proceed
19 further beyond that time. There was an application from
20 Binalong for the extension of their development proposal
21 through stages 1 to 6 and it wasn't supported by the
22 development plan. The access issue was proving to be a
23 fundamental problem and so there was no progress, either
24 with the application or the supplementary development
25 plan, at that particular time.

26 Q. The further application was in late 1988 and the
27 Aboriginal Heritage Branch was consulted by the planning
28 division in respect of that application, was it not.

29 A. That's correct.

30 Q. An archaeological survey of the area was required by the
31 Aboriginal Heritage Branch, is that right.

32 A. That's correct.

33 Q. That was a further archaeological survey, was it not,
34 because there had already been one required earlier,
35 that's so, isn't it.

36 A. I don't believe so. This I think was the initial
37 archaeological survey undertaken by Edmonds. This is
38 the start of the expanded development proposal. There

1 really wasn't any issues raised, to my knowledge, on
2 Aboriginal heritage matters which the earlier
3 application dealt with in the earlier 1980s. This was
4 the first time there were requirements for attention
5 under the Aboriginal heritage aspects of the proposal.

6 Q. Then we have included in the documents, at p.19, the
7 Heritage Branch seeking the views of Henry Rankine. It
8 is document 19, letter to Henry Rankine, dated 2
9 February 1989.

10 A. That's correct.

11 Q. By that time, as you make clear in your statement, it
12 was appropriate to contact the local Aboriginal
13 community to seek advice.

14 A. Yes, that contact was made by the Manager of the
15 Aboriginal Heritage Branch and, as an assessments
16 branch, we would have been relying heavily on the
17 Aboriginal Heritage Branch to follow through on those
18 matters.

19 Q. Could you pick up the chronology of events then. From
20 then on, what occurred.

21 A. This is now heading to the stage where the development
22 wasn't really going anywhere under the planning system,
23 because of the access problems. And the access problems
24 not being solved meant that the supplementary
25 development plan wasn't being processed, nor was the
26 application being processed. So, it comes to the stage
27 where there was the suggestion now that we would have a
28 development proposal put forward which would include
29 within it the proposal to construct the bridge. At this
30 stage, the Department or the Assessments Branch was
31 going by the name of the Major Projects and Assessments
32 Branch and this proposal was then classified as a major
33 project to be dealt with by the Major Projects and
34 Assessments Branch.

35 Q. I think, by that time, as you have made clear in the
36 middle of p.9, the council, district council, had
37 written to the Minister urging the construction of a
38 bridge, is that right.

- 1 A. That is correct. The council and a number of other
2 people owning land on the island were very keen to see
3 this issue resolved. And the council was, indeed,
4 making its own initiatives or taking its own initiatives
5 to have a bridge developed.
- 6 Q. At that point in time or thereabouts, the developer
7 himself put up a proposal then for the construction of a
8 bridge under certain conditions, is that right.
- 9 A. That's correct.
- 10 Q. I think that brought into play the environmental impact
11 statement system, if I could call it that, is that
12 right.
- 13 A. Yes.
- 14 Q. Could you explain that then, what took place after that.
- 15 A. Once that proposal was put forward, as officers in
16 Government, we figured we needed to seek cabinet
17 direction on whether the financial arrangements that
18 were being offered were arrangements that the Government
19 would be interested in. That advice was obtained from
20 the Government and the Government supported in principle
21 proceeding with those arrangements subject to a
22 satisfactory environmental impact statement. From that
23 time advice was given to the proponent that there was a
24 requirement to have a draft or to have an environmental
25 impact statement prepared. And that process proceeded
26 from late 1989 through to the completion of the
27 assessment report in March 1990.
- 28 Q. In the course of that time, the developer was required
29 to undertake archaeological and anthropological surveys
30 of the area, is that right.
- 31 A. That is correct. There was reference made to some of
32 the studies that had already been carried out and
33 requirements for further work to be undertaken.
- 34 Q. So, we had a draft environmental impact statement
35 followed by the publication of it, is that right.
- 36 A. Yes, the release of that document in November. It was
37 on public exhibition for November and through to
38 December. I think probably a six weeks exhibition

1 period. And public comments were received in response
2 to that.

3 Q. Amongst the public reaction to it were submissions
4 received I think from the Conservation Council of South
5 Australia, document 25.

6 A. That is correct.

7 Q. And a submission from R. and C. Owen and A. Lucas,
8 document 26.

9 A. Yes.

10 Q. In summary, there was no vigorous opposition to the
11 bridge, is that right.

12 A. An appreciation and again I would mention that this
13 proposal was being assessed in the context of the follow
14 on on other developments such as Jubilee Point and Mount
15 Lofty cable cars and Sellicks. So, we were dealing with
16 some major proposals that were contentious in the period
17 preceding this. I think we received about 70
18 submissions on this draft environmental impact
19 statement. I think probably half the submissions or of
20 that order were in favour of the development proceeding.
21 The submission from the Conservation Council that is
22 tabled in full as one of the items referred to here was
23 not particularly vigorous at all in its opposition. In
24 fact, it was - it would probably even be said that the
25 Conservation Council even, at that time, was not opposed
26 to the bridge proceeding. They rather highlighted in
27 their submissions some concerns that needed to be
28 addressed. But it was not a contentious proposal that
29 was being assessed, at that stage.

30 Q. As you have said, there was a supplement to the draft
31 environmental impact statement which, as you have said,
32 is the proponents' response the public response, is it
33 not.

34 A. That's correct. And comments from Government agencies
35 responding to that, as well.

36 Q. Can I take you then particularly to document 28, which
37 is a letter, dated 16 February 1990, from the Manager of
38 the Aboriginal Heritage Branch in response to the

1 supplement, is it not.

2 A. Yes, that's correct. That is the document in response
3 to the supplement and it is still suggesting that there
4 should be some further attention to Aboriginal heritage
5 matters.

6 Q. That minute from Mr Ware of the branch advised that the
7 archaeological section of the supplement met the
8 requirements, however, while the anthropological studies
9 were mentioned, the recommendations made in that report
10 were not addressed in the supplement.

11 A. That's correct.

12 Q. What followed from that then.

13 A. The completion of the supplement or at the completion of
14 the supplement again that information would be
15 distributed by the Major Projects and Assessments Branch
16 to other Government agencies including the Aboriginal
17 Heritage Branch. That led to the further comments that
18 have already been referred to. And the Major Projects
19 and Assessments Branch then, through that process of
20 on-going consultation, prepares what is referred to as
21 the assessment report, which is a report that tries to
22 bring together the assessment of Government agencies on
23 the development proposal.

24 Q. Going to document 30, that is an approval from the
25 Minister of Environment and Planning, dated 11 April
26 1990, addressed to the developer, is that right.

27 A. Yes, it is the advice to the developer of the approval
28 granted by the Governor and Executive Council.

29 Q. The conditions are attached to that approval, are they
30 not.

31 A. Yes, that's correct.

32 Q. Our document 30 includes those conditions.

33 A. That's correct.

34 Q. Can you tell us the Aboriginal Heritage Branch
35 conditions, are they mentioned there.

36 A. Yes, the conditions and the advice that was being
37 received from the Aboriginal Heritage Branch, at that
38 time, was reflected in the assessment report. And those

- 1 same conditions were then carried through into the
2 consent as condition 2B. And they were mainly
3 procedural matters relating to anthropological matters
4 that need to be carried through by Binalong.
- 5 Q. The proposal for the development had been approved.
6 A. Yes.
- 7 Q. Which included the bridge.
8 A. Correct.
- 9 Q. And the conditions relating to anthropological matters
10 did not, I take it, then go to the question of whether
11 the construction of the bridge could or could not
12 proceed.
- 13 A. No, this concept was granted with an understanding that
14 those fundamental issues had been addressed. That there
15 was no reason why the development shouldn't proceed, but
16 there was some on-site consultation which was suggested
17 that needed to be followed through.
- 18 Q. The conditions, in particular, 2B, deal with that, don't
19 they, and address themselves to such matters as
20 consulting be with Aboriginal groups concerning the
21 discovery of skeletal remains.
- 22 A. That's right.
- 23 Q. And how to handle those.
24 A. Yes, really it was to the effect of drawing attention to
25 the fact that there was an Aboriginal Heritage Branch
26 and an Aboriginal Heritage Act that had to be complied
27 with.
- 28 Q. Just to make it abundantly clear, there was no
29 requirement in that approval, then, that the developer
30 continue to consult Aboriginal groups about whether or
31 not the development and, in particular, the construction
32 of a bridge could proceed or not.
- 33 A. That is certainly my appreciation.
- 34 Q. Document 31, again, could you tell us what that is.
35 A. Document 31 is an advice from the Manager of the
36 Aboriginal Heritage Branch to Binalong, again, giving
37 clearance for the development to proceed, in effect,
38 under the Heritage Act and drawing the comparison or the

1 linkage across to the assessment report and the planning
2 conditions that was requiring that there be on-going
3 consultation through the construction stage. But,
4 again, I would cite that as support that it was
5 certainly our appreciation that Aboriginal heritage
6 issues had been addressed to the satisfaction of the
7 Aboriginal Heritage Branch. We are entirely dependent
8 on their advice and, if the Aboriginal Heritage Branch
9 was aware of there being a fundamental problem or a
10 problem, in any sense, at that stage, we would have
11 expected quite different advice from them.

12 Q. The conditions mentioned therein, namely, authorisation
13 being subject to conditions set out in 4.6 of the
14 assessment report, were conditions you would describe as
15 not going to the heart of the permission to proceed, but
16 procedural matters relating to how you proceed.

17 A. They were the same procedural matters, which were
18 included as a condition of consent requiring
19 consultation through the construction stage.

20 Q. We are at p.12 of your statement, I think. Could you
21 then just continue. What followed then, because there
22 was some delay in the development.

23 A. From the time that the Governor's consent had been
24 granted, in April 1990, we haven't included the details
25 in this statement, but there were a series of
26 negotiations, I guess, between the developer and, then,
27 by this time, the Premier's Department, through the
28 Special Projects Unit of that Department, which were
29 dealing mainly with the financial aspects of the
30 proposal. That led to some changes to the conditions of
31 consent, as I have already mentioned, I believe, two
32 changes were made in succession, both changing the
33 financial arrangements. The first one deleting a
34 requirement for evidence of bridge contracts to be in
35 place before work proceeds on stage 1. The second one
36 deleting a requirement for a \$500,000 bond to be
37 established by the developer, prior to work proceeding.
38 They were both conditions of the original approval.

- 1 Q. Going to document 32, which is a letter from the
2 Aboriginal Heritage Branch of the Department of
3 Environment & Planning to contractors Connell Wagner SA
4 Pty Ltd, dated 8 May 1992.
- 5 A. Yes, we have come through to 1992, now, where it is
6 getting to the stage where the Government is looking at,
7 in fact, changing the financial arrangements. And it is
8 now being proceeded with by Government agencies, not as
9 a development which Binalong - in which Binalong is
10 constructing the bridge and being reimbursed. But it is
11 now proceeding towards one where the Highways Department
12 is to construct the bridge and be reimbursed by Binalong
13 and other developers. And, hence, we have Connell
14 Wagner, I think, working, at this stage, for the
15 Highways Department, who had also raised or made contact
16 with the Aboriginal Heritage Branch seeking comment on
17 the Aboriginal heritage matters in relation to the
18 bridge.
- 19 Q. We see then, in August 1992, which I think is document
20 32, I think that previous letter from the Minister for
21 Environment and Planning to Mr Chapman, dated 26 August
22 1992, again setting out conditions of approval.
- 23 A. Yes, this again is a change to the conditions from the
24 original approval. And, in this instance, we have quite
25 a significant change, because, at this time, it is now
26 at a stage where Binalong are no longer constructing the
27 bridge. So, it is no longer an approval for Binalong to
28 construct a bridge and carry out extensions to the
29 marina development subject to a number of conditions.
30 This is now a consent granted to Binalong to proceed
31 with stages 2 to 6 of the Marina Goolwa development,
32 subject to a number of conditions.
- 33 Q. Do we take it from that, by August 1992, the situation
34 was that Binalong were not responsible for the bridge.
35 And therefore conditions relating to the construction of
36 the bridge concerning, for instance, Aboriginal skeletal
37 remains were no longer a part of the requirements of
38 Binalong.

- 1 A. That's correct. I actually make two points on that. At
- 2 this stage, when these conditions were drafted, and I
- 3 can recall quite distinctly them being worked through
- 4 with the solicitors from Crown Law, there were two
- 5 issues.
- 6 CONTINUED

1 One is exactly as you have said, that the bridge was no
2 longer the part of the consent, therefore, conditions
3 relevant to that and Aboriginal heritage matters
4 relevant to the bridge were no longer an issue for this
5 consent, but rather a matter for the Department of Road
6 Transport to deal with, as they were then the proponent
7 for the bridge. The other point that was being made to
8 us very clearly at that time by the legal advisers in
9 the Crown Solicitor's Office was that the Aboriginal
10 Heritage Act really sat outside of and alongside the
11 Planning Act, and that we shouldn't be placing, within
12 conditions of consent under the Planning Act, procedural
13 matters that are really covered in other legislation,
14 and these conditions were procedural matters which were
15 covered under the Aboriginal Heritage Act and, hence,
16 the advice was they weren't appropriate to be here
17 anyway.

18 Q. So from August 1992 onward, what happened.

19 A. From August 1992, which was referred to in document 32 -
20 I might just mention briefly, documents 34 and 35 were
21 further changes to those conditions of consent, in the
22 first instance changing the details of stage 2, and on
23 document 35 it was changing the date or the arrangements
24 for the issue of titles for stage 2, and both those
25 changes were proceeding on the understanding that
26 contractual arrangements were being put in place for the
27 Department of Road Transport to construct the bridge.
28 The other document I referred to, which is number 33, is
29 that we now started, I believe, to get advice from
30 people who were raising concerns about the construction
31 of the bridge. I did make the comment when we went
32 through the environmental impact statement process,
33 whilst there were people opposed, there were as many for
34 the development and it was not a particularly
35 contentious development. This, towards the end of 1992,
36 seemed to be the first evidence of people then
37 expressing concern about the financial arrangements,
38 which had changed quite significantly from the original

1 approval, but also about some of the environmental
2 aspects of the proposal.

3 Q. Was it at this stage that there was some legal challenge
4 or some threatened legal challenge to the process.

5 A. We went through some stages, I think, in the opposition
6 that was being raised at this stage. There were queries
7 about the financial arrangements put in place. There
8 were also concerns expressed about the impact of the
9 development on the physical environment. I think the
10 major issue was how the bridge, if it proceeded, would
11 give ready access to the sensitive conservation areas
12 that are accessed from the south-eastern part of the
13 island, the Murray Mouth and the Coorong waters, and
14 said there were queries being raised whether the
15 environmental assessment had adequately dealt with those
16 issues. In fact, the Environment, Resources and
17 Development Committee of Parliament was then at a stage
18 where it reviewed the development proposal. It started
19 to review, too, terms of reference, that were primarily
20 financial. It then added a term of reference that they
21 should also look at environmental issues during the
22 course of their review. So they were the concerns that
23 were being raised in late 1992 through 1993. I still
24 haven't answered your question, I'm sorry. That then
25 came to item number 38 which was, after we had been
26 through the Environment, Resources and Development
27 Report, and most of the opposition seemed to centre on
28 impact on the physical environment, there was also a
29 stage where a legal challenge to the approval processes
30 was being talked about.

31 Q. Perhaps we will come back to that. Could I ask you to
32 deal with the committee inquiry, that is, the
33 Environment, Resources and Development Committee
34 inquiry.

35 A. Yes.

36 Q. You were involved in that.

37 A. I was asked to give evidence to that, as the officer
38 responsible for the assessments branch at the time.

1 Q. That inquiry concentrated on those things you have
2 mentioned, did it not. Those objections based on
3 environmental issues, for instance.

4 A. The objection is based on environmental issues. I mean,
5 whilst the inquiry was also looking at financial issues,
6 they weren't matters that were raised with me. It was
7 the environmental issues that were being discussed with
8 me, and that covered visual aspects and it covered
9 access to the island from the bridge.

10 Q. Am I correct in saying that the inquiry that was
11 undertaken then by that ERD Committee was rather late in
12 the day, bearing in mind all the impact statement
13 processes that have been gone through.

14 A. Yes, it was late in the day. Well after the approval
15 had been granted.

16 Q. Document 37 is in fact the report of that committee. Is
17 that right.

18 A. That's correct.

19 Q. In the end result, what was it that was recommended by
20 that committee.

21 A. The committee, I think, recommended a review of the
22 government's decision to proceed with the bridge, a
23 review of the financial arrangements associated with the
24 bridge, and reinforced some environmental concerns in
25 much the same manner as had been documented, I might
26 add, in the assessment report, that there should be a
27 management plan for or controlling the activities of
28 people in the vicinity of the Murray Mouth and the
29 Coorong waters. The environmental concerns that were
30 being raised and some of the challenges about the
31 implications of the development for people gaining
32 access to those waters - certainly the feeling of the
33 assessments branch is that, whilst they were valid and
34 there was an issue, people could gain ready access to
35 those waters through a boat ramp on the downstream side
36 of the barrage from the mainland, and that a bridge
37 giving access to an island and a marina development
38 where boating movements were upstream of the barrage, we

R.J. HOOK XN (MR SMITH)

1 didn't see as quite the area of concern that other
2 people were noting at that stage. We were particularly
3 keen to reinforce the conservation status of part of the
4 island, which was the south-eastern part, which is where
5 you would get access to these sensitive waters, and that
6 was reinforced, and we did highlight the need for
7 education and, indeed, I think it even suggested a
8 reserve under the National Parks Act to control the
9 activities of people in those waters may have been
10 appropriate.

11 Q. Can I take you then to the end of September 1993. Your
12 department received a notice of a legal challenge to the
13 planning approval.

14 A. There were questions raised about the validity of the
15 planning approvals that had been granted. I think there
16 was a public meeting that was to be convened under a
17 media release that talked about government fudging the
18 planning process. In response to that, we put our
19 approval processes back for review by the Crown
20 Solicitor, and felt that no further action was necessary
21 on our part, and those challenges didn't proceed
22 anywhere.

23 Q. Looking at document 41, which is a submission made to
24 the State Aboriginal Affairs Minister from the
25 Aboriginal Legal Rights Movement dated 23 December 1993.

26 A. Yes, I have a copy of that.

27 Q. You have read that no doubt. I think your position in
28 relation to that letter is that it is incorrect in
29 substance. Is that right.

30 A. Yes. I wasn't aware of the existence of the letter
31 until the last few days. I must add, having read the
32 letter, I noted that it does make mention of the
33 environmental assessment process. It says in the
34 paragraph that starts at the bottom of the first page
35 `Neither the draft environmental impact statement, nor
36 the supplement to the draft environmental impact
37 statement in relation to the Hindmarsh Island Bridge,
38 considered the effects upon Aboriginal sites of the

1 greater visitor traffic and residential and other
2 development which would result if the bridge were
3 constructed'. I think I have made a comment in my
4 statement that I actually have a problem with that
5 statement. I mean, the expectation would have been that
6 the developer would address the impacts of the proposal,
7 including the impacts of the bridge, and that Aboriginal
8 heritage matters were addressed in relation to those
9 aspects. I wouldn't have expected that the developer
10 should take responsibility to assess the impacts of the
11 existence of a bridge on other residential development
12 opportunities that may be created in the future through
13 actions of government at some future stage to rezone the
14 development plan and allow for future development. They
15 would have been matters to have been addressed through
16 the supplementary development planning process, not
17 matters that I feel you would have reasonably expected a
18 developer to have grappled with at the time of this
19 environmental impact statement.

20 Q. So, in essence, that comment in the letter of 23
21 December 1993 of the Aboriginal Legal Rights is
22 incorrect.

23 A. I believe so.

24 Q. Indeed, really the government took over, if you like,
25 the implications of the bridge construction in this area
26 in any event.

27 A. That's correct.

28 Q. By 1990, is that right.

29 A. It was more 1992 that changes to the approvals were made
30 to remove the bridge obligations from the developer.

31 Q. You elaborate on that at p.16 of your statement, don't
32 you.

33 A. Yes, that's correct.

34 Q. Can I take you then to the question of the supplementary
35 development plan 1993.

36 A. Yes. This was a supplementary development plan which
37 wasn't rezoning large areas of residential - or large
38 areas of Hindmarsh Island for residential development.

R.J. HOOK XN (MR SMITH)

1 This was, in effect, just putting in place a policy
2 document that was supporting the approvals that had been
3 granted. So it was providing for the approvals of the
4 marina development, and putting a marina zone over the
5 land, that was the Binalong land that had already been
6 approved. It was identifying that there may be further
7 opportunities for residential development at other sites
8 in the future, but they would be the subject of further
9 planning investigations.

10 Q. Looking at document 40, the letter from Mr Wilbur Wilson
11 to Miss Karen Ferguson, Wilbur Wilson being an officer
12 of the Department of State Aboriginal Affairs, dated 20
13 October 1993, that letter is relevant to this question
14 of what the supplementary development plan 1993
15 achieves, isn't it.

16 A. Yes, it is relevant. This advice, which is dated
17 October 1993 - again, from my appreciation, this is
18 really the first time that the Aboriginal heritage issue
19 was raised as one of new and increased significance over
20 anything that we had dealt with previously.

21 Q. That letter is asking that these matters be addressed in
22 the supplementary development plan, but was assuming the
23 bridge proceeding. Is that the way you read that.

24 A. I think it was drawing attention to - I mean, there is
25 other correspondence that had been sent to the council
26 which had been referred on to us at this stage. I think
27 it was an awareness of the approvals that had been
28 granted, and I think by this stage probably contracts
29 had also been led, but it was raising the Aboriginal
30 heritage concerns at a new level from certainly my
31 appreciation of those that had been dealt with
32 previously.

33 Q. There is a bundle of correspondence that, in similar
34 fashion, addresses that which is all the documents
35 constituted in document 39. There is a bundle of
36 correspondence.

37 A. That is correct.

1 Q. I letter of 25 October from Douglas Milera to the Goolwa
2 Council.

3 A. Yes.

4 Q. With an attached copy of s.23 of the Aboriginal Heritage
5 Act, a letter in response, from the council to Mr Milera
6 of 2 November 1993.

7 A. Correct.

8 Q. And a letter from Karen Ferguson to the district council
9 dated 9 November 1993.

10 A. Yes.

11 Q. You will see in the letter, for instance, from Douglas
12 Milera to the council, there is an allegation that there
13 was no consultation with the Lower Murray Aboriginal
14 Heritage Committee concerning the proposed bridge. Do
15 you see that.

16 COMSR: Which letter are we looking at now?

17 MR SMITH: We are looking at the letter from
18 Douglas Milera, Secretary of the Lower Murray Aboriginal
19 Heritage Committee to the council.

20 XXN

21 Q. Right.

22 A. Yes, I have got a copy of that.

23 CONTINUED

1 Q. Again, you would take issue with that.

2 A. That is dated October 1993. I must admit, my initial
3 reaction when I read it was that at this stage the
4 bridge was, and I think it was being well publicised,
5 the bridge was being constructed by the Highways
6 Department, and maybe this was seen as a different
7 proposal from the one that had been put forward and
8 assessed previously by the developer, and it did appear
9 to me that there was some consultation that needed to be
10 carried through by the Highways Department, that they
11 were, in fact, putting in place a bridge that had been
12 previously approved following the consultation that was
13 carried out during the environmental impact assessment
14 process.

15 Q. Finally, on p.17 of your statement, the Supplementary
16 Development Plan was authorised on 9 December 1993,
17 that's correct.

18 A. That is correct. That again was on the understanding
19 that contracts were in place for the bridge to be
20 constructed.

21 Q. Would you describe what happened in terms of how the
22 Aboriginal community opposition arose in the context of
23 the overall development.

24 A. My appreciation, and I would want to make very clear
25 that I claim no expertise at all in Aboriginal heritage
26 matters, nor would any of the people in the
27 environmental assessments branch at the time, that's why
28 we did have an Aboriginal heritage branch, and our role
29 - and my officers would have been very dependent on the
30 advice of the Aboriginal Heritage Branch, and it would
31 have carried through any advice given to us. My
32 appreciation in that 1989 and 1990, when we worked
33 through the environmental assessment process, that
34 Aboriginal heritage issues were raised as needing
35 attention. There were reports prepared and that, at the
36 conclusion of that process, after the further work
37 requested by the Aboriginal Heritage Branch had been
38 done, is that there was general satisfaction within the

R.J. HOOK XN (MR SMITH)

1 Aboriginal Heritage Branch that there were no reasons
2 why the bridge and the development should not be able to
3 proceed, and I believe the advice from the branch
4 reflected that, and that was even followed through and
5 reaffirmed, I think, over the next year or two. Indeed,
6 my appreciation would have been that if the financial
7 arrangements existing at the time had been such that the
8 bridge had proceeded to construction soon after that
9 approval, that those works may well have proceeded with
10 this still being viewed as a positive development in the
11 minds of a lot of people. That's my appreciation of
12 what we were dealing with on an environmental assessment
13 process. It was quite different to other more
14 contentious developments that had been assessed at
15 around that time. With the passage of time and the
16 change of the financial arrangements, it became apparent
17 to us, in government departments that there were new
18 concerns being raised towards the end of 1992. They
19 were being raised with a degree of vehemence, I guess,
20 that hadn't been the case two years earlier. There were
21 challenges to the financial arrangements which really
22 did not affect us within the Department of Environment
23 and Planning; those arrangements were matters being
24 negotiated through the Premier's Department with the
25 government, there were concerns raised about the
26 environmental impact of the bridge that were reflected
27 through the environment resources and development
28 committee stage of the review, concerns raised then
29 about the legality of the process, and even in those
30 phases, which go through to about August 1993, I was
31 still not aware, nor had anything been raised with us,
32 about Aboriginal concerns. Aboriginal concerns first
33 surfaced around October 1993.

34 Q. And became the prime concerns from thereafter.

35 A. As it appears, yes.

36 Q. The last document in your bundle of documents is a final
37 report, document 43, Hindmarsh Island Bridge
38 Environmental Issues and Options, Natcom Land

R.J. HOOK XN (MR SMITH)
XXN (MR PALYGA)

- 1 Development Services May 1994'. What is that document.
2 A. The Environmental Resources and Development Committee of
3 Parliament did make some preparations about a report on
4 the management of land in that area, and there was also
5 a recommendation in the assessment report, this was when
6 the Department of Environment and Natural Resources
7 constituted a committee and then engaged one of their
8 officers, or asked one of their officers to prepare a
9 report and make representations primarily relating to
10 the management of the land in the Lower Murray lakes.
11 CROSS-EXAMINATION BY MR PALYGA
12 Q. In 1989, you were the manager of the assessments branch.
13 A. That's correct.
14 Q. Mr Ware was the manager of the Aboriginal Heritage
15 Branch.
16 A. That's correct.
17 Q. Both separate branches of the Department of Environment
18 and Planning.
19 A. That's correct.
20 Q. You've provided us with a couple of documents, and
21 there's a memo to Mr Cooper from Mr Ware dated 27
22 January 1988, which refers to referring proposals to the
23 Aboriginal people at Point McLeay with respect to their
24 impact on the traditional significance of the island to
25 Ngarrindjeri and Ramindjeri descendants, it's document
26 number 18, and you've also provided us with a document
27 number 19, a letter to Mr Henry Rankine dated 2 February
28 1989, haven't you.
29 A. Yes.
30 Q. Mr Chapman has given evidence to the Commission that he
31 was told by the Aboriginal Heritage Branch, in mid 1989,
32 to consult Henry and Jean Rankine with Aboriginal
33 heritage matters. Do you know, of your own knowledge,
34 whether or not, at the time, they were the relevant
35 people to consult.
36 A. I don't know, I couldn't answer that question. Any
37 advice on who was relevant to consult would have been
38 advice provided by the Aboriginal Heritage Branch, and I

R.J. HOOK XXN (MR PALYGA)

1 wouldn't presume to have any expertise on that.

2 Q. Were you aware of Mr Rankine in 1989.

3 A. I'm certainly aware of the name now, and I assume I was
4 in 1989.

5 Q. I'd like to take you forward to the letter from Ms
6 Lenehan of April 1990, which is document number 30, and
7 which you've described as a letter dated 11 April 1990.

8 Would you agree with me that the original signed copy of
9 that letter is in fact dated 12 April 1990.

10 A. I'm not sure. It would have been reflecting advice or a
11 decision of Government and Executive Council which would
12 have been made on a particular Thursday.

13 Q. Would it assist you to know that 1 April 1990 was the
14 Thursday before Easter in 1990.

15 A. I would have envisaged that the decision then had been
16 made on that Thursday which would have been -

17 Q. Is it logical to assume that it was 12 April, given that
18 your next document, which is document number 31, the
19 clearance dated 12 April 1990 from the Aboriginal
20 Heritage Branch.

21 A. I don't think the clearance dated 12 April is
22 particularly relevant. It would have been the decision
23 taken by the Government in Executive Council that would
24 have been relevant and, as you would appreciate, the
25 process is that a decision such as that goes through
26 Cabinet on the Monday, and then endorsed by Executive
27 Council on the Thursday, would be normal practice. All
28 the documentation for the minister to sign, if that
29 approval went through, would have been with the minister
30 during that period.

31 Q. You would be aware of some confusion as to whether or
32 not what's been provided as the conditions of approval,
33 i.e. the attachment to the letter signed by the
34 minister, document number 30, are the actual conditions
35 attaching to the approval. Are you aware of some
36 confusion about that and, in particular, some
37 correspondence with Professor Saunders last year about
38 the matter.

R.J. HOOK XXN (MR PALYGA)

1 A. I'm not aware of specific correspondence with Professor
2 Saunders. There is no doubt in my mind that they are
3 the conditions attached to the approval. I'm aware that
4 there's been some comment made that those conditions
5 were included or attached to the letter that was sent to
6 the Chapmans.

7 Q. Are you aware, of your own knowledge, whether or not
8 they were attached to that letter.

9 A. I certainly believe that they would have been but, you
10 know, the process would have been that that would have
11 been sent from the minister's office, and we would have
12 expected that the minister's office would have included
13 the conditions that had then been approved by Executive
14 Council with the letter. In support of the statement I
15 said that I believed they would have been. There are
16 other conditions in there relating to, for instance, the
17 \$500,000 bond which were then, through consent
18 negotiations, even over the next couple of months
19 changed, and there was certainly an awareness of those
20 conditions.

21 COMSR

22 Q. I take it from what you've said that you can't
23 personally say, but you believe that those conditions
24 were attached to the letter, is that what you're saying.

25 A. That's a correct way of putting it.

26 NO RE-EXAMINATION

27 NO FURTHER QUESTIONS

28 WITNESS RELEASED

29 ADJOURNED 3.58 P.M.

